Supreme Court No. 98753-0

Court of Appeals, Division I No.: 80649-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF PUYALLUP,

Petitioner,

vs.

CONWAY CONSTRUCTION COMPANY,

Respondent/Cross-Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER/CROSS-RESPONDENT

Petitioner/Cross-Respondent Conway Construction Company ("Conway") is almost exclusively focused on public works contracts. Conway prevailed at trial and before the Court of Appeals on the issues raised in the City of Puyallup's ("the City") petition for review. Conway timely answers that petition. This Court should deny the City's petition.

II. COURT OF APPEALS DECISION

Division I of the Washington Court of Appeals, in a published opinion dated May 4, 2020, applied controlling precedent to the issues raised in the City's petition for review and correctly affirmed the trial court's findings of fact and conclusions of law, which were supported by substantial evidence and were legally correct, respectively. The City's petition fails to meet the standards of RAP 13.4(b). It should be denied.

III. COUNTER-STATEMENT OF THE CITY'S ISSUES PROPOSED FOR REVIEW

Conway re-frames the issues presented by the City, to more accurately track the opinion and the appellate standard of review:

1. Was the Court of Appeals correct that the Contract provided that the City was justified in terminating Conway for rejected work only if Conway neglected or refused to correct the work? Yes.

2. Was the Court of Appeals correct to conclude that there was

substantial evidence that Conway fully cured any alleged safety concerns before the City terminated Conway? Yes.

3. Was the Court of Appeals correct to conclude that the Contract required the City to provide Conway with 15 days' notice and an opportunity to correct in order to seek a set-off for rejected work? Yes.

IV. SUMMARY OF ARGUMENT

The City improperly terminated Conway from a public works contract for default, when the termination was really for convenience.[1] After it decided that it did not want to work with Conway anymore, the City concocted a list of items that it claimed needed to be cured. But the City did not actually want Conway to cure the items; the City simply wanted to terminate Conway. *See* CP 2476–77; CP 2471; and CP 2466. After a complex, two-phase, ten-week trial that spanned four months, Conway prevailed and obtained a judgment against the City. The City simply failed to meet its burden to prove that Conway remained in default at the time that the City terminated the Contract. The trial court properly converted the termination for default to a termination for convenience.

[1] There are significant differences between a termination for default (for cause) and a termination for convenience (no cause). If a termination is for convenience, payment is to be made for actual work performed and pursuant to § 1-09.5. Trial Ex. 1 at 1–82. In stark contrast, if a termination is for default, then "[a]ny extra costs or damages to the Contracting Agency shall be deducted from any money due or coming due to the Contractor under the Contract. *Id*. at 1–80. In addition, the contractor's remedies are limited, and the City's recourse is substantial. *Id*. at 1–81.

Following its loss at trial, the City appealed. The trial court's findings of fact were supported by substantial evidence, and its conclusions of law were correct. The Court of Appeals correctly concluded that (1) the standard and procedures for termination were in the contract and followed by the trial court; (2) the trial court's finding that the safety breach had been resolved was supported by substantial evidence; and (3) no setoff was appropriate because the City did not provide Conway with the notice and opportunity to cure as required.

The issues raised in the City's petition do not meet the standard for acceptance of review under RAP 13.4. The City fails to argue or explain how its issues somehow involve a matter of public interest under RAP 13.4(b)(4). In addition, the City is simply incorrect that the opinion somehow ran afoul of *Duculon Mechanical, Inc. v. Shinstine/Forness, Inc.*, 77 Wn. App. 707, 893 P.2d 1127 (1995), as that case is not factually analogous, due to the fact that both parties were in material breach in that case. Review is therefore also not appropriate under RAP 13.4(b)(2).

V. COUNTER-STATEMENT OF THE CASE

A. The contract set forth termination and cure procedures.

The City and Conway entered into a public works contract ("the Contract") on or about September 21, 2015, to construct certain road and utility improvements at 39th Avenue Southwest, between 11th Street

Southwest and 17th Street Southwest in the City of Puyallup, Washington. CP 2461 and Trial Ex. 5. The Contract incorporated by reference the project manual, which incorporated by reference the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction ("the Standard Specifications"). Trial Ex. 5; and Verbatim Report of Proceedings ("VRP") Vol. 13 at 15:8–16.

