

A Compliance Audit Report on the
**RECOVERY SCHOOL DISTRICT'S MODULAR
CAMPUS CONSTRUCTION PROGRAM**
Issued April 3, 2013



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We performed a compliance audit of the Recovery School District's Modular Campus Construction Program. We conducted our audit to analyze planning, design, construction, and project management of the program. We also conducted this audit to determine if contractors adhered to their contractual obligations during execution of the program.

Our audit consisted primarily of inquiries and the examination of selected financial transactions, records, and other documentation. The scope of our audit was significantly less than an examination conducted in accordance with *Government Auditing Standards*.

The accompanying report presents our findings and recommendations as well as management's response. This is a public report and copies have been delivered to the appropriate public officials.

Respectfully submitted,

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DGP/ch

RSDMCCP 2013

EXECUTIVE SUMMARY

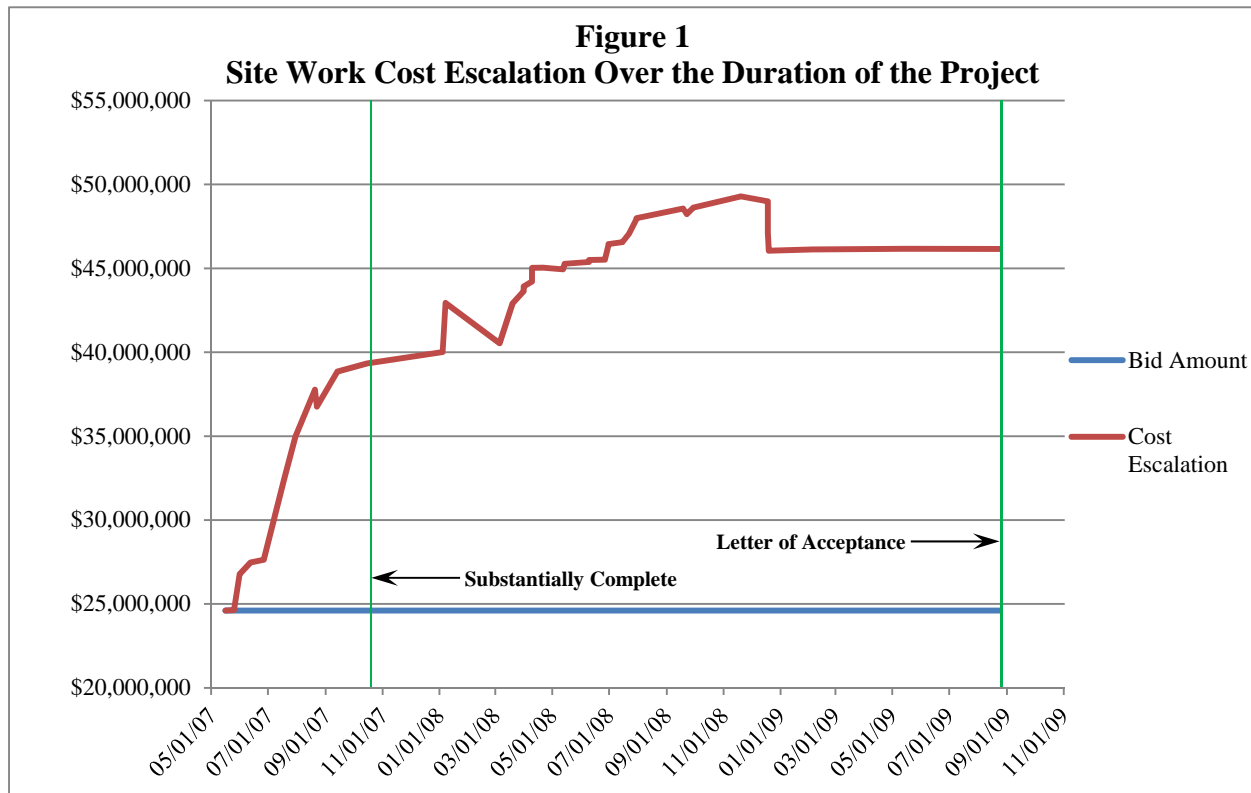
We analyzed planning, design, construction, and project management of the Recovery School District's (RSD) Modular Campus Construction Program (Modular Project). The total cost of planning, design, construction, portable buildings, and project management associated with the Modular Project totaled \$105,356,479. During our analysis, we noted inadequate project management practices that resulted in a total of \$6,120,258 of questionable costs (see the following table). The questionable costs were charged for materials or labor that may not have been provided or items that do not include sufficient evidence to support their costs as follows:

- Linfield, Hunter and Junius, Inc. (LH&J) billed RSD \$3,543,718 for the same site work design services through increases in the cost curve and as additional services.
- Arrighi-Simoneaux Construction (Arrighi-Simoneaux) billed RSD \$685,558 and \$666,419, respectively, for general conditions for the same 77-day period through separate change orders.
- Arrighi-Simoneaux billed RSD \$170,571 for fuel for temporary generators to power five modular campuses but did not provide the fuel. This amount also included \$37,000 of incorrectly charged sales tax.
- Arrighi-Simoneaux billed RSD \$37,843 for 16 light pole foundations that were not provided. In addition, \$472,852 of the cost to provide light pole foundations appears to be unreasonable for the service provided.
- RSD spent over \$10 million through change orders that were based on unit prices that were not established through the public bid process. Some of the unit pricing from Arrighi-Simoneaux may be unreasonable which could result in questionable costs of at least \$404,160.
- Arrighi-Simoneaux billed RSD at least \$139,137 for labor incurred as a result of change orders that is not in accordance with section 7.2.2 of the contract.

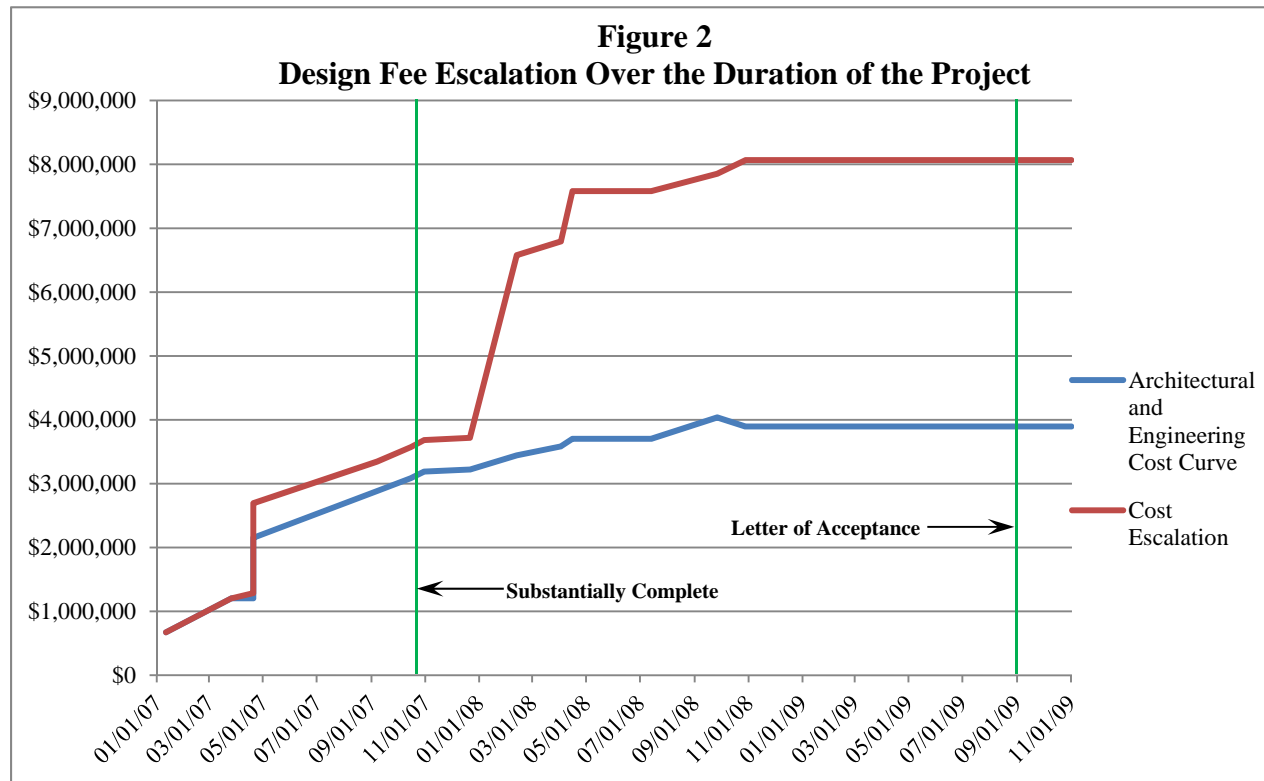
Item	Work or Materials Not Provided	Insufficient Support	Funding Source
Architectural and Engineering Fees	\$3,543,718		Other
General Conditions		\$1,351,977	Mixed
Generator Rental	170,571		Mixed
Light Pole Foundations	37,843	472,852	FEMA
Unreasonable Costs		404,160	Mixed
Change Order Labor Cost		139,137	FEMA
Subtotal	\$3,752,132	\$2,368,126	
Total		\$6,120,258	

FEMA - Funding from FEMA’s Public Assistance program
 Other - Funding from all sources other than FEMA Public Assistance
 Mixed - A combination of FEMA and other funding sources

We conducted this audit because of the cost escalation of the construction site work contract and the architectural and engineering site work design contract. As a result of 45 change orders, the site work contract increased from the \$24,604,265 bid price to a final price of \$46,152,190 (see Figure 1).



In addition, 15 amendments to the architectural and engineering site work design contract increased that contract from the \$673,443 contract price to a final billing of \$8,065,291 (see Figure 2).



BACKGROUND

The Louisiana Legislature created the Recovery School District (RSD) in 2003 to provide the support and intervention necessary to put academically struggling schools on a path toward success. At the time of Katrina, the RSD, administered by the Louisiana Department of Education (LDOE), was still a relatively new organization with a very small staff and only had control of five Orleans Parish schools.

Hurricane Katrina struck New Orleans on August 29, 2005, devastating the City and its public schools. Over 120 schools were damaged, many beyond repair. The number of RSD-controlled schools increased from five to 112 following the storm.

Given the importance of re-opening schools and that RSD did not possess the manpower to accomplish all of the required tasks, RSD contracted with Alvarez and Marsal in April 2006 to develop and implement a comprehensive and coordinated disaster recovery plan. The services included project management responsibility for the design, construction, and placing into service of modular classroom facilities for nine school campuses on seven different site locations (Modular Project).

RSD contracted with Linfield, Hunter and Junius, Inc. (Linfield) in January 2007 to serve as the site work architectural and engineering firm for the Modular Project. To expeditiously get children back in schools, the contract with Linfield provided for a short design time and specifically called attention to the very aggressive design schedule.

In April 2007 after the Modular Project had been designed, RSD issued advertisements seeking public bids for the site work contract. In May 2007 after receipt and review of the bids, RSD entered into a contract with Arrighi-Simoneaux Construction (Arrighi-Simoneaux) for the site work for all campuses included in the Modular Project. Construction work began immediately. Contractually, RSD and Arrighi-Simoneaux agreed that all schools except one would be substantially complete by mid-July 2007 so that all systems could be tested and any minor defects could be fixed before school began in the fall. The other school was supposed to be substantially complete by mid-September 2007.

The July and September 2007 substantial completion dates for the Modular Project were not met. According to RSD management, the Modular Project was plagued with poor project management issues and with errors and omissions in the design work. RSD terminated the Alvarez and Marsal project management contract early, effective October 31, 2007, and replaced Alvarez and Marsal with the project management joint venture of HOV Services/Meridian Consulting Group (HOV/Meridian).

HOV/Meridian served as project manager on the Modular Project from November 1, 2007, until its contract expired on April 30, 2008. HOV/Meridian was an Alvarez and Marsal subcontractor and had institutional experience with the Modular Project. However, according to RSD management, HOV/Meridian failed to properly manage this complex construction project

for RSD. Although the Modular Project was not complete, RSD did not renew HOV/Meridian's contract but instead allowed it to expire and replaced HOV/Meridian with a new project management consultant, Jacobs/CSRS. Under the project management of Jacobs/CSRS, performance improved.

Final acceptance of the Modular Project occurred on September 17, 2009, over two years after the original contract completion date.

The total cost of the planning, design, construction, portable buildings, and project management associated with the Modular Project totaled \$105,356,479. Through change orders, the site work contract with Arrighi-Simoneaux increased from \$24,604,265 to \$46,152,190. That increase and other factors discussed previously caused related contracts to increase in value (i.e., architectural and engineering and project management contracts). The related architectural and engineering contract with Linfield, for example, increased from \$673,443 to \$8,065,291.

The focus of this report is two-fold:

- (1) whether the contractors and the architectural and engineering firm complied with their contracts, and
- (2) the cost reasonableness of the change orders and amendments to the architectural and engineering and site work contracts.

FINDINGS AND RECOMMENDATIONS

Project Management

Inadequate project management practices resulted in a total of \$6,120,258 of questionable costs that were charged for materials or labor that may not have been provided or items that do not include sufficient evidence to support their cost.

RSD contracted with professional project management firms to provide expertise in planning, design, budgeting, scheduling, and construction of temporary modular campuses (see Table 1). RSD relied on these project managers to be its expert representatives on a complex construction project (Modular Project) with a very short design and construction schedule.

TABLE 1

Project Manager	Contract Cost
Alvarez and Marsal	\$3,107,903
HOV/Meridian	1,024,288
Jacobs/CSRS	1,371,175
National Guard	151,536
Total	\$5,654,902

RSD terminated the original project management contract with Alvarez and Marsal early because, according to RSD management, Alvarez and Marsal failed to properly manage the Modular Project. RSD replaced Alvarez and Marsal with the project management joint venture of HOV Services/Meridian Consulting Group (HOV/Meridian). According to RSD management, HOV/Meridian also failed to properly manage the Modular Project. RSD allowed the contract with HOV/Meridian to expire even though the Modular Project was not complete.

In May 2008, near the end of the project, RSD hired Jacobs/CSRS as the project manager. According to RSD management, Jacobs/CSRS did a good job of putting together the missing pieces and helping RSD resolve outstanding issues with FEMA. In addition, RSD hired the Louisiana National Guard during the period April 2007 through June 2008, to communicate project status directly to Department of Education administrators.

As shown in Table 2, Alvarez and Marsal and HOV/Meridian failed to verify that work included in change orders was completed or even provided. In addition, because of the lack of project documentation, we could not verify the cost reasonableness of certain change orders.

