

Jared L. Anderson, #8140  
**SEILER, ANDERSON, FIFE & MARSHALL, LC**  
2500 North University Ave.  
Provo, UT 84604  
Telephone: 801-375-1920  
Facsimile: 801-377-9405  
Email: [jla@safmlaw.com](mailto:jla@safmlaw.com)

*Attorney for Wasatch County School District*

---

**BEFORE THE STATE RECORDS COMMITTEE  
OF THE STATE OF UTAH**  
346 S. Rio Grande St., Salt Lake City, UT 84101

---

TRACY TAYLOR, an individual, and  
WASATCH TAXPAYERS ASSOCIATION,  
a Utah corporation,

Petitioners,  
vs.

WASATCH COUNTY SCHOOL  
DISTRICT, a political subdivision of the  
State of Utah,

Respondent.

**RESPONDENT'S STATEMENT OF  
FACTS AND LEGAL AUTHORITY**

Case No. 2020-43

---

The Respondent, Wasatch County School District (the "District"), by and through its attorney from the law firm of Seiler, Anderson, Fife & Marshall, LC, submits the following Statement of Facts and Legal Authority pursuant to Utah Code § 63G-2-403(5).

**STATEMENT OF FACTS**

A. Petitioner's GRAMA Requests

1. On January 8, 2020, Tracy Taylor, for herself and on behalf of Wasatch Taxpayers Association ("WTPA"), sent a GRAMA request to the District seeking records related to a proposed new high school in Wasatch County (the "New High School"). A copy of the January 8,

2020 GRAMA Request is included as **Exhibit “A”**. A copy of relevant email correspondence between Ms. Taylor and the District containing her GRAMA Requests is included as **Exhibit “B”**.

2. On January 23, 2020, the District responded to the request by providing a copy of invoices related to engineer studies performed on the New High School site. The District further directed WTPA to the “Future High School” tab of the District’s website ([www.wasatch.edu](http://www.wasatch.edu)) for the balance of the requested records. (Exhibit A).

3. The “Future High School” tab of the District’s website directs users to an overview landing page, where they can access records and information related to the following categories: (1) 2019 Bond Viability Research Likely Voter Survey Results, (2) Davis Demographics Study – Updated Feb. 2020, (3) Questions Regarding the Land for the Proposed High School from Berg Engineering, (4) Land Agreements, (5) Traffic Study, (6) Geotechnical Investigation, (7) Cultural Resources Report, (8) Biological Evaluation, (9) Waters of the United States Report, and (10) 2019 Agricultural/Residential Land Appraisal Report. See <https://www.wasatch.edu/domain/2221>.

4. On February 13, 2020, Ms. Taylor submitted another GRAMA request on behalf of WTPA to the District for the following information:

1. Identify which contracts, where funds were due by February 28th 2020, are still outstanding. Identify which properties have not closed yet.
2. Invoice and all reports or drafts done by Bio-West Engineers.
3. All financial analyses done for any fiscal impacts of ongoing annual wetlands mitigation needed to occur, required by the Army Corps of Engineers, to be able to develop new North Fields high school property.

A copy of the February 13, 2020 GRAMA Request is included as **Exhibit “C”**.

5. On February 28, 2020, the District provided its response to items Nos. 1 and 3 identified above.<sup>1</sup> The District further provided WTPA all invoices for Bio-West Engineers, and stated further, “The draft done by Bio-West Engineers is expressly excluded by Utah Code Sec. 63G-2-305(22).” (Exhibit B).

6. On March 27, 2020, Ms. Taylor notified the District that she and WTPA “need to appeal your denial of our GRAMA request dated February 13, 2020. Your denial of the Bio-West wetlands delineation map is being appealed. You stated your reason for denial is Utah Code Sec. 63G-2-305(22), which says it is a draft. We disagree, and consider this document as a stand alone document and NOT a draft.” Citing to Utah Code Ann. § 63G-2-306(2), Ms. Taylor further argued, “There is NO requirement for you to protect this record, if you think the greater public good would be served by releasing it.” (Exhibit B).

7. On April 6, 2020, even before a decision by the District’s chief administration officer on the subject GRAMA request (*see* Utah Code Ann. § 63G-2-401), WTPA made yet another GRAMA request seeking various information and records from Respondent. Although the April 6, 2020 GRAMA request is (like the January 8, 2020 request) not the subject of the present appeal, Ms. Taylor’s steady stream of documentary and informational requests imposed hardship on the District during a time when the District’s offices were closed due to COVID-19, and required District staff (who are adhering to federal and state public health guidance by working from home) to come into the District’s office to search for the requested records. A copy of the April 6, 2020 GRAMA Request is included as **Exhibit “D”**. *See also* Exhibit B.

---

<sup>1</sup> The District’s responses to requests Nos. 1 and 3 are not the subject of the present appeal.

8. On April 10, 2020, the District's chief administration officer, Superintendent Paul Sweat, notified Petitioners that "the original decision was correct and am therefore denying your appeal." (Exhibit B).

9. On May 8, 2020, Petitioners emailed Rebekkah Shaw, the Utah State Records Committee's Executive Secretary, "requesting an opportunity to appeal to your State Records Committee, along with the Wasatch Taxpayers Association (WTPA), the decision by the Wasatch School District's (WSD) to deny us a key document in helping the citizens of Wasatch County determine if the land the WSD already purchased will negatively impact the taxpayers if allowed to go forward with construction." A copy of the May 8, 2020 email from Tracy Taylor to Rebekkah Shaw is included herewith as **Exhibit "E"**.

10. Specifically, Petitioners seek the release of a "wetlands delineation **report**" they believe was drafted by "Bio-West Engineers" concerning land proposed for the New High School. (Emphasis added). Ms. Taylor states in the May 8, 200 email to Rebekkah Shaw, "It may show the amount of wetlands found on the property, and therefore the costs required to mitigate these wetlands with the Army Corps of Engineers. Our November 2019 bond election failed mostly due to the concerns of this parcel of land and the costs associated with it." Ms. Taylor's statement shows her intent in submitting multiple GRAMA requests to the District is to obtain information concerning the proposed New High School which she and WTPA will use in opposition to the New High School proposal. (Exhibit E).