The Standard Specifications, at section 1-08.10(1), established specific grounds for termination for default. Trial Ex. 1 at 1–80. The Standard Specifications also mandated a process—one requiring 15 days' notice and an opportunity to cure—before the Contract could be terminated for default for rejected work or for disregarding laws or regulations. *Id*. Paragraph 22 of the Contract permitted the City to terminate for good cause under certain conditions. Trial Ex. 5 at 8. However, Paragraph 22 was silent as to termination procedure. Therefore, it was not in conflict with—and was supplemented by—the procedural and cure provisions of section 1-08.10(1). *See* Opinion at 5–6. The City expressly terminated Conway under section 1-08.10(1) of the Standard Specifications, not under Paragraph 22 of the Contract.[2]

[2] In a bizarre passage in its petition, the City asserts that "[i]t is also improper for the Court of Appeals to essentially read Paragraph 22 out of the contract." City's Petition at 15. This is demonstrably false. The Court of Appeals properly (and expressly) read Paragraph 22 together with Section 1-08.10(1) and recognized that they did not conflict whatsoever, because Section 1-08.10(1) supplemented Paragraph 22. Opinion at 5–6. Moreover, the

B. The City developed a pretext for terminating Conway.

The City eventually decided that it did not want to work with Conway anymore, so the City manufactured a list of alleged performance issues in the construction that it claimed needed to be cured. The City did not actually want Conway to cure the items or even respond to them; the City simply wanted to terminate Conway:

> Taking the record as a whole, the Court finds that **the City**, acting through Mr. Palmer,[3] **was never genuinely desirous of, or cooperative with, Conway's efforts to comply** with the cure requirements **and continue with the Project**. Certainly, the City did nothing to facilitate such an outcome. Mr. Palmer testified that he had lost confidence in Conway's ability to perform the Contract to his satisfaction, which may well be true. Loss of confidence, however, is not grounds for default termination. The Court finds that **even before the March 9, 2016 cure letter was sent that Mr. Palmer, in conjunction with Mr. Hill, had decided they wanted Conway removed from the Project**.

CP 2476–77 (emphasis added).[4] This finding of fact was unchallenged and is a verity on appeal.[5]

Court of Appeals was correct to note that even if the trial court's application of the "neglects or refuses to correct" standard did not apply to the safety issue, any error was harmless because there was no safety issue remaining at the time of termination. *Id*. at 7.

[3] Mark Palmer was the city engineer for the City of Puyallup. CP 2461.

[4] This is also reflected in other findings. *See, e.g.*, CP 2466 (noting an "after-the-fact attempt to provide support for termination that is unsupported in the contemporaneous documentation created as the Project went forward") and CP 2471 (stating that "[t]he balance of Exhibit 46 is essentially repetitive of Exhibit 44, and the refusal to discuss further details raised by Mr. Conway in his response letter—that being Exhibit 45—**implicated the concerns of bad faith** on the City's part at this time").

[5] *Hegwine v. Longview Fibre Co.*, 132 Wn. App. 546, 556, 132 P.3d 789 (2006).

C. The City's notice of default and nine remedy items

On or about March 9, 2016, the City sent a "Written Notice of Suspension and Breach of Contract" to Conway. Trial Ex. 44.[6] This letter provided notice of nine alleged grounds of default under Section 1-08.10 of the Standard Specifications. Trial Ex. 44.[7]

The Contract provided that Conway could be in default if it "performs Work which deviates from the Contract, and **neglects or refuses to correct** rejected Work." Trial Ex. 1 (emphasis added). The City admitted that it did not expect Conway to complete all nine items in the notice by March 25, 2016. VRP Vol. 20 at 112:18–113:7. It expected only "substantial progress," not that each item had to be physically cured. *Id*.

The City admitted that, by March 22 and 23, 2016 (which was prior to the termination), every ground for default had been fully cured except for two issues: (1) the City's contention that Conway had refused or neglected to replace certain pervious concrete road panels that were allegedly out of compliance with the roadway specifications and (2) the City's contention that Conway had disregarded safety. VRP Vol. 23 at 59:3–60:1 and 62:16–

[6] Although the letter shows a date of 2015, it should have been 2016. *See* VRP Vol. 11 at 69:6–17.