TABLE 2

Item	Questioned Cost Items Not Provided	Questioned Cost Insufficient Support
Architectural and Engineering Fees	\$3,543,718	
General Conditions		\$1,351,977
Generator Rental	170,571*	
Light Pole Foundations	37,843	472,852
Unreasonable Costs		404,160
Change Order Labor Costs		139,137
Subtotal	\$3,752,132	\$2,368,126
Total	\$6,120,258	

*Includes overcharges of at least \$37,000 of additional sales tax.

Recommendation 1: Though the process has improved substantially, RSD management should continue to evaluate its system of accountability for project managers and architectural and engineering firms to ensure adequate performance as projects progress. RSD should also continue to evaluate its internal processes to ensure staff is logically determining the soundness of advice provided by the architectural and engineering firms and the project manager and have the time to do so.

RSD and GOHSEP management agreed with this recommendation (see Appendix A, pages A-1 and A-6 through A-7).

Questionable Architectural and Engineering Fees

Linfield, Hunter and Junius, Inc. (Linfield) appears to have billed RSD \$3,543,718 for the same site work design services through increases in the cost curve and as additional services.

The contract between RSD and Linfield used the standard State of Louisiana contract for professional design services. RSD and Linfield also used the standard State of Louisiana architectural and engineering firm fee curve as the basis for Linfield's fee. Fees charged using this curve are calculated through a formula based on the estimated project cost. This curve allows the architectural and engineering fees to increase or decrease as actual costs become known. The architectural and engineering fees can also increase because of additional services that may be needed. Fees for additional services are not included in the design services fee calculated under the fee curve.

The site layout design contract between RSD and Linfield was created with a basic design services fee of \$673,443 based on estimated construction cost of \$7,500,000 for the site work. Before the bids were received, additional work was added, the design fee was re-calculated, and the design services fee increased to \$2,152,763 based on the available funds for construction of \$27,716,000. Over the course of the project, a total of 45 change orders were approved that increased the cost of the project to \$46,152,190. Using the design services fee calculator with a project cost of \$46,152,190 and \$232,972 for unquestioned additional services, \$3,473,809 should have been Linfield's total fee.

The contract increased for a variety of reasons such as:

- The architectural plans did not include everything that was required to set up school campuses (e.g., adding separate buildings to each campus for communications and IT).
- RSD management changed what was required (e.g., RSD had to change the cafeterias to meet health code).
- Numerous communication issues between the project manager, architectural and engineering firm, and the modular building manufacturer (e.g., replacing all the undersized wire on all campuses with properly sized, more expensive wire).

Linfield requested and RSD approved 15 amendments to the contract. The services contemplated in the amendments appear to be basic design services, but Linfield billed them as if they were additional services. Section 5.4 of Linfield's contract states, "Payment to the designer for additional services, defined in article 7.3¹, shall be made on the basis of the designer's direct personnel expense for performing such services multiplied by a factor of 3.0." Since Linfield did not adhere to this clause in the contract and are unable to provide any documentation to support the direct personnel expenses incurred as a result of the contract amendments, the reasonableness of the charges and the proper amount RSD should have been billed cannot be determined. If RSD, the project managers, and Linfield had followed this clause in the contract, there would have been a way to evaluate the reasonableness of the services and the proper amount Linfield should have billed as additional services.

Many of the amendments also created additional construction work that increased the cost of the project. Even though Linfield billed separately for those services, Linfield continued to increase the design services fee based on the rising price of the project. Architectural and engineering fees should not be increased for basic design services and additional design services for the same work.

In addition, the additional design fees do not appear to be reasonable. For example, an amendment was issued to change the modular building width on the plans from 60 to 68 feet. These changes involved expanding the building outlines on the site plan. Linfield charged \$460,000 of additional design fees through this amendment. By dividing the \$460,000 Linfield charged by \$195 (the highest hourly personnel rate submitted), we determined that it would take 2,359 man hours (10 people working 8 hours a day for 30 days) to generate the \$460,000 fee. Since these plan changes increased the project cost, the calculated design fee increased by

¹ Section 7.3 - ... Additional services may include, but are not limited to, the following:

7.3.1 - Providing design services relative to future facilities, systems, and equipment which are not included as part of the project.

7.3.2 - Providing interior design and other services required for selection of furniture and furnishings and moveable equipment.

7.3.3 - Preparing measured drawings when these are not available or for archival research.

7.3.4 - Providing extensive program revisions during the program completion phase when the necessity of such as additional services is authorized in writing by the owner.

7.3.5 - Providing any other special services not otherwise included in the contract or not customarily furnished in accordance with generally accepted designed practice.

\$100,262. Therefore, Linfield received \$560,262 (\$460,000 + \$100,262) to change the width of the site boxes by 8 feet.

By increasing the fee based on project cost increases and billing for the same work as additional design services, Linfield appears to have billed RSD at least \$3,543,718 for the same services. Also, Linfield was unable to provide support for the fees charged for the additional work as required by the contract.

Recommendation 2: RSD should continue to closely monitor amendments to architectural and engineering contracts, and examine additional design fees thoroughly before approval.

Recommendation 3: RSD management should seek reimbursement from Linfield, Hunter, and Junius for the \$3,543,718 of questionable design fees which were billed in addition to the design fee curve in the contract.

RSD and GOHSEP management agreed with recommendations 2 and 3 (see Appendix A, pages A-1 and A-7 through A-8). However, Linfield management disagreed with both recommendations (see Appendix A, pages A-26 through A-31).

In its response, Linfield states, in part, that:

- (1) the auditor made no attempt to carefully evaluate the additional and special services performed by Linfield, and
- (2) the auditor incorrectly characterizes additional and special services in the amendments as basic design services.

Additional Comments: Our audit staff met with Linfield representatives at their office to obtain supporting documentation for their claims of additional services. At that meeting, we requested records to validate their charges, but were told that the billings were lump sum and that they did not track additional service work or work for specific amendments to their contracts on employees' time sheets as required by the contract. We did not audit Linfield as a separate auditee. Our work focused on the documentation provided to support expenditures made by RSD.

Linfield did not provide adequate documentation to support its work as additional services, as required by its contract. Linfield accepted increases to its basic design fee through the fee curve, as if the charges were basic design services.

Contract General Conditions

Arrighi-Simoneaux Construction (Arrighi-Simoneaux) billed RSD \$685,558 and \$666,419, respectively, for general conditions for the same 77-day period through separate change orders.

The original site work contract with Arrighi-Simoneaux for modular campus construction was signed on May 16, 2007, with a substantial completion date of July 14, 2007, for all campuses except one. For that campus, the substantial completion date was September 14, 2007. Over four months after substantial completion, RSD approved a change order for Arrighi-Simoneaux that added 77 calendar days to the contract and charges of \$685,558 for general conditions.² Over a year after substantial completion, another change order for Arrighi-Simoneaux was approved to grant general conditions charges of \$666,419 for an electrical subcontractor for the exact same 77-day period and at the same sites as the prior change order.

According to section 7.2.7 of AIA A201-1997,³ “The contractor will be due extended fixed job-site overhead for time delays only when complete stoppage of work occurs causing a contract completion extension, and the contractor is unable to mitigate financial damages through replacement work. The stoppage must be due to acts or omissions solely attributable to the owner. In all cases, the contractor must notify the architect in writing. Reasonable proof may be required by the architect that alternate work could not be performed. Reasonable proof may be required by the architect that the stoppage affected the completion date.” Section 7.2.7 is the only part of the site work contract that allows payment for general conditions based on change orders.

We reviewed both of the approved change orders and all of the other contractual documents and determined that there was no stoppage of work nor was there any reasonable proof that a stoppage was eminent. We also determined that Arrighi-Simoneaux did not provide sufficient detail to determine if these general condition charges were reasonable.

The reasonableness of general condition costs are normally determined by reviewing either a detailed list of standard costs for supervision, trash removal, portable restrooms, site office trailers, security, etc., provided by the general contractor at the beginning of the project or by reviewing the breakdown of general conditions costs shown in the schedule of values. General conditions expenses were not shown in the project schedule of values and Arrighi-Simoneaux did not provide a breakdown of general conditions costs at the beginning of the project. Because the costs for general conditions are not clearly stated, Arrighi-Simoneaux could have charged for items that are not allowed to be included under general conditions.

In addition, section 7.2.9 of AIA A201-1997 states, “When applicable as provided by the contract, the cost to the owner for change orders shall be determined by quantities and unit prices. The quantity of an item shall be submitted by the contractor and approved by the architect. Unit prices shall cover costs of material, labor, equipment, overhead, and profit.”

² Defined in the contract as fixed job-site overhead.

³ AIA A201-1997 is the customizable general conditions portion of a contract template between the owner (RSD) and the general contractor (Arrighi-Simoneaux).

During the 77-day period where Arrighi-Simoneaux requested additional general conditions costs, they also submitted and received approval for four unit priced change orders totaling \$7,407,163. According to an Arrighi-Simoneaux representative, all labor, equipment, and overhead is included in their unit prices. Therefore, any general conditions charges based upon those change orders appear to be double billed.

Furthermore, section 7.2.6 of AIA A201-1997 states, “After a change order has been approved, no future requests for extensions of time or additional costs shall be considered for that change order.” Creating two change orders for general conditions for the same period of time for the same sites appears to be inconsistent with section 7.2.6.

Recommendation 4: RSD management should consider seeking reimbursement from Arrighi-Simoneaux for any portion of the \$685,558 of general conditions charges that are inconsistent with the criteria in Section 7.2.7 of AIA A201-1997.

RSD and GOHSEP management agreed with this recommendation (see Appendix A, pages A-1 and A-8 through A-9). However, Arrighi-Simoneaux does not agree with recommendation 4 (see appendix A, pages A-33 and A-34).

In its response, Arrighi-Simoneaux states, in part, that:

- (1) because RSD made a cardinal change to the original scope of work, Arrighi-Simoneaux was entitled to additional reimbursement;
- (2) the overhead extension was based on actual costs incurred during the 77-day period as defined in Change Order #11; and
- (3) the auditor’s report misrepresents the applicable terms and conditions of the contract and misrepresents the facts related to the issue of the 77-day period.

Additional Comments: The auditor is not saying that Arrighi-Simoneaux did not incur general conditions costs, although we have questions about the appropriateness of the amount charged and whether the contract language was followed. In addition, the contract is clear as to when additional general conditions are allowed. Those conditions were stoppage of work or imminent stoppage of work where other work could not be accomplished during the stoppage. Neither of these conditions existed during the project or the 77 additional days of the contract time extension.

Recommendation 5: GOHSEP and RSD management should seek reimbursement for any portion of the \$666,419 of general conditions charges that are inconsistent with the criteria in sections 7.2.6 and 7.2.9 of the contract or may have been double billed.

GOHSEP management agreed with this recommendation (see Appendix A, page A-1) and RSD management agreed in part but disagreed that the \$666,419 was double-billed (see Appendix A, pages A-9 and A-10). Arrighi-Simoneaux does not agree with recommendation 5 (see Appendix A, pages A-33 and A-34).

In its response, Arrighi-Simoneaux states, in part, that:

- (1) Arrighi-Simoneaux's subcontractor made a separate claim for general conditions, which Arrighi-Simoneaux submitted to RSD;
- (2) Arrighi-Simoneaux's subcontractor was entitled to make this claim because allotments for extended general conditions were not included in unit prices; and
- (3) the unit prices included only direct costs associated with labor, materials, subcontractors, and equipment plus applicable profit and overhead.

Also, RSD disagreed that the \$666,419 was double billed because it was for an Arrighi-Simoneaux subcontractor.

Additional Comments: The auditors determined that all of the work done by Arrighi-Simoneaux's subcontractor during the 77-day period was billed using unit prices. As required by the contract, unit prices include all costs to do the work including general conditions. Since unit prices include all costs, charging general conditions in addition to the unit price appears to be double billing.

Arrighi-Simoneaux's subcontractor could not request a change order for general conditions because the subcontractor did not have a contract with RSD; therefore, both change orders for general conditions were requested by and paid to Arrighi-Simoneaux. General contractors, Arrighi-Simoneaux on this project, provide general conditions for each construction site. Subcontractors typically include all of their costs in the price of the work, as evidenced by no other subcontractor on this project claiming general conditions despite the extended length of construction beyond the original contract time.

Generator Rental

Arrighi-Simoneaux billed RSD \$170,571, which includes \$37,000 of incorrectly charged sales tax, for fuel for temporary generators to power five modular campuses but did not provide the fuel.

Because adequately sized transformers were not available for four sites in time to ensure the campuses would open on schedule, RSD sought an alternative means of powering the campuses. RSD decided to use temporary generators to power the five schools (Coghill, Williams, Livingston, Abramson K-8, and Abramson 9-12) located on those four sites.

Arrighi-Simoneaux initiated three change orders totaling \$2,717,454 for the rental of temporary generators to provide power until the correct permanent electrical equipment could be installed. The first change order totaled \$1,776,661 and was for the estimated cost of renting five generators, installation of the generators, maintenance personnel, subsistence, fuel, and a fuel truck.

After Arrighi-Simoneaux discovered that the wire in the original estimate did not meet the specifications required for the generators, Arrighi-Simoneaux located, procured, and provided the correct equipment to power the campuses. This work resulted in the second of the three change orders with an estimated additional cost of \$912,689.

Since the two previous change orders for the generators were based on estimates, the third change order was created to reconcile the estimates to actual cost. The third change order totaled \$28,104.

We reviewed each of the change orders in detail and noted the following issues:

- Arrighi-Simoneaux charged RSD for 52,644 gallons of diesel that were not delivered to any of the school sites. Through the first change order, Arrighi-Simoneaux billed RSD \$690,624 including sales tax and mark-up for 144,000 gallons of diesel but according to the diesel invoices provided, only 91,356 gallons were delivered.

Arrighi-Simoneaux did not provide a credit for the diesel that was not delivered. However, through the second change order, Arrighi-Simoneaux provided a partial credit. Arrighi-Simoneaux reduced the unit price of diesel from \$4/gal to \$2.40/gal resulting in a credit of \$1.60/gal which does not include sales tax and mark-up. The credit Arrighi-Simoneaux provided to RSD for the reduced unit price and the associated sales tax and mark-up was for the 144,000 gallons of diesel that it billed for (see Table 3).

TABLE 3

Item	Questioned Cost
Total Billed	\$690,624
Unit Price Credit	(276,250)
Difference	414,374
Actual Cost	(249,950)
Other Taxes	6,147
Amount Not Credited	\$170,571

Note: All amounts in the table include sales tax and mark-up.

Recommendation 6: RSD management should recalculate and verify all change orders related to this project to identify any additional overcharges.

Recommendation 7: RSD management should seek reimbursement from Arrighi-Simoneaux for the \$170,571 of questioned costs related to generator rental.

RSD and GOHSEP management agreed with recommendations 6 and 7 (see Appendix A, pages A-1 and A-10). However, Arrighi-Simoneaux does not agree with recommendation 7 (see Appendix A, page A-34).