B. Bio-West, Inc.

11. In May, 2019, the District entered into a Wasatch School District Contract (“Contract”) with Bio-West, Inc. (“Bio-West”) for certain engineering services related to land proposed for the New High School. A copy of the Contract is included herewith as **Exhibit “F”**.

12. The Contract specifies as the General Purpose of the Contract four items: 1) wetland delineation and threatened and endangered species field survey, including GPS location of wetland boundaries; 2) threatened and endangered species reporting; 3) wetland delineation reporting with mapping and follow up site visit with the U.S. Army Corps of Engineers; and 4) cultural resources inventory and reporting (hereinafter the “Scope of Work”). (Exhibit F).

13. It is significant to note that a wetland delineation report with mapping is contained in Item 3 of the Contract. It is also significant to note that no report is called for in Item 1 of the Contract. (Exhibit F).

14. The Contract expressly states, “The Contractor shall complete the scope of services work in a manner to achieve any milestones identified in the procurement documents related to this Contract and the attachments to this Contract. The full scope of services work shall be completed by any applicable deadline stated in the solicitation.” (Exhibit F, Section 5).

15. Bio-West acknowledged its understanding that the schedule for completion of the Scope of Work was “very tight”. See email dated May 13, 2019 from Bob Thomas attached hereto as **Exhibit “G”**.

16. On June 4, 2019, Bio-West provided the District with a one-page<sup>2</sup> “Wetland Delineation Findings” (the “Initial Findings”). Bio-West did not use the word “report” at any place

---

<sup>2</sup> Including enclosures, the Initial Findings are two pages in length.

in the document to describe the document's contents. The Initial Findings did not include a threatened and endangered species field survey. Bio-West acknowledges in its Initial Findings that the findings were incomplete, and "have not been discussed or verified with the regulatory agencies." The Initial Findings also expressly contemplate the need to complete "the remainder of the tasks included in the contract documents."

17. The Bio-West Initial Findings invited the District to contact it to discuss the Initial Findings. However, attempts to contact Bio-West to discuss the Initial Findings were nonproductive.

18. The District subsequently learned that Bio-West had undertaken a project in Colorado which would make it effectively unavailable for any follow-up on the Initial Findings.

19. The District determined that Bio-West would not be able to complete Scope of Work as contained in the Contract, including follow up site visits to the property, further wetland delineation and mapping, or site visits with the U.S. Army Corps of Engineers.

20. The District has not circulated Bio-West's Initial Findings to any outside entities, nor has it in any way relied upon the Bio-West Initial Findings in carrying out any action or policy.

21. The District subsequently engaged CRS Engineers to perform the Scope of Work. CRS Engineers' biological evaluation report (48 pages) and wetlands delineation is available at the District's website ([www.wasatch.edu](http://www.wasatch.edu)) under the "Future High School" tab.

## **LEGAL AUTHORITY**

### **I. Bio-West's Initial Findings are Not a "Record" for Purposes of GRAMA.**

Under the Government Records Access and Management Act ("GRAMA"), and subject to Utah Code §§ 63G-2-203 and 204, every person has the right to inspect a "public record" free of

charge, including the right to take a copy of such records during normal working hours. *See* Utah Code Ann. § 63G-2-201(1). A threshold requirement, therefore, to invoking GRAMA is a showing that the information sought is a public “record” for statutory purposes.

GRAMA defines a “record” as “a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics . . . that is prepared, owned, received, or retained by a governmental entity or political subdivision; and where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.” A “record” does not mean a temporary draft or similar material prepared for the originator’s personal use or prepared by the originator for the personal use of an individual for whom the originator is working. *See* Utah Code Ann. §§ 63G-2-103(22)(a)-(b)(ii). In other words, documents which are preliminary drafts or similar material are not “records” as defined by GRAMA.

Here, Bio-West’s Initial Findings were prepared as a preliminary component of a larger, contracted-for Scope of Work that was never completed by Bio-West. Subsequent delineation reporting and mapping to confirm the Initial Findings were expressly contemplated and required by the Contract. The Initial Findings expressly state that they were not verified with any regulatory agencies. Because the Initial Findings are preliminary drafts subject to further delineating and mapping (as well as federal verification) they are not “records” subject to public disclosure under GRAMA.

## **II. Even if Bio-West’s Initial Findings are “Records” for Purposes of GRAMA, They Are Protected Records.**

GRAMA specifies that “all records are public unless otherwise expressly provided by statute.” Utah Code Ann. § 63G-2-201(2). Records that are private, controlled, or protected under

§§ 63G-2-302, 303, 304, or 305, are not public records. *See* Utah Code Ann. § 63G-2-201(3)(a). Drafts are protected records if properly classified by a governmental entity and are not otherwise classified as public records. *See* Utah Code Ann. § 63G-2-305(22).

This Committee's Decision and Order in *Julie Holbrook v. South Jordan City Council*, Case No. 14-16, <https://archives.utah.gov/src/srcappeal-2014-16.html> (last visited Aug. 4, 2020) addressed a records request with very similar circumstances. South Jordan City engaged external auditors to review the cash basis statement for a golf course the city owned. The auditors did "some 'field work'" and a draft report had been prepared, but it was still incomplete. South Jordan City decided to pay the auditors for the report, but the city did not retain the auditors for any further work. Ms. Holdbrook appealed to this Committee after South Jordan City denied her GRAMA request for the engagement letter and draft report of the auditors, citing Utah Code § 63G-2-305(22).

Interpreting GRAMA, this Committee stated, "Draft documents are protected records *and must only be disclosed if they were circulated to entities other than those enumerated in Utah Code Ann. 63-2-301(3)(j) or relied upon in carrying out an action or policy as stated in Utah Code Ann. 63-2-301(3)(k).*" (Emphasis added). Because the audit report was never finalized and South Jordan City never circulated it to anyone other than a government entity, or relied upon it in carrying out any action or policy, this Committee ruled that the city's classification was proper and the report was a non-public, protected record.