[7] The City did not cite Paragraph 22 in its notice. Instead, it cited 1-08 of the Standard Specifications because it felt that it was "the most applicable process for the termination." VRP Vol. 23 at 39:10–18.

18. As discussed below, Conway was not in default as to either item at the time of termination. The trial court and the court of appeals correctly determined that the City could not justify the termination for default as required.

1. Conway did not neglect or refuse to correct any alleged non-conformance issues with the concrete road panels.

This Project involved the first installation of pervious concrete on arterial roadway in the country. CP 2466. The City alleged that certain installed roadway panels needed to be replaced or repaired. CP 2468–69. There was substantial evidence that Conway did not neglect or refuse to correct the alleged non-conformities with these panels. CP 2469, 2474.

Before the City's notice, Conway had proposed to remove and replace certain concrete panels at no cost to the City. VRP Vol. 13 at 81:12–17. The City felt that the proposal was a reasonable one. VRP Vol. 13 at 81:18–82:2. The panels had been discussed on January 21, and the City did not direct either Conway or Wilson Concrete, the subcontractor performing the work, to correct any out-of-tolerance issues at that meeting. VRP Vol. 14 at 14:3–17:7. At a February 24 meeting, the City was receptive to Wilson's plans. VRP Vol. 14 at 43:18–44:18. The City admitted that there was no problem with this:

Q: What was wrong with the contractor's proposal to

> remove and replace the panels once the traffic moved to the south side?
> A: I had no confidence in the contractor's ability to produce a quality product. I didn't want him producing more defective material on the south side before he had corrected the items on the north side.
> Q: So it had nothing to do with the proposal itself? It had to do with your faith in the contractor?
> A: To a large degree it did.

VRP Vol. 23 at 86:20–87:4.[8]

By March 18, Conway had made a proposal to remove and replace all of the panels after the traffic moved to the south side of 39th Avenue. VRP Vol. 23 at 90:14–91:4. That is precisely what Olson, the replacement contractor, did a year later, in 2017. VRP Vol. 23 at 91:1–9; *see also* VRP Vol. 19 at 135:5–136:21 and CP 2471–2472 (Findings of Fact 49 and 51).[9] There was substantial evidence to support the finding that Conway was neither neglecting nor refusing to correct the work.

> 2. Conway had resolved the one safety issue that was raised, and the City admitted that it did not observe any safety issues between the time of the notice of default and the termination; the issue was fully cured.

The City's petition for review takes great liberty with the facts of

[8] The City admitted that it was not permitted to terminate a contractor for default simply due to a lack of confidence in the contractor. VRP Vol. 23 at 91:21–24.

[9] CP 2468–69 and 2471–72 (Findings of Fact 38–41 and 47–51). In Finding of Fact 51, which is unchallenged, the trial court noted with alarm that "when Wilson performed the correction under the subcontract with Olson, Wilson got paid for that work at significant taxpayer expense when it had offered to do it in March of 2016 for free." CP 2472.

the case with respect to safety, most of which were unchallenged and are verities on appeal. After a lengthy trial with lay and expert testimony on these issues, the trial court found the evidence supported only a single violation of any safety, law, regulation, or other order throughout the entire Project, and this single violation occurred *before* the City's notice of default. CP 2464. The trial court, as fact finder, found no credible evidence that Conway was disregarding any safety rule or practice during the cure period leading up to the termination. CP 2464, 2466. In fact, the City deferred any discretion it might have had to the Department of Labor & Industries ("L&I"), and L&I was fully satisfied there were no other safety violations and the one issue had been fully cured. *See* Trial Ex. 46, VRP Vol. 12 at 66:10–68:5 and 67:19–68:5, and Trial Ex. 61.

The City admitted that "the City did not observe Conway violate any safety rule, regulation, or standard while working on the Project after March 9, 2016." Trial Ex. 119 at 12;[10] *see also* VRP Vol. 20 at 9:4–19.