In its response, Arrighi-Simoneaux states, in part, this was a lump sum change order; Arrighi-Simoneaux assumed the risk of an inaccurate estimate; and any overruns or shortages were within Arrighi-Simoneaux’s risk of performing the work.

Additional Comments: If Arrighi-Simoneaux’s change orders were truly based on lump sums, they would not have had the benefit of negotiating pricing after the work had been performed or reconciling the charges to actual cost. Arrighi-Simoneaux did both. Arrighi-Simoneaux reconciled this change order to actual cost twice, increasing the amount by over \$1 million.

Light Pole Foundations

Arrighi-Simoneaux billed RSD \$37,843 for 16 light pole foundations that were not provided. In addition, \$472,852 of the cost to provide light pole foundations appears to be unreasonable for the service provided.

Through change order number 6, Arrighi-Simoneaux charged RSD \$605,498 for 256 light pole foundations. We conducted field inspections and counted 215 light pole foundations. Since the modular campus at Langston Hughes has been removed to make way for the new school, field counts at that campus were not possible. We added the 25 light pole foundations that Arrighi-Simoneaux billed for Langston Hughes to the 215 we counted to arrive at the total number (240) that should have been billed. RSD paid for 256 light pole foundations. Therefore, Arrighi-Simoneaux billed RSD for at least 16 pole foundations that are not located on the modular campus sites at a total cost of \$37,843 (see Table 4).

Table 4

School	Quantity Billed	Quantity Verified	Quantity Difference	Overbilling
Abramson 9-12	31	28	3	\$7,096
Abramson K-8	30	26	4	9,461
Carver 9-12	28	27	1	2,365
Carver K-8	28	28	0	0
Fannie C. Williams	24	22	2	4,731
Coghill	27	26	1	2,365
Gregory	36	31	5	11,825
Livingston	27	27	0	0
Langston Hughes	25	25*	0	0
Total	256	240	16	\$37,843

* Could not be verified

Part of the \$605,498 charge was \$472,852 for supplying and driving metal pipe piles to support the light poles. That price equates to \$160 per linear foot of driven pile. According to RS Means and National Construction Estimator, similar pipe piles should cost less than \$60 per linear foot of driven pile. Therefore, the cost of driving the piles may not be reasonable as required by federal regulations.

Recommendation 8: RSD should require Arrighi-Simoneaux to provide detailed direct costs for each item related to the light pole foundations in change order number 6 as required under sections 7.2.2 and 7.2.5 of their contract to verify the cost reasonableness of the light pole foundation piles. GOHSEP and RSD management should recoup any amounts that are determined unreasonable.

RSD and GOHSEP management agreed with this recommendation (see Appendix A, pages A-1 and A-10 through A-11). However, Arrighi-Simoneaux does not agree with the recommendation (see Appendix A, pages A-34 and A-35).

In its response, Arrighi-Simoneaux states, in part, that it is inappropriate for the auditor to question the cost reasonableness of the light pole foundations. Arrighi-Simoneaux stated that they estimated the cost of this added work and negotiated a lump sum change order with RSD.

Additional Comments: Arrighi-Simoneaux's contract requires that they submit detailed direct material, labor, and equipment costs plus overhead and profit or use competitively bid and properly procured unit prices. Change order number 6 does not include all detailed costs, nor does it use competitively bid and properly procured unit prices. We agree that it is impractical to bid in all situations. However, the change order process provides a way to accomplish work at a reasonable cost without the necessity of bidding. Had Arrighi-Simoneaux followed its contract and provided the itemized direct costs, we would not have had to use RS Means and National Construction Estimator pricing to estimate the reasonableness of the cost.

Recommendation 9: GOHSEP and RSD management should seek reimbursement of the \$37,843 for the 16 light pole foundations that Arrighi-Simoneaux did not provide.

RSD and GOHSEP management agreed with this recommendation (see Appendix A, pages A-1 and A-11). However, Arrighi-Simoneaux disagreed with the recommendation (see Appendix A, pages A-34 and A-35).

In its response, Arrighi-Simoneaux states, in part, that the auditor's conclusion of missing foundations is based on field counts that were conducted several years after completion and acceptance. Arrighi-Simoneaux also states that the contractor cannot be held accountable for changes made to the sites after contract completion or for the auditor's inability to locate or count the foundations correctly. Arrighi-Simoneaux also stated that the auditor's initial count showed that over 100 light pole foundations were missing and that Arrighi-Simoneaux found many light pole foundations that the auditors had missed.

Additional Comments: The auditor's initial count indicated 43 light pole foundations were missing, not 100 as mentioned by Arrighi-Simoneaux. The auditor's initial count did not include a parking lot at one of the schools, five light pole foundations that we were told were not part of the original installation, and a few light pole foundations that were later brought to our attention by Arrighi-Simoneaux representatives. After receiving more information and conducting additional field counts, the auditor revised his numbers and compared those amounts to the field counts made by Arrighi-Simoneaux's staff. The auditor's count and the Arrighi-Simoneaux staff count differ by eight light pole foundations. Only one modular campus site had been removed at the time of this audit and we gave Arrighi-Simoneaux full credit for foundations installed at that campus.

Sales Tax Incorrectly Charged

Arrighi-Simoneaux incorrectly charged RSD at least \$37,000 of additional sales tax.

In common practice, a general contractor does not separate sales tax from the total amount billed. Rather, the tax is included in the lump sum amount that is passed on to the owner (see Example 1).

Example 1	
Price	\$100.00
Tax (7%)	7.00
Contractor's Cost	107.00
Mark-up (10%)	10.70
Owner's Cost	\$117.70

By not following this typical billing process, Arrighi-Simoneaux incorrectly charged at least \$37,000 of sales tax to RSD. This was accomplished by including additional taxes in their invoices to RSD as demonstrated in the following example:

- Arrighi-Simoneaux added 9% tax to the amount they already paid for items (which included taxes), marked that amount up 10%, and then billed RSD (see Example 2). Example 2 clearly indicates that for the same \$100 purchase (Example 1), RSD paid an additional \$10.59 because Arrighi-Simoneaux incorrectly charged for additional taxes.

Example 2	
Price	\$100.00
Tax (7%)	7.00
Contractor's Cost	107.00
Tax (9%)	9.63
Subtotal	116.63
Mark-up (10%)	11.66
Owner's Cost	\$128.29

Recommendation 10: RSD management should review sales taxes charges through all change orders and seek reimbursement for the amount that was incorrectly billed.

Recommendation 11: RSD management should seek guidance from the Louisiana Department of Revenue with regard to any taxes that Arrighi-Simoneaux charged and collected but may not have remitted to the Department of Revenue.

RSD and GOHSEP management agreed with recommendations 10 and 11 (see Appendix A, pages A-1 and A-12).

Unreasonable Costs

RSD spent over \$10 million through change orders that were based on unit prices that were not established through the public bid process. Some of that unit pricing may be unreasonable which could result in questionable costs of at least \$404,160.

FEMA revised the site-work project worksheets for the modular campuses to include change orders based on unit costs. FEMA included language in those project worksheets that indicates the unit prices were pre-determined and agreed upon in the competitively bid and properly procured original contract. Apparently, FEMA received inaccurate information about the procurement for the majority of unit prices since only 41 of the 228 unit prices were competitively bid and properly procured (see Appendix C).

Of the 41 unit costs that were included in the bids, only 19 were used. Those 19 unit prices were used in 210 instances for a total cost of \$933,006. The remaining 187 unit prices that were not bid were used in 1,459 instances for a total cost of \$10,240,681. Therefore, some of this unit pricing may not be reasonable and RSD may have to return funds to FEMA.

We analyzed several of Arrighi-Simoneaux's change orders to determine if the unit prices were reasonable. The following items are examples of unit prices and quantities of materials that appear to produce unreasonable costs:

- Change order number 8 includes work to drill 180 4-in. holes in wooden floors. Arrighi-Simoneaux charged RSD a unit price of \$110 per hole. Based on manufacturers' demonstrations, it takes less than 30 seconds to drill a 4-in. diameter hole through 3/4-in. thick plywood. Allowing 10 minutes per hole to compensate for moving from one drill location to the next and changing buildings, the price per hour would be \$660 which seems unreasonable for drilling holes. Arrighi-Simoneaux billed RSD \$19,800 for this work.
- Change order number 5 includes work totaling \$384,360 to install transformer foundations at all seven sites. The foundation work was based on standard construction drawings provided by Entergy Corporation. The following table contrasts the prices charged with the prices found in RS Means data.

Table 5

Item Description	C/O Unit Price	C/O Total	Drawing Quantity	Amount Charged	Mean's Unit Price	Mean's Total Price	Difference
Wooden Pile Driving			2700 LF	\$119,188	\$19.20/LF	\$51,840	(\$67,348)
Concrete	\$95/CY	135 CY	61 CY	\$12,825	\$98/CY	\$5,978	(6,847)
Limestone Base	\$85.10/TN	98 TONS	0 TONS *	\$8,340	BUP		(8,340)
Concrete Forming, Pouring, and Finishing Labor			2,580 SF	\$79,340	\$5/SF	\$12,900	(65,834)
Total							(\$148,369)

*Drawings do not include a limestone base.

BUP - Bid Unit Price

Based on the comparisons in Table 5, it appears that most of the prices Arrighi-Simoneaux used in change order number 5 are not reasonable.

As a result of using unit prices that were not established through the bid process, some of this unit pricing may not be reasonable and RSD may have paid unreasonable prices resulting in questionable costs of at least \$404,160.

Recommendation 12: RSD should verify that unit costs are being applied appropriately to change orders and not used for purposes other than what they were established for.

Recommendation 13: RSD should require contractors to provide a detailed breakdown of all direct costs including actual quantities for all change orders that include costs based on unit prices that were not established through the public bid process.

Recommendation 14: GOHSEP and RSD management should conduct cost analyses for the \$10,732,100 of charges and \$3,909,812 of credits based primarily on unit prices to determine reasonable cost for each unit price that was used that was not publicly bid and ensure only the reasonable amounts are charged to the Public Assistance program.

RSD and GOHSEP management agreed with the recommendations 12 through 14 (see Appendix A, pages A-1 and A-12 through A-13). However, Arrighi-Simoneaux disagreed with recommendations 12 and 13 (see Appendix A, pages A-35 and A-36).

In its response, Arrighi-Simoneaux states, in part, that RSD determined that exigent project circumstances did not allow time for change order work to be let via the public bid process. Arrighi-Simoneaux also stated that they prepared estimates for the changed work, which were subject to extensive negotiations in the best interest of RSD, and that “no work was performed prior to the execution of the change order.

Additional Comments: While the auditor agrees that it is impractical to bid in all situations, the change order process provides a way to accomplish work at a reasonable cost without the necessity of bidding. Had Arrighi-Simoneaux followed its contract and provided the itemized direct costs of every change order, then no bidding would have been required. Unit prices are only acceptable if they have been competitively bid and properly procured. Arrighi-Simoneaux included 41 unit costs with its bid but also used 187 additional unit prices that were not included in its bid.

Change Order Labor Costs

Arrighi-Simoneaux billed RSD at least \$139,137 for labor incurred as a result of change orders that are not in accordance with section 7.2.2 of the contract.

On several change orders, Arrighi-Simoneaux billed RSD for labor using hourly rates that included overhead and profit, benefits, fringes, and labor burden. According to Arrighi-Simoneaux’s contract, only direct wages paid plus a narrowly defined labor burden are allowed for change orders. The contract defines labor burden as markup for applicable payroll taxes, worker’s compensation insurance, unemployment compensation, and social security taxes. We found that the amounts Arrighi-Simoneaux billed for some labor was greater than the amounts listed in the certified payroll plus labor burden. The differing amounts indicate that Arrighi-Simoneaux did not adhere to section 7.2.2 of the contract.

Recommendation 15: On projects requiring conformance with the Davis-Bacon Act, RSD management should use the certified payroll as a tool to verify actual hours worked and actual hours billed for labor in change orders.

Recommendation 16: Prior to approving change orders, RSD management should ensure that each contractor and subcontractor submits documentation indicating the labor burden for each class of employee and that the labor burden submitted does not include items not allowed by the contract.

RSD and GOHSEP management agreed with recommendations 15 and 16 (see Appendix A, pages A-1 and A-13 through A-14). However, Arrighi-Simoneaux does not agree with recommendation 16 (see Appendix A, page A-36).

Arrighi-Simoneaux stated, in part, that the audit report is misleading in that it asserts \$139,137 was incorrectly billed for labor costs in the execution of change orders, when, in fact, billings for labor were in accordance with the terms of the lump sum change orders. Arrighi-Simoneaux also states that billings for labor and other costs were in accordance with the terms of the lump sum change orders.

Additional Comments: Arrighi-Simoneaux did not follow the requirements of section 7.2.2 of its contract for change orders numbered 1 through 10 because it charged RSD a billable rate for labor instead of the direct wages plus labor burden as required by the contract. This seems clear because Arrighi-Simoneaux billed labor on all change orders after number 10 at the direct wage rate plus labor burden as required by the contract.

Appendix A

Management's Responses

Governor's Office of Homeland Security and
Emergency Preparedness - Page A.1

Recovery School District - Pages A.2-A.14

Linfield, Hunter and Junius, Inc. - Pages A.15-A.31

Linfield, Hunter and Junius, Inc.'s complete response is 500 pages long and is on file for public viewing in the Legislative Auditor's office.

Arrighi Construction - Pages A.32-A.36



BOBBY JINDAL
GOVERNOR

State of Louisiana
Governor's Office of Homeland Security
and
Emergency Preparedness

KEVIN DAVIS
DIRECTOR

February 22nd, 2013

Daryl Purpera, CPA, CFE
Legislative Auditor
State of Louisiana
1600 North Third Street
Baton Rouge, Louisiana 70804-9397

RE: GOHSEP response to LLA report on Recovery School District(RSD)- Modular
Campus Construction Program

Dear Mr. Purpera:

We have received and reviewed the draft report compiled by the Louisiana Legislative Auditor's Recovery Assistance Division on RSD an applicant in the FEMA Public Assistance Grant program administered by the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP). This report, provided at the request of the GOHSEP, provided an analysis of the costs incurred by RSD in association with their Modular Campus Construction Program. We concur with the recommendations made to RSD based on the findings identified in the report .

GOHSEP agrees with the recommendations made for RSD to implement procedures which would increase their ability to monitor and increase accountability of vendors. Additionally, GOHSEP considers these recommendations to be sound business practices for all applicants engaged in the FEMA Public Assistance program. As such GOHSEP will continue to support those best practices and encourage all applicants to adopt similar activities.

In regards to the recommendations that require action by GOHSEP, our staff will work with RSD to determine a path forward and seek reimbursement for any questioned costs reimbursed with FEMA Public Assistance funding.