Here, as in *Julie Holbrook v. South Jordan City Council*, the District engaged Bio-West to complete a Scope of Work consisting of four distinct items. Bio-West, as with the auditors, did some preliminary fieldwork and prepared the Initial Findings. However, the Initial Findings are



incomplete because they have not been verified with any regulatory agencies, nor has there been any follow up delineation reporting with mapping, as expressly contemplated by the Contract. Bio-West's Initial Findings further state the need to complete "the remainder of the tasks included in the contract documents."

In drafting the Initial Findings, Bio-West did not complete even the first of four components of the Scope of Work, as the Initial Findings contain no mention of or analysis pertaining to threatened endangered species. As in *Julie Holbrook v. South Jordan City Council*, although the District did pay Bio-West for the preliminary work it did, it did not have Bio-West do any additional work identified in the Scope of Work. The foregoing demonstrates conclusively that the Initial Findings are an incomplete, draft report, protected by Utah Code Ann. § 63G-2-305(22).

Further, as in *Julie Holbrook v. South Jordan City Council*, the Initial Findings have not lost their protected status because they have not been circulated to any outside entities, nor has the District in any way relied upon the Initial Findings in carrying out any action or policy. Instead, the District was essentially forced to engage another engineering firm (CRS Engineers) to perform the Scope of Work, including follow up site visits to the property, both with and without the U.S. Army Corps of Engineers. Documentation related to CRS Engineers' biological evaluation report (48 pages) and wetlands delineation is available at the District's website ([www.wasatch.edu](http://www.wasatch.edu)) under the "Future High School" tab.

In light of the foregoing, and consistent with this Committee's Decision and Order in *Julie Holbrook v. South Jordan City Council*, the Committee should affirm Superintendent Paul Sweat's April 10, 2020 denial of Petitioners' appeal under Utah Code Ann. § 63G-2-305(22).

### **III. Petitioners' Argument Regarding Utah Code § 63G-2-201(5)(b) is Misplaced.**

In her email correspondence, Ms. Taylor seems to suggest that, even if the Initial Findings are properly classified as protected, the public interest outweighs the classification under Utah Code Ann. § 63G-2-201(5)(b), requiring disclosure.

Indeed, “the State Records Committee *may*, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected *if the public interest favoring access is greater than or equal to the interest favoring restriction of access.*” Utah Code § 63G-2-403(11)(b) (emphasis added). It should be noted that, “[i]n balancing ‘the various interests and public policies [under Section 63G-2-403(11)(b)],’ the court must conduct an analysis of *the parties’ specific interests*, “*not a general analysis of competing public policies.*” *Utah Legal Clinic v. Salt Lake City Corp.*, 2019 UT App 58, ¶ 16, 440 P.3d 948, 952 (emphasis added).

Here, Ms. Taylor has not articulated a specific interest she or WTPA has in the Initial Findings, and it is entirely unclear to Respondent what interest Petitioners could have in preliminary, noncomprehensive and potentially incorrect information, other than seeking information concerning the proposed New High School which Ms. Taylor and WTPA will use in opposition to the New High School proposal. As already noted, CRS Engineers performed more thorough and detailed wetlands delineation and mapping, which is currently publicly accessible at the District’s website ([www.wasatch.edu](http://www.wasatch.edu)). Thus, the information Petitioners claim to seek and have an interest in is already available to them in greater length and detail than Bio-West’s preliminary, one-page Initial Findings. Accordingly, the public interest (if any) is not equal to or

greater than the interest favoring protection and does not override the protected status of the document.

### CONCLUSION

For all of the foregoing reasons, this Committee should rule that the Initial Findings is a draft document, such that it is either not a “record” for purposes of GRAMA or is protected from disclosure under Utah Code Ann. § 63G-2-305(22).

DATED this 5th day of August, 2020.

**SEILER, ANDERSON, FIFE & MARSHALL, LC**

*/s/ Jared L. Anderson*

---

JARED L. ANDERSON

*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that I mailed and emailed a true and correct copy of the foregoing **RESPONDENT'S STATEMENT OF FACTS AND LEGAL AUTHORITY** to the following by first class mail this 5th day of August, 2020:

Tracy Taylor  
Wasatch Taxpayers Association  
2 South Main Street, Ste. 1F  
Heber UT 84032

/s/ Robyn Ludlow

**EXHIBIT A**

# Wasatch COUNTY SCHOOL DISTRICT

## GRAMA REQUEST FOR RECORDS

TO: Wasatch County School District Attn: Keith Johansen

(Name of person and/or government office holding records)

The response to a request may be delayed if it is not directed properly. To find out where to direct a request, consult the agency's rules, telephone the agency or State Archives. The telephone number for the State Archives is (801) 538-3012.

Address of Government Office: WCSD, 101 East 200 North, Heber City, UT 84032

Description of records sought (records must be described with reasonable specificity):

Purchase contracts and appraisals on all land purchases involved in the 2019 School Bond Election. All evaluations and inspections conducted on all property previously mentioned, whether completed reports or incomplete drafts, with any attached informative commentary by inspector, including, but not limited to, a wetlands delineation report or map. All invoices received by WSD for any and all previously mentioned property evaluations and inspections.  
All information in electronic format, delivered via email.

- I would like to inspect the records
- I would like to receive copies of the records. I understand that I will be responsible for copy costs. I authorize costs of up to \$ \_\_\_\_\_. I further understand that the agency will contact me if estimated costs are greater than the amount I have specified, and that agency will not respond to a request for copies if I have not authorized adequate costs.
- I would like to receive copies of the records. I request a waiver of copy costs. (Please attach information supporting your request; see U.C.A. 63G-2-203(4) for a list of situations under which an agency is encouraged to provide copies without charge.)

If applicable, check one of the following and attach necessary documentation:

- I am the subject of the record.
- I am the person who provided the information.
- I am authorized to have access by the subject of the record or by the person who submitted the information.
- Other. Explain: wasatch taxpayers association website for public review

Name: Tracy Taylor

Address: tracy@etracytaylor.com

Day Time Phone Number: 435 503-1121

- I am requesting expedited response. (Please attach information that shows your status as a member of the media and a statement that the records are required for a story for broadcast or publication; or lease attach other information that demonstrates that you are entitled to the expedited response under U.C.A. 63G-2-203(3).)