After that, no one from the City raised any safety concerns before

[10] On April 13, 2016, the Washington State Department of Labor & Industries issued an invoice for a penalty assessment. Trial Ex. 59; *see also* VRP Vol. 22 at 33:1–25. However, the opening conference on this issue occurred on March 16, 2016, and the closing conference occurred on March 29, 2016. Trial Ex. 59; *see also* VRP Vol. 22 at 34:15–35:17. Notably, the invoice noted that a correction due date was not applicable; this was because the issue had been resolved by backfilling the trench. Trial Ex. 59; *see also* VRP Vol. 22 at 35:18–36:2. There was no evidence that the invoice was based on any safety issue that was unresolved before the City terminated the Contract. L&I did not say anything to Conway about safety after March 16. VRP Vol. 22 at 38:2–6.

the City's letter of March 9. VRP Vol. 22 at 23:14–25. Conway testified unequivocally that the safety issue raised by the City was completely remedied before the City terminated Conway for default. VRP Vol. 22 at 42:24–43:9. There was no evidence to the contrary, and the City had no personal knowledge that would permit it to testify that Conway was unresponsive to safety concerns. VRP Vol. 23 at 14:18–15:4.

Except for the one violation that was addressed and resolved before the City's notice of default, L&I found no safety violations. *See* VRP Vol. 12 at 66:10–67:5; *see also* Trial Ex. 61. Regardless, the City admitted that safety had been cured by March 16:

> Q: …. I think we have established that you were fine with safety as of March 16th. And at that point we have seven working days—nine days before the termination date. As far as you were concerned on the 16th, safety had been cured, hadn't it?
> A: What I expected to come out of calling L&I happened, yes.

VRP Vol. 19 at 110:16–21. There was substantial evidence to support the finding that there was no safety violation at the time of termination, and Conway was simply not in default when the City wrongfully terminated Conway for default.

D. <u>The City did not provide Conway with notice and an opportunity to cure supposedly rejected work after termination.</u>

The Contract required the City to afford Conway with notice and an

opportunity to cure any rejected work. Trial Ex. 1 at 1–80.

At trial, the City claimed—for the first time—that some other of Conway's concrete panel work was non-conforming by way of a claim to correct defective work that was not disclosed at the time of termination. But the City admittedly failed to provide Conway with any notice or an opportunity to cure any non-conforming work after it improperly terminated the Contract. VRP Vol. 33 at 125:18–126:25, 160:22–161:5, and 162:9–12; *see also* VRP Vol. 32 at 120:17–121:1.

The trial court carefully examined all of the City's allegations of defective or non-conforming work. In some instances, the City had given Conway notice and an opportunity to correct, and in those instances, the trial court offset Conway's own damages to account for the City's costs. In other instances, however, the City had failed to provide Conway with notice and an opportunity to cure before the City just went ahead and corrected it at taxpayer expense. Had the City followed the Contract, Conway would have had a chance to investigate whether or not this work was truly defective and, if so, the work would have been corrected at no cost to the City and its taxpayers. Applying both controlling authority of this Court and persuasive authority from Oregon, the Court of Appeals correctly applied the law to deny the City any offset for allegedly defective or non-conforming work when the City failed to satisfy the mandatory conditions

of notice and an opportunity to cure.

VI. ARGUMENT AND AUTHORITY AS TO WHY REVIEW SHOULD NOT BE ACCEPTED ON THE ISSUES RAISED IN THE CITY'S PETITION

A. The City's petition fails to meet the requirements of RAP 13.4(b).

A petition for review will not be accepted by this Court unless one or more of the following are established:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

The City's petition cites to RAP 13.4(b)(2) and RAP 13.4(b)(4), impliedly contending that the opinion contradicted published authority of the Court of Appeals and involved an issue of substantial public interest that should be determined by the Washington Supreme Court. As discussed in the following sections, there is no conflict with a published Court of Appeals opinion, and the City has not raised, let alone substantially argued, a matter of substantial public interest.

1. The published opinion does not conflict with a decision of the Washington Court of Appeals, so the City's petition does not meet the standard under RAP 13.4(b)(2).

Contrary to the City's petition, the opinion does not contradict the opinion in *Duculon Mechanical, Inc v. Shinstine/Forness, Inc.*, 77 Wn. App. 707, 893 P.2d 1127 (1995). In stark contrast to the present case, both parties in *Duculon* were in material breach, and the court's holding was premised on the plaintiff being in default. *See id*. at 708 and 713 (framing the issue as "whether a *defaulting* subcontractor's restitutionary award should be offset by the general contractor's cost to complete and repair the subcontractor's work *when the general contractor is also in default*" (emphasis added)).