Your reports continue to assist us in our successful administration and monitoring of the Public Assistance grant program.

Sincerely,

Mark DeBosier
State Coordinating Officer- Disaster Recovery Division

MD:lbb

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February 22, 2013

Mr. Daryl G. Purpera
Louisiana Legislative Auditor
1600 North Third Street
P.O. Box 94397
Baton Rouge, Louisiana 70804-9397

RE: Response of Louisiana Department of Education, Recovery School District to Louisiana Legislative Auditor Modular Campus Construction Program Audit Report received February 13, 2013.

Dear Mr. Purpera:

The Louisiana Department of Education, Recovery School District (“RSD”) sincerely appreciates the opportunity to respond to the Modular Campus Construction Program Audit Report received February 13, 2013. As you know, the RSD is in the midst of rebuilding the public school system in New Orleans, which was devastated by Hurricane Katrina. This is one of the largest school construction programs in the history of New Orleans. The RSD works aggressively to ensure that all federal and state dollars are spent appropriately and that all governing federal and state laws and procedures are followed.

The Modular Campus Construction Program (sometimes referred to herein as the “Modular Project”) which was the subject of this audit, was designed to provide temporary school facilities in New Orleans as soon as possible after Hurricane Katrina in order to assist New Orleans families return home after the storm. The following Introduction, Chronology and Pertinent Facts provides the contextual circumstances surrounding the creation of the RSD and the construction of the Modular Campuses, to provide a better understanding of the very important facts and circumstances existing at the time this unique construction project took place. The RSD’s specific responses to each of your office’s 16 recommendations follow.

I. INTRODUCTION, CHRONOLOGY AND PERTINENT FACTS

A. The Creation of the RSD and the Destruction of Hurricane Katrina

The Louisiana Legislature created the RSD in 2003, before Hurricane Katrina, with the mission of providing the support and intervention necessary to put academically struggling schools on a path toward success. At the time of Katrina, the RSD (administered by the Louisiana Department of Education (LDOE)) was still a fledgling organization, with a very small staff. RSD

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had control of only five (5) Orleans Parish schools, all of which were operated by independent non-profit organizations and only overseen by the RSD's Baton Rouge-based staff.

Hurricane Katrina struck New Orleans on August 29, 2005. Katrina and the failure of the federal levees devastated the City of New Orleans, including its public schools. Over 120 schools were damaged in Orleans Parish, many beyond repair. The number of RSD-controlled schools skyrocketed from 5 to 112 following the storm. The RSD was forced to open and operate a large number of schools immediately to serve a returning population, essentially creating a new school district from the ground up in a devastated city.

Katrina not only destroyed the infrastructure of the Orleans Parish school system; 65,000 school children were also forced to evacuate, as were teachers, administrators, and school support staff. Very few habitable buildings remained. RSD, after being given control of over 100 schools by the state, was responsible for both creating this new school district and ensuring sufficient space in which to serve a rapidly returning student population.

Recognizing that a lack of available public schools would prevent families from returning to New Orleans, in November 2005, the RSD Superintendent contacted FEMA and requested modular school buildings. FEMA refused to provide these desperately needed resources.

The Louisiana Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) became the primary grantee of federal Katrina grant funds, effective as of the date of Katrina. Not until ten (10) months later, on June 24, 2006, did the RSD receive sub-grantee status, opening the door to the receipt of federal grant funds to begin the school rebuilding process.

B. The Modular Project Begins – To Provide a School Seat for Every Child

Given the critical importance of re-opening Orleans Parish schools, in early 2006, even before the RSD received the critical sub-grantee status of federal Katrina grant funds, the RSD commenced the contractual relationships needed for the massive task of rebuilding the Orleans Parish school system. The RSD did not possess the internal human resources to manage disaster recovery and a rebuilding program of the magnitude before it, the RSD entered into a professional services contract with Alvarez and Marsal (A&M) in April 2006 to, among other things, "develop and implement a comprehensive and coordinated disaster recovery plan in the wake of Hurricane Katrina." The services to be provided were expansive in scope and included, among many other things, construction and project management responsibility for the design, construction, and placement into service of modular classroom facilities for nine school campuses on seven different site locations to serve as temporary campuses until the permanent buildings could be replaced or repaired (the "Modular Project" or "Modular Campuses").

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The RSD contracted with the architectural firm of Linfield Hunter & Junius (LH&J) in January 2007 to serve as the Modular Project Architect and Engineer (A&E). Given the urgent need to get the Modular Project completed and the children back in schools, the contract with LH&J provided for a short design time, and specifically called attention to the “very aggressive design schedule.”

Following completion of design, the RSD issued, in April 2007, advertisements seeking public bids for the site work contract. After receipt and review of the bids received, the RSD entered into a contract for the site work for all of campuses included in the Modular Project the next month, on May 16, 2007, to the lowest responsive and responsible bidder, Arrighi Simoneaux. Construction work began immediately, with a contractually agreed upon date of Substantial Completion of July 14, 2007 for all sites except one (Langston Hughes), which had a contractually agreed upon date of Substantial Completion of September 14, 2007.¹ These dates were specifically designed so that the temporary Modular Campuses could open in the Fall of 2007, and the Orleans Parish public school children could return to school.

Separately, in February 2007, plaintiffs filed two federal lawsuits against the LDOE, RSD, Orleans Parish School Board and others alleging that the defendants had violated federal and state laws by failing to immediately enroll eligible school students in school, and by placing them on an indefinite wait list. In June 2007, the State Board of Elementary and Secondary Education (BESE) met and approved an RSD Enrollment Policy committing that the RSD would maintain a centralized registry for RSD schools, would not place on waiting lists or deny enrollment to any eligible child, and would ensure that all eligible registered students would be enrolled immediately. This Enrollment Policy was made part of a Settlement Agreement resolving the two federal lawsuits. By Federal Court Order, it was implemented and made judicially binding upon the RSD. In order to comply with this Court Order, it was vital that additional school space be built and opened as soon as possible.

The July and September 2007 Substantial Completion dates for the Modular Campuses were not met. Instead, the Modular Project was plagued with poor construction project management by the RSD’s then-professional project management firms, and with errors and omissions in the design work by its Architect. The RSD relied on its professional project managers to be its expert representatives on this complex construction project with a very short design and construction schedule. At the very same time, the RSD was also rebuilding destroyed permanent school buildings, and creating what was essentially a brand new school district in New Orleans. To its extreme disappointment, Alvarez & Marsal was unable to step up to the task. The RSD was forced to terminate the A&M project management contract early,

¹ Separately, the contract to provide the actual portable buildings to be used for the classrooms and other related school buildings was publicly advertised in March 2007, and the contracts executed with the lowest responsive and responsible bidder, Williams Scotsman, in April 2007.

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effective October 31, 2007, and replace them with the project management joint venture of HOV/Meridian.

HOV/Meridian served as project manager on the Modular Project from November 1, 2007 until its contract expired on April 30, 2008. Meridian had been a subcontractor to A&M, and so had institutional experience with the Modular Project, but, like A&M, failed to properly manage this complex construction project for the RSD. The RSD did not renew HOV/Meridian's project management contract with respect to the Modular Project, but instead, allowed it to expire.

Both A&M and HOV/Meridian, did not properly supervise and manage the Modular Project, including its schedule, did not properly manage and coordinate the various parties working on the Modular Project, and did not ensure that all change order requests and contract amendments were proper in amount and scope and contained the appropriate supporting documentation.

In an effort to rectify this situation, in May 2008 the RSD contracted with the program administration consortium of Jacobs/CSRS to, among many other project management responsibilities, project manage the remainder of the Modular Project. Under the project management of Jacobs/CSRS, the situation improved. Jacobs/CSRS was also able to assist with gathering missing information and working with FEMA to resolve outstanding grant issues.

Before this transition in project management, a number of design issues surfaced with the work performed by LH&J. The RSD discovered, among other issues, that electrical requirements of the modular buildings had been underdesigned. Additionally, the elevation of the modular buildings had been incorrectly determined, resulting in the buildings being too low, and thus failing to meet the required federal elevation standards. Related, the canopies connecting the modular buildings were too low, and had to be redesigned and reconstructed. These design errors caused the stairs, ramps and concrete sidewalks to be inadequate. They too had to be removed, modified and replaced.

Compounding the situation, due to the mandate of the Federal Court litigation referenced above, these mistakes had to be rectified after the school year had commenced, and school children were occupying the Modular Campuses. Partial occupancy of the Modular Campuses was granted early, before the schools were finished, for this very reason.

Final acceptance of the Modular Project did not occur until September 17, 2009, over two years late.

Due in large part to mismanagement by A&M and HOV/Meridian, and to design errors and omissions by LH&J, the cost of the Modular Project skyrocketed. Through change orders, the site work contract with Arrighi, with an initial Contract Sum of \$24,604,265, increased to \$46,152,190. Through contract amendments and increases in the related site work

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construction contract, the A&E contract with LH&J increased from \$673,443 to \$8,065,291. The Legislative Auditor's Findings and Recommendations regarding the Modular Campus Construction Program display the effects of this project mismanagement and design inadequacies. The RSD intends to perform all due diligence required under the circumstances to investigate and follow up on the Legislative Auditor's recommendations, as set forth herein further below.

II. RSD'S SPECIFIC RESPONSES TO LEGISLATIVE AUDITOR'S RECOMMENDATIONS

Recommendation 1:

Though the process has improved substantially, RSD management should continue to evaluate its system of accountability for project managers and A&E firms to ensure adequate performance as projects progress. RSD should also continue to evaluate its internal processes to ensure staff is [sic] logically determining the soundness of advice provided by the A&E firms and the project manager and have the time to do so.

Response to Recommendation 1:

The Modular Campus project management contracts with A&M and HOV/Meridian were entered into in 2006 and 2007, respectively, and the A&E contract with LH&J was entered into in early 2007, in a tumultuous post-Katrina environment, under the pressures of constructing temporary classroom facilities *as soon as possible*, so families with school-age children could return to New Orleans after the storm. Those contracts were also entered into within the context of Louisiana Constitutional mandates and two Federal Court orders requiring the RSD to provide seats for New Orleans school children immediately.

At the time those project management and A&E contracts were executed, the RSD did not have any full time employees in place whose primary and direct responsibilities included managing the complex, comprehensive and financially significant construction program which was beginning. The few employees the RSD did have, with the assistance of LDOE employees, worked diligently to accomplish the important goal of providing schools on an expedited basis with the limited resources at their disposal.

Since that time, the RSD has retained an experienced professional Executive Director of Major Capital Projects, whose responsibilities include oversight of the Program Manager and A&E firms. Additionally, in 2008 the RSD retained a different Program Manager, Jacobs/CSRS Consortium, and during the tenure of its Program Management Contracts, construction project management has improved. Further, the RSD has implemented a system of accountability for both its Program Manager and its A&E firms through improvements in its contract documents,

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and monitoring compliance therewith. Those contract documents contain specific tasks, services, responsibilities and deliverables, and time frames within which to accomplish them.

The RSD's improved procedures, practices and management governing its implementation of the Master Plan to rebuild the Orleans Parish public school system have resulted in the achievement of a low rate of change orders to open construction contracts of approximately 3 %.

The RSD remains committed to, and will continually, review the performance and accountability of its Program Manager and its A&E firms. The RSD also remains committed to, and will continually review and evaluate its internal processes with respect to the advice received from its Program Manager and A&E firms, with a continuing view to improving processes and results where needed.

Recommendation 2:

RSD should continue to closely monitor amendments to A&E contracts, and examine additional design fees thoroughly before approval.

Response to Recommendation 2:

The RSD concurs with this recommendation. As stated above in response to Recommendation No. 1, at the time the Modular Campus A&E contract with LH&J was conflicted, the RSD did not have any full time employees in place whose primary and direct responsibilities included managing the complex, comprehensive and financially significant construction program which was beginning. Further, during the time period when the majority (nine of 15) of the amendments to the A&E contract were conflicted, the RSD still did not have any full time employees charged with managing this complex construction program.

As stated above, since that time, the RSD hired an experienced professional Executive Director of Major Capital Projects whose responsibilities include oversight of A&E firms and their contracts. Additionally, the contract between the RSD and its new Program Manager, Jacobs/CSRS Consortium, includes within its Scope of Services specific responsibilities for assisting the RSD in direct management of its professional design consultants. Through these improvements, and through its continual efforts to improve internal processes and results where needed, the RSD is committed to ensuring that amendments to A&E contracts are only approved where factually and contractually justified.

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Recommendation 3:

RSD management should seek reimbursement from Linfield, Hunter, and Junius for the \$3,543,718 of questionable design fees which were billed in addition to the design fee curve in the contract.

Response to Recommendation 3:

The RSD has already made demand upon LH&J on February 22, 2010 to recover overbillings in a minimum amount of \$ 2,923,002 arising out of LH&J's improper billing for work as Additional Services, when LH&J was already contractually required to perform that work as Basic Services under the A&E contract, and LH&J's improper billing for Close-Out Phase work which LH&J failed and refused to complete. That demand specifically reserved the RSD's rights to additional monies to which it may be entitled due to LH&J's role in the numerous cost overruns, system redesigns and system reconstructions on the Modular Project that resulted from LH&J's design errors and omissions. Those design errors and omissions include, but are not limited to, the following:

- LH&J underdesigned the electrical requirements of the modular buildings. Correction of this required the replacement of all the undersized wire and conduits on all campuses with properly sized, more expensive wire, and the extended use of expensive temporary generators to power the campuses.
- LH&J incorrectly determined the elevation of the modular buildings, resulting in them being too low, and thus failing to meet required elevation standards. Related, the canopies connecting the modular buildings were too low, and had to be redesigned and reconstructed.
- The incorrect elevation also caused the stairs and ramps leading up to the modular buildings and the sidewalks connecting them to be inadequate. They had to be removed, modified and replaced.

The Legislative Auditor's Recommendation No. 3 identified additional "questionable design fees" in the amount of \$620,716, over the amount already demanded by the RSD. The RSD will diligently investigate the Legislative Auditor's findings and recommendations and the relevant facts and circumstances, in order to determine if the additional "questionable design fees" constitute improper overbillings. If so, the RSD will initiate appropriate actions to attempt to recover them.

Recommendation 4:

RSD management should consider seeking reimbursement from ASC for any portion of the \$685,558 of general conditions charges that are inconsistent with the criteria in Section 7.2.7 of AIA A201-1997

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Response to Recommendation 4:

The RSD will diligently investigate the Legislative Auditor's findings and recommendations and the relevant facts and circumstances with respect to the general conditions charges billed by ASC on the change order in question, to determine if they are consistent with relevant provisions of the construction contract documents and supported by appropriate facts and documentation. Based upon the results of that investigation, the RSD will determine what, if any, action is needed. If improper charges are identified, the RSD will initiate appropriate actions to attempt to recover them.