Signature: 

Date: Jan. 8, 2020

**EXHIBIT B**

**From:** KEITH JOHANSEN <[KEITH.JOHANSEN@wasatch.edu](mailto:KEITH.JOHANSEN@wasatch.edu)>  
**Sent:** Monday, April 20, 2020 11:57 AM  
**To:** Tracy Taylor <[tracy@etracytaylor.com](mailto:tracy@etracytaylor.com)>  
**Cc:** PAUL A. SWEAT <[PAUL.SWEAT@wasatch.edu](mailto:PAUL.SWEAT@wasatch.edu)>; STACEY MOORE <[STACEY.MOORE@wasatch.edu](mailto:STACEY.MOORE@wasatch.edu)>  
**Subject:** GRAMA request dated April 6, 2020

Ms. Taylor,

During this pandemic and State and County "stay at home" orders, it is very inconvenient and somewhat dangerous for district staff to have to come in to the office to respond to a steady stream of large and excessive GRAMA requests. The District is attempting to work at home as much as possible, but records are seldom available from home. In order to respond to this type of request, district staff are required to come into the district office, which has been closed due to the pandemic, to search for these records.

With that being said, here is the response to the April 6, 2020 GRAMA request:

1. ***All signed contracts between Wasatch School District and all engineers doing work and due diligence on the 2019 school bond properties, including (but not limited to) BioWest Engineers.*** response - see attached.
2. ***Identify, and describe, all 4 location options listed in Paul Berg's invoice #4180 dated 10/31/2018, plat maps for each option, and concept plans done by Berg for all options.*** response - there are no records in possession of the District which satisfy this request.
3. ***Any due diligence done with CUP and Jordanelle Dam safety. School Board's engineering report documentation that shows it takes one hour for the Jordanelle Dam water to reach the proposed high school area in case of dam breakage.*** response - see attached memo from Berg engineering.
4. ***Traffic mitigation the School Board is proposing for 100 South/Midway Lane.*** response - see attached Traffic Impact Study prepared by Hales Engineering.

Keith Johansen  
Business Administrator  
Wasatch County School District

---

**From:** PAUL A. SWEAT <[PAUL.SWEAT@wasatch.edu](mailto:PAUL.SWEAT@wasatch.edu)>  
**Sent:** Friday, April 10, 2020 11:18 AM  
**To:** Tracy Taylor <[tracy@etracytaylor.com](mailto:tracy@etracytaylor.com)>  
**Cc:** STACEY MOORE <[STACEY.MOORE@wasatch.edu](mailto:STACEY.MOORE@wasatch.edu)>; KEITH JOHANSEN <[KEITH.JOHANSEN@wasatch.edu](mailto:KEITH.JOHANSEN@wasatch.edu)>; Jared Anderson <[jla@safmlaw.com](mailto:jla@safmlaw.com)>  
**Subject:** GRAMA appeal dated March 27 2020

Ms. Taylor:



After reviewing your GRAMA appeal dated March 27, 2020 with district counsel, I have determined the original decision was correct and am therefore denying your appeal.



**Paul A. Sweat**  
*Superintendent of Schools*  
p: 435.654.0280  
a: 101 East 200 North, Heber City, UT 84032  
w: [www.wasatch.edu](http://www.wasatch.edu)  
e: [paul.sweat@wasatch.edu](mailto:paul.sweat@wasatch.edu)

---

Tracy Taylor  
Fri 3/27/2020 1:45 PM  
To:

- [KEITH JOHANSEN <keith.johansen@wasatch.edu>](mailto:keith.johansen@wasatch.edu);
- [blaik.baird@wasatch.edu](mailto:blaik.baird@wasatch.edu)
- 
- GRAMA request Appeal

Hi Keith

I'm sorry to have to take up your time dealing with this, when there are many other things the school district is dealing with right now, but we need to appeal your denial of our GRAMA request dated February 13, 2020.

**Your denial of the Bio-West wetlands delineation map is being appealed.**

-You stated your reason for denial is Utah Code Sec. 63G-2-305(22), which says it is a draft. We disagree, and consider this document as a stand alone document and NOT a draft.

-Also, this supposed protected record is also subject to this code:

**63G-2-306. Procedure to determine classification.**

- (1) If more than one provision of this chapter could govern the classification of a record, the governmental entity shall classify the record **by considering the nature of the interests intended to be protected** and the

specificity of the  
competing  
provisions.

- (2) **Nothing** in Subsection [63G-2-302\(2\)](#), Section [63G-2-304](#), or [63G-2-305](#) **requires a governmental entity to classify a record as private, controlled, or protected.**

There is NO requirement for you to protect this record, if you think the greater public good would be served by releasing it.

We believe there is a strong benefit to the community to release that document because it would help the taxpayers of Wasatch County understand their possible future, annual and in perpetuity, wetlands mitigation costs to develop the North Fields land the school district wishes to put a new high school complex on. The wetlands delineation map information directly affects the financial stability of citizens of Wasatch County.

Thank you,

**Tracy Taylor**  
**Wasatch Taxpayers Association**  
cell: 435 503-1121

Confidentiality Notice: This e-mail may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive from the recipient), please contact the sender by reply e-mail and delete all copies of the message.

---

**From:** KEITH JOHANSEN <[KEITH.JOHANSEN@wasatch.edu](mailto:KEITH.JOHANSEN@wasatch.edu)>  
**Sent:** Friday, February 28, 2020 4:05 PM  
**To:** Tracy Taylor <[tracy@etracytaylor.com](mailto:tracy@etracytaylor.com)>  
**Cc:** PAUL A. SWEAT <[PAUL.SWEAT@wasatch.edu](mailto:PAUL.SWEAT@wasatch.edu)>; STACEY MOORE <[STACEY.MOORE@wasatch.edu](mailto:STACEY.MOORE@wasatch.edu)>  
**Subject:** response to GRAMA request dated 13 Feb 2020

Ms. Taylor,

In response to your GRAMA request submitted on 13 Feb 2020:

1. **Identify which contracts, where funds were due by February 28th 2020, are still outstanding. Identify which properties have not closed yet.** The purchase agreements are available on the district website at [www.wasatch.edu](http://www.wasatch.edu) under the "Future High School" tab then "Land Agreements." The properties all closed in October 2019, with final payment for three of the properties due on Feb 28 2020.
2. **Invoice and all reports or drafts done by Bio-West Engineers.** The invoice for Bio-West is attached. The draft done by Bio-West Engineers is expressly excluded by Utah Code Sec. 63G-2-305(22).