The RSD also believes it is important to note that the general conditions charges that are the subject of this finding were included on a written change order, which was reviewed, approved **and** recommended for approval and payment by **both** the project manager and the A&E on the Modular Project. The RSD relied on these professionals to be its expert representatives on this complex construction project with an expedited schedule. The RSD would not have approved or paid a contractor for a change order without the approval and recommendation of both its expert project manager and A&E representatives.

Recommendation 5:

GOHSEP and RSD management should seek reimbursement for any portion of the \$666,419 of general conditions charges that are inconsistent with the criteria in Sections 7.2.6 and 7.2.9 of AIA A201-1997.

Response to Recommendation 5:

The RSD will diligently investigate the Legislative Auditor's findings and recommendations and the relevant facts and circumstances with respect to the general conditions charges that are the subject of this recommendation, to determine if they are consistent with relevant provisions of the construction contract documents and supported by appropriate facts and documentation. Based upon the results of that investigation, the RSD will determine what, if any, action is needed. If improper charges are identified, the RSD will initiate appropriate actions to attempt to recover them. However, the RSD does not believe double-billing occurred because the general conditions charges that are the subject of this recommendation were not for ASC, as the Legislative Auditor states in his report, but instead were for TMC Contractors, Inc., who was an the electrical subcontractor on the Modular Project. Nonetheless, the RSD will diligently investigate these issues, and will follow the facts where they lead, and determine what, if any, action is needed.

The RSD also believes it is important to note that the general conditions charges that are the subject of this finding were included on a written change order, which was reviewed, approved

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and recommended for approval and payment by *both* the project manager and the A&E on the Modular Project. The RSD relied on these professionals to be their expert representatives on this complex construction project with an expedited schedule. The RSD would not have approved or paid a contractor for a change order without the approval and recommendation of its expert project manager and A&E representatives.

Recommendation 6:

RSD management should recalculate and verify all change orders related to this project to identify any additional overcharges

Response to Recommendation 6:

The RSD will comply with this recommendation and direct its current program manager to recalculate and verify all change orders related to this Project.

Recommendation 7:

RSD management should seek reimbursement from ASC for the \$170,571 of questioned costs related to generator rental.

Response to Recommendation 7:

The RSD will diligently investigate the Legislative Auditor's findings and recommendations and the relevant facts and circumstances with respect to the questioned costs related to the generator rental, and specifically whether a credit is due to the RSD for the difference between actual diesel used on the Project and diesel billed by the contractor. The RSD will request the contractor to provide all diesel invoices, as well as documentation of where on the Project that diesel was used. Based upon the results of its investigation, the RSD will determine what, if any, action is needed. If improper charges are identified, the RSD will initiate appropriate actions to attempt to recover them.

Recommendation 8:

RSD should require ASC to provide detailed direct costs for each item related to the light pole foundations in change order number 6 as required under sections 7.2.2 and 7.2.5 of their contract to verify the cost reasonableness of the light pole foundation piles. GOHSEP and RSD management should recoup any amounts that are determined unreasonable.

Response to Recommendation 8:

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The RSD will diligently investigate the Legislative Auditor's findings and recommendations and the relevant facts and circumstances with respect to the direct cost of the light pole foundations, and compliance with the governing provisions of the contract documents. The RSD will also investigate the cost reasonableness of the amounts charged by the contractor for the light pole foundation piles. Based upon the results of its investigation, the RSD will determine what, if any, action is needed. If improper charges are identified, the RSD will initiate appropriate actions to attempt to recover them.

The RSD believes it is important to note that the light pole foundation charges that are the subject of this finding were included on a written change order, which was reviewed, approved **and** recommended for approval and payment by **both** the project manager and the A&E on the Modular Project. The RSD relied on these professionals to be their expert representatives on this complex construction project with an expedited schedule. The RSD would not have approved or paid a contractor for a change order without the approval and recommendation of its expert project manager and A&E representatives.

With respect to the Legislative Auditor's comments regarding cost reasonableness, the RSD also believes it is important to note that, in the post-Katrina construction market in New Orleans, prices were extremely elevated due to the economic circumstances resulting from the devastation wrought by the storm. The Legislative Auditor has cited and relied upon RS Means and National Construction Estimator rates in determining cost reasonableness in this Recommendation and in Recommendation No. 14 below. However, the RSD understands that is not the best indicator of market prices in the post-Katrina New Orleans construction market. The RSD understands that GOHSEP retained RS Means to evaluate and provide updated post-Katrina New Orleans construction market cost data. The RSD will continue its efforts to obtain this more accurate cost data, in order to use it to evaluate the cost reasonableness of these charges, as recommended by the Legislative Auditor.

Recommendation 9:

GOHSEP and RSD management should seek reimbursement of the \$37,843 for the 16 light pole foundations that ASC did not provide.

Response to Recommendation 9:

The RSD will diligently investigate the Legislative Auditor's findings and recommendations and the relevant facts and circumstances with respect to the number of light pole foundations actually installed, and specifically will request the contractor to provide invoices and other appropriate supporting documentation to prove the number of light pole foundations installed. Based upon the results of its investigation, if it is determined that the contractor charged the RSD for light pole foundations not installed, the RSD will take actions to recover the amount overcharged.

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Recommendation 10:

RSD management should review sales taxes charges through all change orders and seek reimbursement for the amount that was incorrectly billed.

Response to Recommendation 10:

The RSD will comply with this recommendation and direct its current program manager to review all change orders related to this Project and identify any sales taxes that were incorrectly billed, and will seek reimbursement for same.

The RSD would like to note that its current construction contract document package contains appropriate Sales Tax Exemption documentation so that all contractors have adequate notice and contractually binding obligations not to charge the RSD sales taxes.

Recommendation 11:

RSD management should seek guidance from the Louisiana Department of Revenue with regard to any taxes that ASC charged and collected but may not have remitted to the Department of Revenue.

Response to Recommendation 11:

Following the review it will conduct pursuant to Recommendation No. 10, the RSD will compile those results, and forward a copy to the Louisiana Department of Revenue, so that, in the event ASC did improperly collect sales taxes from the RSD, but did not remit them to the Department of Revenue, the Department of Revenue can take whatever action it deems appropriate and necessary.

Recommendation 12:

RSD should verify that unit costs are being applied appropriately to change orders and not used for purposes other than what they were established for.

Response to Recommendation 12:

The RSD concurs with this recommendation, and in current practice, has already implemented it, with the assistance of its professional Program Manager and the A&E on the Project, in the management of its construction projects.

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Recommendation 13:

RSD should require contractors to provide a detailed breakdown of all direct costs including actual quantities for all change orders that include costs based on unit prices that were not established through the public bid process.

Response to Recommendation 13:

The RSD concurs with this request, and in current practice, has already implemented it. The RSD's current construction contract documents require contractors to submit a detailed breakdown of all direct costs and actual quantities for all change order requests, and further require supporting documentation to prove those costs and quantities. The governing contractual requirements are contained in Article 7.2 of A201, General Conditions to the Contract for Construction, as modified.

Recommendation 14:

GOHSEP and RSD management should conduct cost analyses for the \$10,732,100 of charges and \$3,909,812 of credits based primarily on unit prices to determine reasonable cost for each unit price that was used that was not publicly bid and ensure only the reasonable amounts are charged to the Public Assistance program.

Response to Recommendation 14:

The RSD will work with GOHSEP management as recommended and will diligently investigate the Legislative Auditor's findings and recommendations and the relevant facts and circumstances with respect to unit prices that may have been used but not publicly bid, to determine their cost reasonableness. Based upon the results of that investigation, the RSD will work with GOHSEP to determine what, if any, action is needed. If improper charges are identified, the RSD will work with GOHSEP to initiate appropriate actions to attempt to recover them.

Recommendation 15:

On projects requiring conformance with the Davis-Bacon Act, RSD management should utilize the certified payroll as a tool to verify actual hours worked and actual hours billed for labor in change orders.

Response to Recommendation 15:

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For all contracts that require adherence to the Davis Bacon Act, the RSD's current construction contract documents require contractors to submit certified payroll on a monthly basis. The governing contractual requirements are contained in Article 3.23 of A201, General Conditions to the Contract for Construction, as modified. The RSD will diligently investigate and consider the Legislative Auditor's findings with respect to this recommendation and its implementation.

Recommendation 16:

Prior to approving change orders, RSD management should ensure that each contractor and sub-contractor submits documentation indicating the labor burden for each class of employee and that the labor burden submitted does not include items not allowed by the contract.

Response to Recommendation 16:

The RSD concurs with this recommendation and, in current practice, with the assistance of its Program Manager and the A&E on the Project, has already implemented it. The RSD's current construction contract documents delineate the specific components of labor burden that contractors are permitted to include on change orders, and require contractors to require their subcontractors to adhere to the same requirements. When labor burden is included on change orders, the RSD and its Program Manager verify that the components of labor burden included on those change orders conform to these contract requirements.

III. CONCLUSION

Thank you for the opportunity to respond to this audit. The RSD is working aggressively to address your office's recommendations and we look forward to making continued improvements. Please contact me should have any questions.

Sincerely,



Patrick Dobard
Superintendent, Recovery School District



LINFIELD, HUNTER & JUNIUS, INC.
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February 22, 2013

Mr. John L. Morehead
Director of Recovery Assistance
and Assistant Legislative Auditor
Office of Louisiana Legislative Auditor
1600 North Third Street
P.O. Box 94397
Baton Rouge, Louisiana 70804-9397

**Re: Recovery School District – Modular Campuses
Project No. 19D-682-06-EDU, Part 01
Contract Between Owner, Recovery School District
and Designer, Linfield, Hunter & Junius, Inc.
LH&J File #: 07-06**

Dear Mr. Morehead:

This letter will serve as our formal response to the recent e-mail dated February 13, 2013 which included an attached report pertaining to the RSD Modular Campus Construction Audit that your office conducted in connection with the Modular Campuses project (the "Project"). Your report, as it pertains to Linfield, Hunter & Junius, Inc. ("LH&J") contains many factual inaccuracies and misleading statements which we believe are based on an incomplete and cursory review of the Project and Project records. Your report fails to adequately describe or document the numerous changes to the Project which resulted in a significant increase in LH&J's compensation. The superficial approach utilized by your office to "audit" the RSD is contrary to standard auditing practices and will irreparably damage LH&J's reputation. LH&J reserves its rights to pursue a claim for damages against the Legislative Auditor resulting from the erroneous, misleading and false statements contained in this report.

Since you have failed to adequately do so in your report, we are providing you with a detailed history and background of LH&J's involvement in this Project.

FACTUAL BACKGROUND

On January 11, 2007, LH&J entered into a contract ("LH&J Contract") with the RSD to provide certain architectural and engineering services in connection with the Project. A

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copy of the LH&J contract is included as Attachment No. 1 to this letter. The services were to be performed on a “fast track” basis since the RSD’s principal objective was to have the “kids in school” by the end of August, 2007. The Project involved site work design and engineering at 8 separate sites that involved 11 schools.¹ The RSD was to supply, through a separate contract, modular buildings which would be placed on each of these sites. The LH&J Contract required LH&J to perform certain “basic services” which were described in the LH&J Contract for a fee of \$673,443. This initial fee was calculated using the State fee curve set out in “Louisiana Capital Improvements Procedure Manual for Design and Construction – 2004 Edition (the “Manual”). The initial fee for basic services was based on an AFC (Available Funds for Construction) of \$7,500,000. At the time the LH&J Contract was executed, the RSD, the RSD’s Program Manager and LH&J acknowledged and agreed that the AFC was set arbitrarily in order for services to commence immediately with the understanding that the AFC would be revised once the full extent and scope of the Project was better defined.

During the initial conceptual design phase of the Project, LH&J informed RSD’s Program Manager and RSD’s staff that the AFC was grossly insufficient to construct the site work for the 11 school campuses and that a more realistic cost could not be readily determined until the Project became more clearly defined.

Pursuant to Amendment No. 1 which was submitted on March 16, 2007, the fee for basic services was increased from \$673,443 to \$1,204,873 based on an increase of the AFC from \$7,500,00 to \$14,910,000. Amendment No. 1 is included as Attachment No. 2 to this letter. This increase in the AFC was based on a very preliminary estimate of construction cost submitted by LH&J during the early phase of the design of the Project. Subsequently, pursuant to Amendment No. 4, which was submitted on April 12, 2007, LH&J’s fee for basic services was increased from \$1,204,873 to \$2,152,763 based on an increase in the AFC from \$14,910,000 to \$27,716,000. Amendment No. 4 is included as Attachment No. 5 to this letter. This increase was based on an estimate of construction cost prepared by LH&J just prior to bidding the Project, but this estimate and the resultant increase in the AFC was based on a design using 60 ft. wide modular buildings.

During the preparation of construction documents for the Project, LH&J was advised by the RSD that the low bidder who would supply the modular buildings had provided an alternate price for supplying 68 foot wide modular buildings which would save the RSD substantial money. Despite LH&J informing RSD’s program manager and RSD’s staff that the project was not ready to be bid, RSD insisted that due to time constraints the Project schedule had to be maintained. RSD directed LH&J to complete the construction documents and bid the Project utilizing the 60 foot wide modular buildings, even though the RSD intended to revise the design after the bidding to implement the change from 60

¹ Two sites had 2 separate schools which shared the same site.

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foot wide modular buildings to 68 foot wide modular buildings (see copy of meeting minutes included in Attachment No. 4). To forecast the cost for this change, RSD requested LH&J to include certain additive quantities of materials and labor in the bid documents which would be included as part of the redesign. Further, the RSD decided before bidding the Project to reduce the number of campuses to be bid from 11 to 9, even though LH&J had completed construction documents for all 11 campuses.² LH&J was never paid a design fee it earned for designing the 2 campuses which were not included in the bid documents since their fee for basic services was adjusted based on a bid that only included 9 campuses. Based on an estimated construction cost of \$4,264,750.00 for these 2 campuses, LH&J had earned a fee of 65% of 15.4% of the total cost based on the State fee curve which equates to a fee of \$215,314.14. This fee has not been paid to date.

While the bids for the sitework were being obtained in May, 2007 and before Arrighi Simoneaux Construction was awarded the site construction contract, LH&J was directed and authorized by the RSD to revise the design of the Project to incorporate the use of 68 foot wide modular buildings. Based on a proposal submitted by LH&J, RSD and LH&J entered into Amendment No. 3, submitted on March 29, 2007, and which LH&J and its consultants were to provide these "additional services" for a lump sum fee of \$460,000. This change in the width of the modular buildings required a complete re-design of the Project pursuant to a very aggressive schedule since the layout and orientation of the modular buildings changed at every site which resulted in mechanical, electrical, civil, structural and architectural changes to the original design of the Project. The original construction documents had to be scrapped and a new set of construction documents prepared from scratch. At a coordination meeting, RSD's program manager requested LH&J to submit a proposal covering the fee and schedule for the redesign (see copy of meeting minutes included in Attachment No. 4). As noted in LH&J's proposal dated March 29, 2007, "the fee will be in addition to the base fee and will be billed separately." The fee for these Additional Services was further documented in LH&J's letter dated March 29, 2007. Amendment No. 3, along with LH&J's proposal of March 29, 2007 and its letter dated March 29, 2007 are included "in globo" as Attachment No. 4 to this letter. Because the design change had to be implemented immediately and the change involved a complete redesign of all the campuses, RSD and LH&J agreed on a lump sum fee rather than having the fee calculated pursuant to Section 7.3 of the Manual. The RSD, LH&J and the Program Manager, Alvarez and Marsal ("A&M"), mutually agreed to this approach prior to execution of the amendment. The lump sum fee of \$460,000 represents only approximately one-third of the design fee for the original design which is inherently reasonable considering the circumstances.

In order to implement these design changes in a very short time frame, LH&J and its consultants expanded their work effort to more than 12 hours per day, seven days a week. LH&J's office remained open for business around the clock while this redesign was

² The 2 campuses that were not included in the bid documents were the two Kennedy schools.

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being undertaken. LH&J's personnel were compensated for the premium time required to complete these services. During this process, a total of 29 LH&J personnel, as well as employees of LH&J's subconsultants, worked on this redesign. Upon completion of the revised design, a new set of construction documents were issued to the sitework contractor (Arrighi Simoneaux) for construction.

Meanwhile, RSD entered into a separate contract with the winning modular building contractor (Williams Scotsman) to supply and install the modular buildings for all the sites. LH&J was not in any way associated with Williams Scotsman and neither did LH&J coordinate or direct their work. Once the award of the modular building contract to Williams Scotsman was finalized which included the 68 foot wide modular buildings, RSD requested Williams Scotsman to provide LH&J with the actual utility loads for the 68 foot wide modular buildings, and in particular, the electrical loads required to service these modular buildings. Williams Scotsman responded by indicating that the electrical loads would not be available until after the modular buildings were designed. The original electrical load requirements in the procurement specifications which were provided to the design team by RSD as the basis for the electrical site design when the Project was going to utilize 60 foot modular buildings called for a 200 amp, 120/208 V, 3 phase, 4 wire service to each kitchen modular building to be used on the project. Sometimes after the electrical construction drawings were completed and turned in for bidding, final electrical loads were submitted by Williams Scotsman to RSD which required that the feeder sizes be increased over what was originally designed. Because this change was requested while Arrighi Simoneaux was well into their contracted work under the original design the redesign resulting from the increased electrical loads had to be implemented in the field at a stage of construction when the feeder conduit and cables utilizing the original electrical loads were already being installed. Additional inspection and administration of the electrical work in the field was required in order to insure that the conduit and cables were the correct size, based upon the revised electrical loads. This was particularly important since a substantial amount of the original conduit and cable had already been installed due to the "fast track" nature of the Project.

Due to the emphasis on meeting the construction schedules, RSD's program manager and Arrighi Simoneaux agreed to a six-step process for all design changes including providing temporary and permanent electrical power to the campuses. The six-step process consisted of: (1) issuing a field directive to Arrighi Simoneaux; (2) reviewing the extra work order (EWO) for scope and authorizing the work at the value of the EWO; (3) measuring the work in the field; (4) estimating the cost based on measurement and the contract unit prices; (5) negotiating the final cost with Arrighi Simoneaux; and (6) processing the contract change order document for approval by LH&J, RSD, RSD's program manager and Arrighi Simoneaux. As a result of this process, LH&J and its electrical engineering consultant were required to provide engineers who were available on a full-time basis throughout the construction of the project. These engineers were

provided as an additional service, authorized and approved by all parties, and included in an amendment to LH&J's contract.

Another example of services that LH&J was required to provide arose when it was discovered that Williams Scotsman had not placed the buildings at the correct locations shown on the site drawings. This error impacted the location of the ramps, sidewalks and utility tie-ins to the buildings. In response to this problem, RSD's program manager decided to "field-fit" the ramps, sidewalks and utility tie-ins to each of the modular buildings. This decision then affected the canopies which were in the process of being shop fabricated in accordance with the original design. The canopies had to be redesigned to fit the as-built conditions of the modular buildings, ramps and sidewalks. In order to perform this redesign, LH&J needed a field survey to establish the as-built conditions. Further, this directive resulted in the need for an additional supplier for the canopies, revised design drawings, new shop drawings and a redesign of the canopy lighting systems. None of these changes resulted from any acts, errors or omissions on the part of LH&J and all of the services that LH&J provided in connection with these changes were legitimately "additional services" which were never part of basic services.

Additionally, RSD's program manager requested LH&J to provide on-site resident inspection for an additional fee since that level of construction observation was not part of basic services. Due to RSD's request for additional on-site inspection services, the electrical engineer provided full-time field inspectors to inspect and administer the electrical portion of the construction. Field inspectors were provided for each school site and daily reports were generated. These inspectors documented and implemented corrective action for numerous electrical installations that were not in accordance with the electrical engineering drawings or requirements of the National Electric Code. The Manual clearly recognizes that these services are not included as part of basic services and were thus approved by the RSD as additional services.

RSD also requested LH&J to measure the settlement of the modular buildings and to perform an inspection and report on the electrical design of the modular buildings which were provided by the Williams Scotsman. These special services were not part of basic services, were authorized and approved by RSD, and included in an amendment to the LH&J Contract.

RSD also directed that modular Buildings A and B originally designed to be located at Langston Hughes School be relocated to the Gregory School site. This action required site work and electrical engineering design to accommodate this change and to add utility transformer conduit, wiring and electrical distribution equipment to supply power to these relocated modular buildings. These services were authorized by the RSD as additional services.

After design of the Langston Hughes campus was completed, RSD commenced design and planned construction of the new, permanent Langston Hughes School. The design of the permanent school, which was being designed by another design team, required the relocation of the transformers for the temporary school. As a result of this action, RSD directed LH&J and its electrical engineering consultant to relocate the utility pad and transformer to another location that would not conflict with the footprint of the new, permanent school.

Also, the closeout phase of the Project was expanded beyond what is normally provided as a part of basic services. Instead of a single inspection performed at the time of substantial completion of the entire Project, the closeout phase on this Project involved multiple inspections and the issuance of numerous reports which were provided as an additional service. The inspections began with the State Fire Marshal's inspection prior to occupancy of the school buildings followed by the "acceptance" inspections performed and punchlists generated after occupancy of the schools. At this point, there remained significant work to be performed. Subsequent re-inspections and punchlists were performed and prepared after additional construction work was completed and then final inspections and punchlists were prepared after all construction work was completed. An interim punchlist was prepared which combined punchlists prepared by others with LH&J's punchlists. The final punchlists were then divided into maintenance work that was the responsibility of RSD and the construction items that were the responsibility of Arrighi Simoneaux.

Nevertheless, as a result of the monumental efforts undertaken by LH&J to provide these additional and special services, the Project was designed and constructed in an inconceivably short timeframe and the children were able to start school in September, 2007.

These additional and special services, along with adjustments to LH&J's total fee due to increases in the total construction cost for the Project, were included in subsequent amendments to the LH&J Contract. A brief summary of these amendments is set out below:

Amendment No. 5 was submitted on September 10, 2007 and revised the fee for basic services from \$2,152,763 to \$2,805,358 based upon the increase in the construction cost from \$24,604,264 to \$36,756,439. The increase in the cost of construction was based on RSD approved Change Orders to the Construction Contract. A copy of Amendment No. 5 is included as Attachment No. 6 to this letter.

Amendment No. 6 was submitted on October 15, 2007 and revised the fee for basic services from \$2,805,358 to \$2,954,670 as a result of approved Change Orders to the Construction Contract. Also included in this Amendment was \$25,000 in design fees, as an additional service, for the as-built design of the sites due to the difference in the as-

built locations and building design from the design drawings issued for construction. Additionally, the Amendment included \$37,620 for additional survey requirements, as a special service, to establish the as-built conditions which were needed for the as-built design drawings and \$13,750 as a special service, for additional construction administration services for asbestos work. The amendment provides in Clause A that the redesign fees will be in addition to the base fee and will be billed separately.” The inclusion of the fees for these additional and special services is supported by an LH&J letter and Meeting Minutes which, along with a copy of Amendment No. 6, are included “in globo” as Attachment No. 7.

Amendment No. 7, which was submitted on October 29, 2007, included as a special service, \$99,375 for additional surveying work which was needed to prepare “as-built” drawings and \$9,000 of services pertaining to as-built design drawings, as an Additional Service, to prepare drawings for review by the New Orleans Fire Protection Bureau. Finally the scope of environmental services by a subconsultant was increased by \$1,350 to provide inspection services at one modular building. All three of those fee increases were additional or special services which were outside the scope of basic services. This amount increased the total fees for the Project to \$3,681,310. This amendment specifically provided in Clause A that the additional redesign fees “... will be in addition to the base fee and will be billed separately.” An explanation and justification for these additional and special services is supported by an LH&J letter which, along with a copy of this Amendment No. 7, are included “in globo” as Attachment No. 8.

Amendment No. 8 was submitted on November 26, 2007 and extended the duration of the LH&J contract from January 10, 2008 to April 30, 2008. A copy of Amendment No. 8 is included as Attachment No. 9.

Amendment No. 9 was submitted on December 21, 2007 and increased the fee for basic services from \$2,954,270 to \$2,989,323 based on the increase in the cost of construction from \$38,844,381 to \$39,329,902. A copy of Amendment No. 9 is included as Attachment No. 10.

Amendment No. 10 was submitted on February 15, 2008 and added \$2,896,802 in additional services which were beyond the fee for basic services. The additional services were requested to cover redesign services due to changes in the electrical load requirements by Williams Scotsman, additional services to cover the cost of construction administration services not covered in the fee for basic services, additional services to provide onsite construction coordination services which were not included in the fee for basic services, and additional services during the construction closeout phase which were not covered by the fee for basic services. Exhibit B of the amendment provides that “Linfield, Hunter & Junius, Inc. has previously indicated in writing to the Recovery School District when they needed or were directed by Alvarez & Marsal to provide the revised designs or other services and that a subsequent request would be submitted to

cover the added costs that were not covered by the basic fee in the Linfield, Hunter & Junius, Inc. contract.” The inclusion of these fees is supported by Meeting Minutes, LH&J letters which, along with this Amendment No. 10 are included “in globo” as Attachment No. 11.

A breakdown of these additive costs is set out below:

1. Redesign of the electrical system at all sites due to revised electrical loads permitted by Williams Scotsman, and changes in the electrical transformer systems supplied by Entergy. \$340,250
2. Additional construction administration services to address the additional services needed to develop, finalize and process contract change orders which were beyond the services provided as part of the fee for basic services. \$277,500
3. Additional services for construction, coordination and inspection in the field which were not included in the fee for basic services. \$500,000
4. Additional architectural and civil engineering “redesign” Services. \$95,600
5. The additional cost above the fee for basic services due to increase in construction cost change orders for Architectural and Civil Engineering design changes. \$124,700
6. Additional services to provide field coordination and inspections of those portions of the work which involved architectural and civil engineering which were not included in the fee for basic services. \$427,150
7. Additional design work requested by RSD which was not included in the original design to address the following:
 - a. Adding gates and sidewalks for student egress in the event of emergency activities. \$216,370
 - b. Additional access requirements mandated by the New Orleans Fire Department. \$199,765
 - c. Additional Playground at Williams School. \$51,400

d.	Installation of Modular Buildings A&B from Hughes School to Gregory School.	\$109,165
e.	Relocation of electrical transformers and panels at Langston Hughes School.	\$44,600
f.	Settlement monitoring.	\$55,000
g.	Redesign of canopies in order to address final changes in sidewalks and ramps during construction.	\$77,950
h.	Additional construction administration and closeout services which were not included in the fee for basic services due to design changes.	\$376,520
i.	Corrections and Fees - Previously authorized costs were adjusted by \$200 and \$132 was added for reimbursement of a permit fee.	

Amendment No. 10 specified that these fees were for services beyond basic services.

Amendment No. 11 was submitted on April 2, 2008 and addressed additional services related to the paving of parking lots and roads at Abramson, Carver, Livingston and Gregory Schools. This increased the basic services fee by \$215,236 due to an increase in the cost of construction from \$40,015,459 to \$41,865,459. This increased the total fee by \$215,236 to \$6,793,348. It was determined that there would be no additive fees above the fee for basic services related to this Change Order work. The inclusion of this fee is supported by an LH&J letter which, along with a copy of this Amendment No. 11, are included "in globo" as Attachment No. 12.

Amendment No. 12 was submitted on April 15, 2008 and revised the basic services fee by \$111,781 due to an increase in construction cost from \$41,865,459 to \$43,439,430. This amendment also included, as an Additional Service, the cost of two, full-time resident construction inspectors from 4/3/2008 to 9/19/2008 for an additive fee of \$438,330 since these services were not included in the fee for basic services. In addition, the "completion" inspections of the modular buildings' electrical systems were authorized as an Additional Service which increased the total fee by \$190,000. Two additional design tasks were added as an Additional Service for a total fee of \$45,600. These design tasks included 1) the addition of stripes and signs for handicap parking and 2) the repair of the access road at the Williams School. These Additional Services increased the total fee for the Project to \$7,579,059. Exhibit A of this amendment provides that the two design tasks "... are considered as additional services." The

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inclusion of these fees is supported by LH&J letters and Meeting Minutes which, along with a copy of this Amendment No. 12, are included "in globo" as Attachment No. 13.

Amendment No. 13 was submitted on September 16, 2008 to F. LaCourse of CSRS – Jacobs and extended the term of the LH&J Contract to May 30, 2009. A copy of this amendment is included as Attachment No. 14.

Amendment No. 14 replaced Amendment No. 13 and added two special services which were not included as part of basic services. These two special services included were 1) the use of underground electric detection equipment to determine the location of the electrical conduits and 2) to extend the modular building settlement monitoring from July 2008 to May 2009. This added \$273,350 in additional fees and increased the total fee for the Project to \$7,852,409. These added engineering tasks did not increase the cost of construction. The inclusion of these fees are supported by LH&J letters and Meeting Minutes which, along with a copy of this Amendment No. 14 are included "in globo" as Attachment No. 15.