- 3. All financial analyses done for any fiscal impacts of ongoing annual wetlands mitigation needed to occur, required by the Army Corps of Engineers, to be able to develop new North Fields high school property.*** There are no documents or records that meet that definition.

District policy allows a thirty (30) working day period to file a written request for a hearing with the superintendent or his/her designee to appeal a denial. Failure to file an appeal within the period specified will constitute a waiver of the right to appeal.

Keith Johansen  
Business Administrator

---

Tracy Taylor

Thu 2/13/2020 3:53 PM

**To:** KEITH JOHANSEN <[keith.johansen@wasatch.edu](mailto:keith.johansen@wasatch.edu)>; STACEY MOORE <[STACEY.MOORE@wasatch.edu](mailto:STACEY.MOORE@wasatch.edu)>; [blaik.baird@wasatch.edu](mailto:blaik.baird@wasatch.edu) <[blaik.baird@wasatch.edu](mailto:blaik.baird@wasatch.edu)>

**Subject:** WTPA- GRAMA request

Hi Keith

Here's a new, formal GRAMA request. Please let me know that you received it.

Thanks,

**Tracy Taylor**

cell: 435 503-1121

Confidentiality Notice: This e-mail may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive from the recipient), please contact the sender by reply e-mail and delete all copies of the message.

---

**From:** KEITH JOHANSEN <[KEITH.JOHANSEN@wasatch.edu](mailto:KEITH.JOHANSEN@wasatch.edu)>

**Sent:** Thursday, January 23, 2020 1:38 PM

**To:** Tracy Taylor <[tracy@etracytaylor.com](mailto:tracy@etracytaylor.com)>

**Cc:** PAUL A. SWEAT <[PAUL.SWEAT@wasatch.edu](mailto:PAUL.SWEAT@wasatch.edu)>; STACEY MOORE <[STACEY.MOORE@wasatch.edu](mailto:STACEY.MOORE@wasatch.edu)>

**Subject:** Re: WTPA- GRAMA request

Ms. Taylor,

In response to the GRAMA request of 8 January 2020, I am attaching a copy of invoices related to the engineer studies performed on the high school site. Everything else that was requested is available on the district website ([wasatch.edu](http://wasatch.edu)) under the Future High School tab.

Keith Johansen

Business Administrator

Wasatch County School District

**From:** Tracy Taylor <[tracy@etracytaylor.com](mailto:tracy@etracytaylor.com)>

**Sent:** Wednesday, January 8, 2020 4:17 PM

**To:** KEITH JOHANSEN <[KEITH.JOHANSEN@wasatch.edu](mailto:KEITH.JOHANSEN@wasatch.edu)>; STACEY MOORE <[STACEY.MOORE@wasatch.edu](mailto:STACEY.MOORE@wasatch.edu)>; BLAIK BAIRD <[BLAIK.BAIRD@wasatch.edu](mailto:BLAIK.BAIRD@wasatch.edu)>

**Subject:** WTPA- GRAMA request

Hi Keith

Here's a formal GRAMA request, please let me know that you received it.

Thank you,

**Tracy Taylor**

cell: 435 503-1121

Confidentiality Notice: This e-mail may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive from the recipient), please contact the sender by reply e-mail and delete all copies of the message.

**EXHIBIT C**

# Wasatch COUNTY SCHOOL DISTRICT

## GRAMA REQUEST FOR RECORDS

TO: Wasatch County School District Attn: Keith Johansen  
(Name of person and/or government office holding records)

The response to a request may be delayed if it is not directed properly. To find out where to direct a request, consult the agency rules, telephone the agency or State Archives. The telephone number for the State Archives is (801) 538-3012.

Address of Government Office: WCSD, 101 East 200 North, Heber City, UT 84032

Description of records sought (records must be described with reasonable specificity):

Identify which contracts, where funds were due by February 28th 2020, are still outstanding. Identify which properties have not closed yet.

Invoice and all reports or drafts done by Bio-West Engineers. All financial analyses done for any fiscal impacts of ongoing annual wetlands mitigation needed to occur, required by the Army Corps of Engineers, to be able to develop new North Fields high school property. All information in electronic format, delivered via email.

- I would like to inspect the records
- I would like to receive copies of the records. I understand that I will be responsible for copy costs. I authorize costs of up to \$ \_\_\_\_\_. I further understand that the agency will contact me if estimated costs are greater than the amount I have specified, and that agency will not respond to a request for copies if I have not authorized adequate costs.
- I would like to receive copies of the records. I request a waiver of copy costs. (Please attach information supporting your request; see U.C.A. 63G-2-203(4) for a list of situations under which an agency is encouraged to provide copies without charge.)

If applicable, check one of the following and attach necessary documentation:

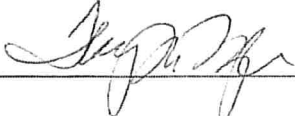
- I am the subject of the record.
- I am the person who provided the information.
- I am authorized to have access by the subject of the record or by the person who submitted the information.
- Other. Explain: wasatch taxpayers association website for public review

Name: Tracy Taylor

Address: tracy@etracytaylor.com

Day Time Phone Number: 435 503-1121

- I am requesting expedited response. (Please attach information that shows your status as a member of the media and a statement that the records are required for a story for broadcast or publication; or lease attach other information that demonstrates that you are entitled to the expedited response under U.C.A. 63G-2-203(3).)

Signature:  Date: February 13, 2020

**EXHIBIT D**

# Wasatch COUNTY SCHOOL DISTRICT

## GRAMA REQUEST FOR RECORDS

TO: Wasatch County School District Attn: Keith Johansen

(Name of person and/or government office holding records)

The response to a request may be delayed if it is not directed properly. To find out where to direct a request, consult the agency's rules, telephone the agency or State Archives. The telephone number for the State Archives is (801) 538-3012.

Address of Government Office: WCSD, 101 East 200 North, Heber City, UT 84032

Description of records sought (records must be described with reasonable specificity):

All SIGNED contracts between Wasatch School District and all engineers doing work and due diligence on the 2019 school bond properties, including (but not limited to) BioWest Engineers. Identify, and describe, all 4 location options listed in Paul Berg's invoice #4180 dated 10/31/2018, plat maps for each option, and concept plans done by Berg for all options. Any due diligence done with CUP and Jordanelle Dam safety. School Board's engineering report documentation that shows it takes one hour for the Jordanelle Dam water to reach the proposed high school area in case of dam breakage. Traffic mitigation the School Board is proposing for 100 South/Midway Lane. All information in electronic format, delivered via email.

- I would like to inspect the records
- I would like to receive copies of the records. I understand that I will be responsible for copy costs. I authorize costs of up to \$ \_\_\_\_\_. I further understand that the agency will contact me if estimated costs are greater than the amount I have specified, and that agency will not respond to a request for copies if I have not authorized adequate costs.
- I would like to receive copies of the records. I request a waiver of copy costs. (Please attach information supporting your request; see U.C.A. 63G-2-203(4) for a list of situations under which an agency is encouraged to provide copies without charge.)

If applicable, check one of the following and attach necessary documentation:

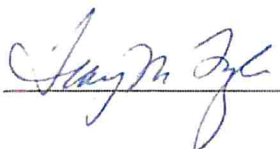
- I am the subject of the record.
- I am the person who provided the information.
- I am authorized to have access by the subject of the record or by the person who submitted the information.
- Other. Explain: wasatch taxpayers association website for public review

Name: Tracy Taylor

Address: tracy@etracytaylor.com

Day Time Phone Number: 435 503-1121

- I am requesting expedited response. (Please attach information that shows your status as a member of the media and a statement that the records are required for a story for broadcast or publication; or lease attach other information that demonstrates that you are entitled to the expedited response under U.C.A. 63G-2-203(3).)

Signature: 

Date: April 6, 2020



**EXHIBIT E**

On Fri, May 8, 2020 at 2:32 PM Tracy Taylor <[tracy@etracytaylor.com](mailto:tracy@etracytaylor.com)> wrote:

Rebekkah Shaw  
SRC Executive Secretary  
346 S. Rio Grande  
Salt Lake City, UT. 84101

Dear Rebekkah,

I am requesting an opportunity to appeal to your State Records Committee, along with the Wasatch Taxpayers Association (WTPA), the decision by the Wasatch School District's (WSD) to deny us a key document in helping the citizens of Wasatch County determine if the land the WSD already purchased for a new high school will negatively impact the taxpayers if allowed to go forward with construction. It may show the amount of wetlands found on the property, and therefore the costs required to mitigate these wetlands with the Army Corps of Engineers. Our November 2019 bond election failed mostly due to the concerns of this parcel of land and the costs associated with it.

Bio-West Engineers entered into a contract with Wasatch School District on 5-16-2019 and did a wetlands delineation report sometime in May- June 2019 and was GRAMA requested by us. The Wasatch School District denied it's release, claiming that it was a draft and not a formal document. It must be noted that our original GRAMA request of 1-8-2020 for all invoices and reports by all engineers, did not include either the Bio-West invoice nor the their wetlands delineation report. We then GRAMA requested it by name on 2-13-2020, and was given the invoice but the report was denied.

We disagree with the Wasatch School District's reasoning that it this document is only a draft. We show in the attached Bio-West contract dated 5-16-2019, that this report was a key component of the contract, in Section 2, Item 1- it references the correct item as the "Wetland Delineation and Threatened and Endangered Species Field Study". The Wasatch School District, and taxpayers, paid Bio-West for this report. Another engineer was hired afterwards to conduct the same studies.

We also referenced the weighting provision argument for it's release, and explained how this document may shed light on the possible costs to mitigate these wetlands in perpetuity. This will directly effect the financial stability of Wasatch County residents and taxpayers. We have always released any public documents we receive and shared them for public review on our website: [WasatchTaxpayersAssociation.com](http://WasatchTaxpayersAssociation.com)

Below is the associated correspondence with Wasatch School District, their reasons for denial, and our argument for the release.

We are respectfully requesting to be included on your future agenda to appeal this decision.

Thank you,

Tracy Taylor  
Wasatch Taxpayers Association

CC'd to Wasatch School District

**EXHIBIT F**



**ATTACHMENT A: WASATCH COUNTY SCHOOL DISTRICT TERMS AND CONDITIONS  
FOR PROFESSIONAL SERVICES**

1. **AUTHORITY:** Provisions of this contract ("Contract") are pursuant to the authority set forth in 63G-6a, Utah Code, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), Wasatch County School District Procurement Policies, and related statutes which permit Wasatch County School District to purchase certain specified services, and other approved purchases for Wasatch County School District.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this Contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof.
3. **LAWS AND REGULATIONS:** The person or entity contracting with Wasatch County School District under this Contract ("Contractor") and any and all supplies, services, equipment, and construction furnished under this Contract will comply fully with all applicable Federal, and State, and local laws, codes, rules, regulations, and ordinances, including applicable licensure and certification requirements.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of, all records necessary to properly account for the payments made to the Contractor for costs authorized by this Contract. These records shall be retained by the Contractor for at least four years after the Contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and Wasatch County School District staff, access to all the records to this Contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **TIME:** The Contractor shall complete the scope of services work in a manner to achieve any milestones identified in the procurement documents related to this Contract and the attachments to this Contract. The full scope of services work shall be completed by any applicable deadline stated in the solicitation.
6. **TIME IS OF THE ESSENCE:** For all work and services under this Contract, time is of the essence and Contractor shall be liable for all damages to the Wasatch County School District and anyone for whom Wasatch County School District may be liable, as a result of the failure to timely complete the scope of work required under this Contract.
7. **PAYMENT:**
  - 7.1 Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a correct invoice is received by the appropriate Wasatch County School District official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Section 15-6-3. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.
  - 7.2 The contract total may be changed only by written amendment executed by authorized personnel of the parties. Unless otherwise stated in the Contract, all payments to the Contractor will be remitted by mail.
  - 7.3 The acceptance by the Contractor of final payment without a written protest filed with Wasatch County School District within ten (10) working days of receipt of final payment shall release Wasatch County School District from all claims and all liability to the Contractor for fees and costs of the performance of the services pursuant to this Contract.
8. **PROMPT PAYMENT DISCOUNT:** Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. Contractor shall list Payment Discount Terms on invoices. The prompt payment discount will apply to payments made checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.
9. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by duly authorized representatives of both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
10. **DOCUMENT OWNERSHIP:** Contractor agrees that any work/services and all Deliverables prepared for Wasatch County School District, to the extent to which it is eligible under copyright law in any county, shall be deemed a work made for hire, such