Amendment No. 15 was submitted in a revised form on November 18, 2008 to F. LaCourse of CSRS – Jacobs and increased the total fees from \$7,852,409 to \$8,065,291. These Additional Services included \$139,442 in fees for providing resident inspectors up through 11/7/2008 and \$73,440 in fees for the third and final inspections of the electrical work by Williams Scotsman at all sites. These Additional Services were not included in the fee for Basic Services and did not result in an increase in the cost of construction. These Additional Services are addressed and explained in an LH&J letter and the Meeting Minutes which, along with a copy of this Amendment No. 15, are included "in globo" as Attachment No. 16.

Amendment No. 16 was submitted to F. LaCourse of CSRS Jacobs on 1/8/09 and changed the end date of the LH&J Contract from 5/30/2009 to 1/11/2010. A copy of this amendment is included as Attachment No. 17.

Amendment No. 17 was submitted on July 31, 2009 to F. LaCourse of CSRS Jacobs which added fees for a subconsultant in the amount of \$5,500. These Additional Services increased the total fee for the Project to \$8,070,791, but this amendment has not been processed to date. These Additional Services are addressed and explained in an LH&J letter which, along with a copy of this Amendment No. 17, are included "in globo" as Attachment No. 18.

Amendment No. 18 was submitted on April 2, 2010 to Lona Hankins of RSD. This amendment increased the fee for basic services to \$3,474,386 based on a final construction cost of \$46,160,358. These additional fees increased the total fee for the contract of \$8,263,490, but this amendment has not been processed to date. The

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inclusion of these fees is supported by an LH&J letter which, along with a copy of this Amendment No. 18, are included "in globo" as Attachment No. 19.

LH&J has prepared a more detailed summary of each of the amendments which is included as Attachment No. 20.

As a result of the numerous changes and directives issued by RSD, the total cost of the planning, design, construction, modular buildings, and Project management associated with the Project was \$105,356,479. To illustrate the magnitude of the changes, over 250 change order requests were submitted in connection with the site work construction. These change order requests resulted in 45 formal change orders. Due to the short time frame for construction of the Project, LH&J and its consultants ended up having to work 12-hour days/7 days per week which was never contemplated as part of the original LH&J Contract.

SUMMARY OF PAID AND UNPAID FEES

Throughout the design and construction of the Project, LH&J submitted 20 invoices which totaled \$8,027,317.08. RSD made payments totaling \$7,250,499.19, leaving an unpaid balance of \$776,817.89 (see Attachment No. 22). Additionally, the increased fees included in Amendment Nos. 17 and 18 total \$198,199 which were earned by LH&J but have not been processed to date. As noted earlier, LH&J provided basic services for the design of 2 campuses at the Kennedy site which were not included in the bid documents. Based on LH&J's calculations using the estimated construction costs used to establish the AFC prior to bidding, and applying the State fee curve, LH&J earned a fee for these 2 campuses of \$215,314.14. These additional fees have not been processed to date. See Attachment No. 21.

LH&J also performed design services in connection with electrical transformers furnished by Entergy and communication facilities furnished and/or constructed by other contractors for which LH&J is entitled to a fee of \$44,803.44. These additional fees have not been processed to date. See Attachment No. 21.

The total of the billed and unbilled fees which remain unpaid is \$1,173,107.47. A summary of the contract amendments, unpaid invoices and fees earned but not invoiced is included as Attachment No. 21 to this letter. Also included in Attachment No. 21 is a letter of review of the invoices and payments.

As is evident from the brief summary of the Contract Amendments, the Project and how it proceeded was unusual and atypical when compared to other projects. This Project involved extensive Additional Services and Special Services which went far beyond what is normally anticipated and contemplated. These services were required throughout the design and construction of the Project.

LH&J's RESPONSE TO AUDITOR'S FINDINGS/OPINIONS

The auditor's principal finding is that LH&J "billed RSD \$3,543,718 for the same site work design services through increases in the cost curve and as additional services. This finding is presumably based on the following assumptions:

1. The Project scope did not change;
2. The increase in LH&J's fees for basic services resulting from an increase in the overall construction cost for the Project was adequate to compensate LH&J for all of the Additional Services authorized and approved by the RSD.
3. An Additional Service performed by LH&J always results in a corresponding increase in the construction cost.

As explained below, these assumptions are erroneous and invalid. First, the Manual allows LH&J's compensation to be adjusted when the construction cost increases, even when LH&J isn't requested to perform additional services. Second, there are additional services which do not result in an increase in the construction cost yet LH&J is still entitled to be paid for those additional services. Third, some of the Additional Services and Special Services were not included in basic services, e.g. resident inspectors, surveying, etc. have no relationship to the cost of construction or LH&J's fee for basic services.

The Legislative auditor made no attempt to carefully evaluate the Additional and Special Services performed by LH&J, but instead chose to include a statement which it knows to be false on its face. The Manual clearly recognizes that "... any other special services not otherwise included in the Contract or not customarily furnished in accordance with generally accepted designers' practice"³ are considered additional services. Undoubtedly, as is evident from the factual background set out in this letter, this Project was totally atypical and the RSD issued numerous directives for LH&J to provide additional services which would not be considered "customarily furnished" in accordance with general practice.

Figure 2 in the report is a chart entitled "Design Fee Escalation Over the Duration of the Project". Through the use of this chart, the auditor attempts to compare the fee that LH&J would have earned had the fee curve been applied to the increase in the construction cost of the Project and (2) the fees earned by LH&J pursuant to the LH&J Contract and Amendments 1 – 16. In plotting the line for the latter, the auditor used the dates when the amendments were executed rather than the dates when the services were

³ See Section 7.3.5 of the Manual.

actually performed in order to presumably make it appear that the bulk of the fees were for services provided after substantial completion of the Project. By using this approach, the auditor intended to mislead the public into believing that LH&J unreasonably billed for the services which they provided. Further, the line representing the fees LH&J would have earned "had the fee" curve been used to calculate the total fee, suffers from the same erroneous assumptions noted earlier.

The auditor also incorrectly concludes that the dates for substantial completion of the campuses which were established in the Arrighi Simoneaux construction contract were not met because the Project was "plagued with poor project management and with errors and omissions in the design work." The auditor conveniently attributes his conclusions to statements made by "RSD management" without either identifying the person who made the statements or any identification of the purported errors or omissions which are attributable to LH&J. LH&J is unaware of any errors or omissions in the services it provided, let alone any errors or omissions which delayed completion of the Project. It is reckless and careless for the auditor to include such a statement without providing any substantiation of such a serious allegation.

The auditor also attempts to mislead the public by including a statement in the report that "Final acceptance of the Modular Project occurred on September 17, 2009, over two years after the original contract completion date." All of the campuses but two were ready for occupancy in September, 2007 (the other campuses were occupied in October and November, 2007), and the overriding objective to have the "kids in school" was met. Admittedly, closeout issues which didn't impact occupancy delayed the filing of both the substantial completion certificates in November, 2007 and the formal acceptance filed in 2009. It appears that the auditor intends to imply that the date that the final acceptance was filed somehow correlates to the date of substantial completion of the Project. Such an implication is grossly misleading and inaccurate.

The bulk of the findings which pertain to LH&J are included in the section of the report entitled "Questionable A&E Fees". A detailed analysis of this Section is warranted since most of the statements are inaccurate, incomplete or erroneous.

The auditor very generally describes the fee curve which was included in the LH&J Contract and used to calculate LH&J's compensation for Basic Services. That fee curve was used throughout the Project to calculate the increase in LH&J's compensation for Basic Services as a result of increases in the construction cost. However, the fee curve does not address "Additional or Special Services". Those services are handled differently and are usually not tied back to an increase in the construction cost.

The auditor ignored all of the Additional and Special Services that were addressed in the Amendments to the LH&J Contract except \$232,972 of special services which were presumably included in Amendments 2, 6 and 7. The auditor instead chose to

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characterize all the other Additional and Special Services included in the Amendments as appearing to be “basic design services but LH&J billed then as if they were additional services.” The auditor further concluded that “A&E fees should not be increased for basic design services and additional design services for the same work.”

These statements are not based in reality. Many of the Additional Services did not result in an increase in the construction cost. As an example, adding inspectors to examine the electrical work of Williams Scotsman did not increase the construction cost for the Project. Further, even when Additional Services involved a change in the Project scope which increased the construction cost, the fee increase based on the fee curve was inadequate to cover the cost of the Additional Services performed by LH&J and its consultants. In other words, the increase in the basic service fee due to the increase in construction cost had to be supplemented by the fees included in the Amendments for Additional Services in order to fairly and reasonably compensate LH&J for these services.

The auditor also concluded that “[B]y increasing their fee based on project cost increases and billing for the same work as additional design services, LH&J appears to have billed RSD at least \$3,543,718 for the same services.”

Like other similar statements in the report, the auditor erroneously concludes that LH&J is billing RSD twice for the same services. This is blatantly misleading for many of the same reasons noted earlier. The auditor makes no attempt to substantiate overly broad and general statements. It’s frightening to think that the Legislative Auditor would offer such an “opinion” without delving into the facts behind each of the Amendments.

The auditor also offers an opinion on whether the fees for the Additional Services were “reasonable” and support it with a crude and amateurish calculation. LH&J’s fees for the redesign of the entire Project were \$460,000 which was precipitated by a change in the size of the width of the modular buildings. This fee was based on an estimate provided by LH&J to the RSD prior to proceeding with these Additional Services. Instead of conducting a detailed review and analysis of the substantial effect these changes had on the original design of the Project, the auditor chose to diminish the effect of the changes by characterizing the changes as merely changing “the width of the site boxes by eight feet.” By including this simplistic description in its report, the auditor intentionally ignored LH&J’s oral explanation to the auditor of the significant impact these changes had on the original design and why the changes required LH&J to scrap the original design and start over.

If that wasn’t enough, the auditor performed a calculation in an effort to illustrate that the fee for these additional design services was unreasonable. The calculation assumes that it would take 10 people working 8 hours a day for 30 days at a rate of \$195/hr. to justify a fee of \$460,000. As noted earlier, during this redesign effort, LH&J had upwards of 29

people working to redesign the Project and LH&J's consultants also had people dedicated to this project working 10 to 12 hours a day, seven days a week in order to meet the deadlines of having the campuses designed and constructed to get the "kids in school". Again, the auditor made no effort to determine the reasonableness of this fee before reaching the conclusion that the fee for this redesign "... did not appear to be reasonable."

The auditor contends LH&J did not adhere to the provision in the LH&J Contract which provides that payment for Additional Services "shall be made on the basis of designer's direct personnel expense for performing such services multiplied by a factor of 3.0". Although LH&J admits that the RSD did not strictly follow this provision, there were exigent circumstances which made it either impossible or impractical to follow this provision. Since this Project had to be completed on such a tight schedule, changes had to be made on the come as they arose so that delays in construction were minimized. The ultimate goal of getting the schools open for the fall semester overrode all other considerations. Further, since basic services were interwoven with Additional Services, keeping track of the time that each person spent on each activity was impractical, if not impossible.

Based on these practical considerations, the Program Manager, RSD staff and LH&J reached a consensus that fees for Additional Services would be based on a fee proposal which estimated the fees necessary to perform the Additional Services. These estimated fees were negotiated and approved by RSD either before, during or after the services were performed, since time was of the essence.

The auditor, in spite of this explanation, concluded that "the reasonableness of the changes and the proper amount RSD should be charged cannot be determined." This statement is blatantly false. The parties to the contract agreed that the fees for these Additional Services were reasonable considering the effort that LH&J expended. An objective calculation is not the only way to determine if the fees were reasonable. In fact, hours logged on a particular task are not determinative of whether the amount charged was reasonable or not.

The parties to the LH&J contract had the right to agree to use a different approach to determine the total amount of the fee for a particular Additional Service. Once the Amendments were executed, this approach was deemed to have replaced the approach set out in the original LH&J Contract and the Manual. The auditor is now suggesting or implying that this approach was illegal and therefore not binding. Such a finding is neither correct nor reasonable.

The auditor also cites three reasons why the construction cost increased as set out below:

- The architectural plans did not include everything that was required to set up school campuses. For example, adding separate modular building to each campus for communications and IT;
- RSD management changed what was required. For example, RSD changed the entrance security buildings; and
- Numerous communications issues between the project manager, A&E, and Williams Scotsman caused delays in project cost increases. For example, replacing all the undersized wire on all campuses with properly sized, more expensive wire.

Although the construction cost increased for a variety of reasons, no acts, errors or omissions on the part of LH&J contributed in any way to this increase. Further, the examples imply that LH&J was responsible for changes in the scope of the work or improperly designed certain site work utilities. This implication is based on a lack of knowledge of the history and background of the Project.

Regarding the first example, the original scope of the Project stated that the scope of services would not “include any provisions for entry to the site or for interconnecting between buildings the telephone, communications and fire alarms.” In other words the original scope did not provide for handling communication or IT. Once the equipment requirements were established by RSD, RSD decided to design and construct a separate building for each campus to house this equipment. LH&J was directed by the RSD to include this building in the bid package and to include quantities to account for these buildings as part of the third addendum to the bid documents. After the construction contract was awarded, RSD directed LH&J to design the buildings as an additional service.

Regarding the second example, RSD did in fact change the security building located at the entrance of each of the campuses, however, these changes were handled by Williams Scotsman. RSD directed LH&J to modify the canopies adjacent to these modular buildings as an additional service. Regarding the third example, LH&J, through its electrical engineering consultant, designed the electrical service to the modular buildings based upon electrical loads provided to LH&J by the RSD. This was explained earlier in this letter. The conduit feeders and wire sizes were not “undersized” for those original electrical loads. When actual electrical loads were provided by the RSD after construction commenced, all of the feeders had to be re-evaluated and sizes subsequently increased as necessary to address the increased electrical loads. Due to the fast track nature of the Project schedule, the electrical subcontractor working under ASC had already begun installing conduit and wiring based on the original electrical loads. Thus,

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some of the conduit and wiring had to be replaced with larger sized conduit and wiring. This change was beyond the control of LH&J or its consultants. This redesign was performed by LH&J and its electrical engineering consultant as an additional service.

CONCLUSION

For these and many other reasons which would be evident from a careful review of LH&J's project files, LH&J did not overbill or overcharge the RSD for the basic, additional and special services which LH&J and its consultants provided in connection with the Project. Every amendment to LH&J's Contract was reviewed, discussed, negotiated and approved by RSD's program manager and RSD's staff before the amendment was executed. Whenever a change in the Project resulted in an increase in the fee for basic services, the fee for additional services was negotiated taking the increase in the fee for basic services into account. All parties involved agreed that the additional services would be performed pursuant to a lump sum fee proposal which was submitted to and approved by RSD before the issuance of each amendment. The fees earned by LH&J were reasonable and appropriate for the services which were provided.