that all right, title and interest in the work and Deliverables reside with Wasatch County School District. To the extent any work or Deliverable is deemed not to be, for any reason whatsoever, work made for hire, Contractor agrees to assign and hereby assigns all right, title, and interest, including but not limited to, copyright, patent, trademark, and trade secret, to such work and Deliverables, and all extensions and renewals thereof, to Wasatch County School District. Contractor further agrees to provide all assistance reasonably requested by Wasatch County School District in the establishment, preservation and enforcement of its rights in such work and deliverables, or subsequent amendments or modifications to such work and deliverables, without any additional compensation to Contractor. Contractor agrees to waive, and hereby, to the extent permissible, waives, all rights relating to such work and deliverables, or subsequent amendments or modifications to such work and deliverables, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use.

## **11. CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":**

### **11.1 Status Verification System**

(1) Contractor certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Utah Code Ann. Section 63G-12-302.

(2) The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Utah Code Ann. Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

(3) Wasatch County School District will not consider a proposal for award, nor will it make any award, where there has not been compliance with this Section.

(4) Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws, including Utah Code Ann. Section 63G-12-302.

### **11.2 Indemnity Clause for Status Verification System**

Contractor (includes, but is not limited to any Contractor or Consultant) shall protect, indemnify and hold harmless Wasatch County School District and its officers, employees, agents, representatives and anyone that Wasatch County School District may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Contractor's subcontractor or subconsultant at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

**12. CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of Wasatch County School District, unless disclosure has been made in accordance with Section 67-16-8, Utah Code, as amended. Contractor also represents that it has no conflict of interest in performing the services for Wasatch County School District under this Contract, unless such conflict of interest has been disclosed to Wasatch County School District and approval to proceed, notwithstanding the conflict, has been obtained from Wasatch County School District in writing.

**13. CONTRACTOR AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind Wasatch County School District to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for Wasatch County School District, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by Wasatch County School District. The Contractor shall be responsible for the payment of all income tax and Social Security amounts due as a result of payments received from Wasatch County School District for these Contract services. Persons employed by Wasatch County School District and acting under the direction of Wasatch County School District shall not be deemed to be employees or agents of the Contractor.

**14. INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release Wasatch County School District, and all its officers, agents, volunteers, and employees from and against any and all claims, loss, damages, injury, liability, suits, and proceedings arising out of the performance of this Contract which are caused in whole or in part by the acts or negligence of (a) the Contractor, (b) the Contractor's officers, agents, volunteers, or employees, (c) the Contractor's subcontractors or subconsultants at any tier, or (d) anyone for whom Contractor may be liable but not for claims arising from Wasatch County School District's sole negligence. The parties agree that if there are any Limitations of the Contractor's Liability, including a limitation of liability for anyone for whom the Contractor is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.

- 15. EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42 USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits sexual harassment in the work place. Contractor also agrees to abide by any laws and policies of the State of Utah regarding any of the above mentioned prohibitions in this paragraph.
- 16. PERFORMANCE EVALUATION:** Wasatch County School District may conduct a performance evaluation of the Contractor's services, including specific personnel of the Contractor. References in the Contract to Contractor shall include Contractor, Contractor's subcontractors, or subconsultants at any tier, if any. Results of any evaluation will be made available to the Contractor.
- 17. WAIVERS:** No waiver by Wasatch County School District or Contractor of any default shall constitute a waiver of the same default at a later time or of a different default.
- 18. SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal authority, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
- 19. RENEGOTIATION OR MODIFICATIONS:** This Contract may be amended, modified, or supplemented only by written amendment to this Contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of this Contract. Automatic renewals will not apply to this Contract.
- 20. SUSPENSION/DEBARMENT:** The Contractor certifies that neither it nor its principals are presently or have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract), by any governmental department or agency in the United States, including any federal, state or local agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify Wasatch County School District within 30 days if suspended or debarred by any governmental entity during the Contract period.
- 21. TERMINATION:**
- 21.1 Unless otherwise stated in the Additional Terms and Conditions of Wasatch County School District, if applicable, this Contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which this Contract may be terminated for cause. This Contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given to the other party. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
- 21.2 In the event of such termination, the Contractor shall be compensated for services properly performed under this Contract up to the effective date of the notice of termination. The Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from Wasatch County School District is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of the Contractor having to terminate contracts necessarily and appropriately entered into by the Contractor pursuant to this Contract. Contractor further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, and any and all documents produced by Contractor under this Contract up to the date of termination are the property of Wasatch County School District and shall be promptly delivered to Wasatch County School District.
- 22. INSURANCE:**
- 22.1 To protect against liability, loss and/or expense in connection with the performance of services described under this Contract, the Contractor shall obtain and maintain in force during the entire period of this Contract without interruption, at its own expense, insurance as listed below from insurance companies authorized to do business in the State of Utah. If the solicitation document has qualification requirements for the financial stability of the insurance company, these requirements must be met.
- 22.2 The following are minimum coverages that may be supplemented by additional requirements contained in the solicitation for this Contract or provided in an Attachment to this Contract:

(1) Worker's Compensation Insurance and Employers' Liability Insurance. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction.

(2) General Liability Insurance. Contractor must carry insurance with policy limits no less than one million per incident and three million in the aggregate. Contractor must provide proof of insurance to Wasatch County School District and must add Wasatch County School District as an additional insured with notice of cancellation.