The auditor's report woefully fails to provide any support or substantiation for the statements and recommendations pertaining to LH&J. Moreover, the audit lacks legitimacy and is contrary to standard auditing practices which would require, at the very least, a detailed review and analysis of the project files of LH&J and the other parties involved in the Project. We reiterate our concerns that many statements and all of the recommendations as they pertain to LH&J are misleading, erroneous and defamatory. We demand that these statements and recommendations be retracted and removed from the report before it is finalized and "published" on the auditor's website.

Very truly yours,

LINFIELD, HUNTER & JUNIUS, INC.



Richard A. Van Wootten, P.E.
Administrator

LINFIELD, HUNTER & JUNIUS, INC.



Sergio J. Girau, P.E.
Vice President

RVW/kwf

Enclosures



February 22, 2013

Louisiana Legislative Auditor
PO Box 94397
Baton Rouge, LA 70804-9397

Re: Recovery School District Modular Campus
Legislative Audit

To Whom It May Concern:

Arrighi Simoneaux, LLC (ASC) was proud to have assisted the City of New Orleans and the Recovery School District (RSD) in providing necessary services to the citizens of New Orleans after the devastation caused by Hurricane Katrina. Within a very short period of time, the construction team built several school facilities which had been severely damaged. Our efforts allowed over 1,000 students to return to school relatively quickly after the storm.

The widespread destruction caused by Katrina, along with the need to proceed with the work on an expedited basis, required the construction team to proceed in a somewhat unconventional manner. For example, the nature and exigency of the work required crews to be onsite seven days per week, working sixteen hours per day (or more). After the original contract was advertised, bid, awarded and signed, RSD elected to dramatically expand the originally-anticipated work scope, which required numerous change orders and contract modifications. The RSD did not have the luxury of stopping the work – and sending the work crews home – while each change and addition was submitted to public and competitive bidding. Rather, RSD required ASC to prepare cost estimates and submit lump-sum proposals to RSD for the changed work – all on an expedited basis – while the other work continued. The many change orders were all subject to significant negotiation, and much “give and take” between the parties.

RSD did not permit any work to be performed on a “cost plus” basis but instead required all change orders to be executed on a lump sum basis. Thus, ASC was required to bear the risks that its cost estimates were too low, along with the inherent performance risks. ASC performed the changed work only after RSD and ASC had concluded negotiations, agreed upon the pricing, and signed the change orders. On many occasions, ASC’s *actual* cost to perform the (lump sum) change order work *exceeded* its estimate (and the agreed price) which resulted in a *loss* to ASC. On other occasions, ASC’s actual cost of performance was less than its estimate, and ASC made more profit than originally estimated.

The Legislative Auditor’s conclusions and accusations of “overcharges” by ASC are associated with the latter category of change orders where ASC’s costs were less than originally estimated. The Auditors have given no consideration to the former category, where ASC actually lost money on change order work. For the most part, the Legislative Auditors totally ignore the parties’ agreements – i.e. that the changed work was to be done on an agreed lump sum basis – and superimpose upon ASC the



“obligation” to perform work at a price lower than that which was agreed. In large part, the Auditor’s conclusions are based on a fictional re-creation of the parties’ contract and obligations, as well as a misunderstanding of the work performed by ASC.

In sum, to the extent that the Auditors assert that ASC’s charges were excessive, unreasonable or unsupported, ASC responds that the audit report is factually inaccurate and unfair.

In addition to the foregoing general response, we offer the following responses to certain specific allegations related to ASC’s performance.

Item #2 – *“Arrighi-Simoneaux Construction (ASC) billed RSD \$685,558 and \$666,419 respectively for general conditions for the same 77 day period through separate change orders.”*

ASC Response - This statement is both factually and legally incorrect. The Auditor’s Report misrepresents the applicable terms and conditions of the contract and misrepresents the facts related to this issue. This allegation should be deleted from the report.

Because RSC made a cardinal change to RSC’s original scope of work, ASC was entitled to additional reimbursement. The Auditors fail to recognize or address this fact in their report. There was no “duplication” of charges for the referenced 77 day period.

On August 19, 2007, Contractor’s claim for extended overhead extensions was submitted to RSD in EWO 124, which was valued at \$719,782 based on information provided to ASC.

Through extensive negotiations between ASC and RSD, the final claim for overhead extension was agreed to by the parties and incorporated in EWO 124R4 at an agreed price of \$685,557.81. This was included in Change Order #11 which was executed by RSD on February 19, 2008. The overhead extension was based on actual costs incurred during the 77 day period as defined in Change Order #11.

During the same period of negotiations, a similar claim was made by ASC’s subcontractor, for the “general conditions” associated with the subcontractor’s additional costs to perform the added work. The subcontractor was entitled to make this claim because allotments for extended general conditions were not included in unit prices. The audit report references alleged representations by ASC concerning the makeup of submitted unit prices. The auditors have taken these conversations out of context in an apparent attempt to lend support to their false and inaccurate allegations. Of particular note, the alleged representations of ASC concerning unit prices related to an issue separate and apart from the issues set forth in the auditor’s report. The fact is that the unit prices included only direct costs associated with labor, materials, subcontractors and equipment plus applicable profit and overhead. That (subcontractor) claim for “general



conditions” was presented as EWO 170 and submitted on November 28, 2007. The charges submitted by the subcontractor are **different from and in addition to** any and all costs incurred by the Contractor during this period. The subsequent Change Order #34 included actual costs incurred by the subcontractor during the same period as detailed in EWO 170R3.

Both EWOs were under consideration by RSD prior to the execution of change orders. The RSD made the decision to approve only one component while the second component was under review. The second change order does not include any “double billing” (as wrongfully asserted by the Auditors). Rather, it includes appropriate amounts to reimburse the contractor and subcontractor for their actual costs of performing changed work. The “confusion” arose only because RSD elected to include the charges in two separate change orders.

Item #3 – *“ASC billed RSD \$170,571, which includes \$37,000 of incorrectly charged sales tax, for fuel for temporary generators to power five modular campuses but did not provide the fuel.”*

ASC Response - The Auditor’s Report is both factually inaccurate, legally incorrect, and misrepresents the facts related to the subject fuel usage. In conjunction with ASC’s pricing of changed work, ASC developed an estimate of the amount of the amount and cost of fuel that would be consumed by generators utilized onsite. That estimate was incorporated into a lump sum change order that was signed by RSD and ASC. Because this was a lump sum change order, ASC assumed the risk of an inaccurate estimate, and any overruns or shortages were within ASC’s risk of performing the work. ASC billed RSD for the amount of the lump sum change order only, which included all fuel. There is no legal basis to assert an “incorrect charge” or overcharge by ASC.

The Auditors now assert that the lump sum change order price should be reduced because ASC’s original *estimate* of the fuel cost was higher than ASC’s *actual* cost of fuel. However, because this was a lump sum change order, both the estimated cost and the actual cost are irrelevant. Clearly, if ASC’s actual costs had been higher than its estimated costs, the Auditors would not be asserting that ASC is entitled to compensation in excess of the lump sum change order. There is no basis to adjust the lump sum price, simply because ASC’s estimate was lower than its actual costs *for this one item* (fuel).

Item #4 – *“ASC billed RSD \$37,843 for 16 light pole foundations that were not provided. Additionally, \$472,852 of the cost to provide light pole foundations appears to be unreasonable for the service provided.”*

ASC Response - The Auditor’s Report is incorrect. Light pole foundations were to be provided by ASC under Change Order #6, which was executed on August 6, 2007 and was based on the ASC’s EWO 125 dated July 23, 2007. No work was performed prior to RSD’s execution of the change order.



ASC purchased and installed all required light pole foundations. During installation, RSD accounted for required light pole foundations.

The Auditor's conclusion of "missing" foundations is based on their field counts that were conducted several years after completion and acceptance. It is significant to note that the Auditor's *initial* count showed that *over 100 light pole foundations* were "missing" and allegedly were not installed. ASC provided evidence of its purchase of all required foundations. ASC also went to the sites and conducted its own count of the light pole foundations. ASC found many poles foundations which the Auditors had totally missed. Other locations could not be verified because of post-installation modifications to the sites. However, the Auditors now claim that (only) 16 were not provided – not the 100 that were missed during their first "audit." In any event, the Contractor cannot be held accountable for changes made to the sites after contract completion or for the Auditor's current inability to locate or count the foundations correctly.

In reference to the allegation that foundation costs may be unreasonable, the auditor's report is likewise incorrect and inappropriate. ASC estimated the cost of this added work. After negotiations with RSD, the parties reached agreement on a lump sum Change Order #6, which was executed on August 6, 2007 based on the Contractor's EWO 125 dated July 23, 2007. No work was performed prior to RSD's execution of the change order.

The Auditors now contend that the appropriate price for this work should have been \$60/lf. ASC has provided invoices from its supplier (Skyline steel) which shows that the cost for the material alone is \$64/lf. The Auditors after-the-fact estimate is erroneous, as it obviously misinterpreted the work scope and/or actual cost of performance. In any event, there is no basis to adjust a lump sum agreement between the parties (RSD and ASC) simply because the Auditors develop a lower (albeit inaccurate) estimate of costs.

Item #5 – *“RSD spent over \$10 million through change orders that were based on unit prices that were not established through the public bid process. Some of that unit pricing may be unreasonable which could result in questionable costs of at least \$404,160.”*

ASC Response - The auditor's report is incorrect at many levels. The RSD determined that the exigent Project circumstances did not allow time for change order work to be let via the "public bid process." ASC prepared estimates for the changed work, which were subject to extensive negotiations in the best interest of RSD. No work was performed prior to the execution of the change order. No cost concerns were raised at the time of execution of the Change Order. All lump sum change orders were developed based on the onsite conditions of extreme overtime, differing site conditions and were atypical to standard construction practices or pricing strategies. As stated above, ASC was required to assume the risks of inaccurate estimates and other performance risks. In many cases, ASC's *actual* costs to perform Change Order work were greater than its *estimated* costs. ASC



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CONSTRUCTION

absorbed those losses as an inherent risk of undertaking work on a lump sum basis. ASC cannot be charged with “unreasonable” pricing simply because *some of its actual costs* for performing changed work was less than its estimated cost.

Item #6 – “ASC billed RSD \$139,137 for labor incurred as a result of change orders that is not in accordance with Section 7.2.2 of the contract.”

ASC Response – As noted above, RSD required that all change order work be performed on a lump sum basis. The work was performed after the Change Order was negotiated, approved and executed. All cost estimates were disclosed, submitted and approved prior to executing the Change Orders and the work. If RSD had cost concerns, none were raised at the time of negotiation or execution.

The Audit Report is false and misleading in that it asserts \$139,137 was “incorrectly billed” for labor costs in the execution of change orders. In fact, ASC’s billings for labor (and other costs) were in accordance with the terms of the lump sum change orders. That figure (\$139,137) represents the Auditor’s continued attempts to set aside the parties’ agreements, and to de-construct ASC’s initial estimate for labor costs, including labor burden. Neither exercise is reasonable or appropriate.

Appendix B

RSD's Modular Campus Schools
Included within This Audit

School	Street Address	Total	Zip Code
Mary Coghill	5500 Piety Dr	New Orleans, LA	70126
Edward Livingston	7301 Dwyer Rd	New Orleans, LA	70126
Langston Hughes	3519 Trafalgar St	New Orleans, LA	70119
Francis W Gregory	1700 Pratt Dr	New Orleans, LA	70122
George W Carver #1	3059 Higgins Blvd	New Orleans, LA	70126
George W Carver #2	3059 Higgins Blvd	New Orleans, LA	70126
Marion Abramson #1	5552 Read Blvd	New Orleans, LA	70127
Marion Abramson #2	5552 Read Blvd	New Orleans, LA	70127
Fannie C Williams	11755 Dwyer Rd	New Orleans, LA	70128

Appendix C

Unit costs that were competitively bid and properly procured in the original contract

Appendix C indicates all the competitively bid and properly procured unit prices used by the general contractor for change order pricing. This table is included as an example of the proper procurement of unit prices for change orders as opposed to the numerous unit price items used during this project that were not competitively bid or properly procured.

Item	Unit Price	Unit	Coghill	Livingston	Abramson	Williams	Gregory	Hughes	Carver
IT Building	\$25,000.00	ea	x	x	x	x	x	X	x
Pole to Xfrmr pull box 72" x 48"	5,255.50	ea	x	x	x	x	x	X	x
6' x 4' x 3' pull box	5,255.50	ea	x	x	x	x	x	X	x
Sewer manhole	4,830.00	ea	x	x			x	X	
Drain manhole	4,025.00	ea				x			
Drop inlets	2,875.00	ea		x		x	x		
24' wide double swing gate	1,964.20	ea					x	X	
Tree removal	1,725.00	ea	x						
Fixture Type F3	1,236.25	ea	x	x	x	x	x	X	x
200A/3P DS N-3R	1,112.05	ea	x	x	x	x	x	x	x
5' wide single chain link gate	652.05	ea	x	x	x	x	x		x
Sewer clean out	396.75	ea						x	
Pavement and 8" thick base	138.00	sy				x			
Remove and replace 8" thick concrete	120.75	sy		x					
7" thick concrete pavement	86.25	sy						x	
Crushed limestone pad	85.10	cy	x	x	x	x	x	x	
21" PVC drain	77.05	lf		x					
4" long radius elbow	66.78	ea	x	x	x	x	x	x	x
4" long radius elbow	66.75	ea	x	x	x	x	x	x	x
18" PVC drain	65.55	lf		x			x	x	
8" PVC sewer	59.51	lf	x	x	x	x	x	x	x
15" PVC drain	54.05	lf		x				x	
12" PVC drain	50.75	lf				x			
8" PVC water main (with fittings)	46.30	lf				x	x	x	x

Item	Unit Price	Unit	Coghill	Livingston	Abramson	Williams	Gregory	Hughes	Carver
4" concrete walkway	\$41.40	sy	x	x	x	x	x		
4" PVC sewer	39.68	lf	x				x		
10' high chain link fence	33.35	lf		x	x		x		x
5" sch 40 PVC	26.28	lf	x	x	x	x	x	x	x
4" sch 40 PVC	21.23	lf	x	x	x	x	x	x	x
4" sch 40 PVC	21.23	lf	x	x	x	x	x	x	x
Pavement removal	17.25	sy						x	
2" C, sch 40 PVC	16.70	lf	x	x	x	x	x	x	x
Excavation	9.20	cy	x	x	x	x	x	x	
Asphalt pavement removal	6.90	sy	x						
Concrete sidewalk removal	6.90	sy	x						
1-1/4" Inner duct	6.21	lf	x	x	x	x	x	x	x
1-1/4" Inner duct	6.21	lf	x	x	x	x	x	x	x
3/0 AWG	5.55	lf	x	x	x	x	x	x	x
Building removal	4.60	sf	x						
#6 AWG	1.38	lf	x	x	x	x	x	x	x
Geotextile fabric	1.15	sy		x	x	x	x	x	