(3) Professional liability insurance in the amount as described in the solicitation for this Contract, if applicable.

(4) Any other insurance described in the solicitation for this Contract, if applicable.

22.3 Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.

22.4 The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order.

**23. STANDARD OF CARE:** The services of Contractor and its subcontractors and subconsultants at any tier, if any, shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude and complexity of the services that are the subject of this Contract. The Contractor shall be liable to Wasatch County School District for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. another Contractor's claim against Wasatch County School District), to the extent caused by wrongful acts, errors or omissions that do not meet this standard of care.

**24. STATE REVIEWS, LIMITATIONS:** The right of Wasatch County School District to perform plan checks, plan reviews, other reviews and/or comment upon the services of the Contractor, as well as any approval by Wasatch County School District, shall not be construed as relieving the Contractor from its professional and legal responsibility for services required under this Contract. No review by Wasatch County School District or any entity/user, approval or acceptance, or payment for any of the services required under this Contract shall be construed to operate as a waiver by the State of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract, and the Contractor shall be and remain liable to Wasatch County School District in accordance with applicable law for all damages to Wasatch County School District caused by the wrongful acts, errors and/or omissions of the Contractor or its subcontractors or subconsultants at any tier, if any.

**25. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:**

25.1 Upon thirty (30) days written notice delivered to the Contractor, this contract may be terminated in whole or in part at the sole discretion of Wasatch County School District, if Wasatch County School District reasonably determines that a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of the contract.

25.2 Upon thirty (30) days written notice delivered to the Contractor, this contract may be terminated in whole or in part, or have the services and purchase obligations of Wasatch County School District proportionately reduced, at the sole discretion of Wasatch County School District, if Wasatch County School District reasonably determines that a change in available funds affects Wasatch County School District's ability to pay under the contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

25.3 If a notice is delivered under paragraph 1 or 2 of this Section 25 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW," Wasatch County School District will reimburse the Contractor for products properly delivered or services properly performed up until the effective date of said notice. Wasatch County School District will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said notice.

25.4 Notwithstanding any other paragraph or provision of this Section 25 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW," if Wasatch County School District in said notice to the Contractor indicates that the Contractor is to immediately cease from placing any orders or commitments with suppliers, subcontractor or other third parties, the Contractor shall immediately cease such orders or commitments upon receipt of said notice and Wasatch County School District shall not be liable for any such orders or commitments made after the receipt of said notice.



- 26. SALES TAX EXEMPTION:** The Wasatch County School District sales and use tax exemption number is 11944465-003-STC. The tangible personal property or services being purchased are being paid from Wasatch County School District funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the Contract.
- 27. PUBLIC INFORMATION:** Contractor agrees that this Contract, related sales orders, and invoices shall be public documents, and shall be available for distribution. Contractor gives Wasatch County School District express permission to make copies of this Contract, related sales orders, and invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor also agrees that the Contractor's response to the solicitation, if applicable, will be a public document, and copies may be given to the public under GRAMA laws. This permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
- 28. PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold Wasatch County School District, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this Contract.
- 29. ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of Wasatch County School District.
- 30. DEFAULT AND REMEDIES:**
- 30.1 Any of the following events will constitute cause for Wasatch County School District to declare Contractor in default of this Contract:
- (1) Nonperformance of contractual requirements; or
  - (2) A material breach of any term or condition of this Contract.
- 30.2 Should Contractor be in default under any of the provisions under Subsection 30.1 above, Wasatch County School District will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, Wasatch County School District may do one or more of the following: (1) Exercise any remedy provided by law; (2) Terminate this Contract and any related contracts or portions thereof; (3) Impose liquidated damages, if liquidated damages are listed in the Contract; or (4) Suspend Contractor from receiving future solicitations.
- 31. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. Wasatch County School District may terminate this Contract after determining such delay or default will reasonably prevent successful performance of this Contract.
- 32. PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to Wasatch County School District is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of Wasatch County School District, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6a-2304.5, Utah Code, as amended).
- 33. CONFLICT OF TERMS:** In order for any terms and conditions of the Contractor to apply to this Contract, they must be in writing and attached to this Contract. No other terms and conditions of the Contractor will apply to this Contract, including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the terms and conditions in the Contract, the order of precedence shall be: (1) Attachment A: Wasatch County School District Terms and Conditions; (2) Wasatch County School District Contract; (3) Additional Terms and Conditions of Wasatch County School District; (4) Terms and Conditions of the Contractor, if any.
- 34. ENTIRE CONTRACT:** This Contract including all attachments and documents incorporated hereunder, and the related Wasatch County School District solicitation documents, if any, constitutes the entire Contract between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Contract shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of Wasatch County

School District. The parties agree that the terms of this Contract shall prevail in any dispute between the terms of this Contract and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Contract.

- 35. DISPUTE RESOLUTION:** In the event of any dispute under this Contract prior to any filing in any judicial proceedings, the parties agree to participate in good faith in the mediation of the dispute. Wasatch County School District, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of the dispute. If Wasatch County School District appoints such an expert or panel, Wasatch County School District and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.

(Revision date: 14 April 2014)

**EXHIBIT G**

**From:** Bob Thomas <[bthomas@bio-west.com](mailto:bthomas@bio-west.com)>  
**Sent:** Monday, May 13, 2019 8:02 PM  
**To:** Purchasing <[purchasing@WasatchSchoolDistrict.onmicrosoft.com](mailto:purchasing@WasatchSchoolDistrict.onmicrosoft.com)>  
**Subject:** BIO-WEST wetland study in Heber

Hello,

I am preparing our letter cost estimate for the wetland study.

I was hoping to have it all together tonight but I need to wait another day or so to get the estimate from the cultural resources subcontractor.

I wanted to let you know we were working on this and realize the schedule for completion is very tight.

Thanks

--

Bob Thomas  
Professional Wetland Scientist  
BIO-WEST, Inc.  
1063 West 1400 North  
Logan, UT 84321-2291  
Ph: 435.752.4202  
Fax: 435.752.0507  
Cell: 435.890.9311  
[www.bio-west.com](http://www.bio-west.com)