The *Duculon* opinion is inapplicable to this case, and the opinion was not contradicted by the Court of Appeals in this case. Moreover, the Opinion was entirely consistent with *DC Farms LLC v. Conagra Foods Lamb Weston, Inc.*, 179 Wn. App. 205, 226, 317 P.3d 543 (2014), which held that "[a] party who has bargained for a notice-and-cure provision to protect against forfeiture and litigation is entitled to have that bargained-for protection honored." The City has failed to establish a basis for review under RPC 13.4(b)(2), and its petition should be denied on that basis.

2. The issues raised by the City's petition are not of substantial public interest; rather they turn on the particular provisions of the subject contract, so the City's petition does not meet the standard under RAP 13.4(b)(4).

The City's petition fails to raise or discuss how any issue in its petition is "an issue of substantial public interest that should be determined by the Supreme Court," as required under RAP 13.4(b)(4). The City's vague reference to taxpayers is unavailing. The City contends that "[i]f left to stand, any municipality that is found to have improperly terminated a contractor for cause will be forced to incur the extra expense of fixing defective work *and* paying the terminated contractor." City's Petition at 20. That is simply not true. If these same contract provisions are applied to future public works contracts, all a municipality must do to avoid "the extra expense of fixing defective work" is to follow the contract it drafted and give the contractor the required notice and opportunity to cure before barging ahead to correct and spoiling the alleged condition.

The issues in the City's petition are specific to the contract at issue. Except for the fact that the Court of Appeals found persuasive and followed *Sheltered Products, Inc. v. Steelwood Construction, Inc.*, 257 Or. App. 382, 402, 307 P.3d 449 (2013), the aspects of the opinion that were raised in the City's petition will have no precedential value, and therefore no public interest, let alone a substantial public interest that rises to a level warranting

review under RAP 13.4(b)(4).

B. As to the issues raised in the City's petition, the Court of Appeals ruled correctly.

1. Standard for termination

The Contract provided that Conway could be terminated for default if it "performs Work which deviates from the Contract, and neglects or refuses to correct rejected Work." Trial Ex. 1. Without neglect or refusal, there is no default to justify a termination as to rejected work.

It is axiomatic that if a default is cured, then it cannot form the basis for termination. Therefore, even if the safety violation was not "rejected work," the curing of the safety violation removed the default, in which case a termination would not be justified. A party cannot terminate a contract for a cured breach. *See generally Takota Corp. v. United States*, 90 Fed. Cl. 11, 17–18 (Fed. Cl. 2009) (noting that only two alleged breaches could be resolved on summary judgment, as some were subject to factual disputes and others were cured). Here, the safety issue was "cured by the end of the suspension period." CP 2474.

The City agrees that it had the burden of proof on justification, consistent with *Lisbon Contractors, Inc. v. United States,* 828 F.2d 759, 754–55 and 765 (Fed. Cir. 1987). Yet the City attempts to distract from the language of the Contract, arguing that it somehow had unfettered discretion to ignore the express language of the Contract and terminate Conway for

default even after any default was cured. None of the cases cited by the City stand for this proposition. And there is no authority for the proposition that any court can ignore the specific timing, procedures, and standards that are expressly set forth in Section 1-08.10(1).

As noted in the preceding counter-statement of the case, there was substantial evidence[11] to support the trial court's findings that (1) Conway neither neglected nor refused to correct rejected work and (2) the one safety violation was cured before termination, and there was no evidence of any other safety violation at that time. The City's issues had been resolved, and there was no cause for termination.

2. Notice and the opportunity to cure

At trial, the City claimed—for the first time—that some other of Conway's concrete panel work was non-conforming by way of a claim to correct defective work that was not disclosed at the time of termination. The Contract required the City to provide Conway with 15 days' notice and the opportunity to investigate and correct rejected work. Trial Ex. 1 at 1–80. The City failed to provide notice or an opportunity to cure after it

[11] This Court reviews a trial court's findings of fact to determine if they are supported by substantial evidence. *Hegwine v. Longview Fibre Co.*, 132 Wn. App. 546, 555, 132 P.3d 789 (2006). Unchallenged findings of fact are verities on appeal. *Id.* at 556. An appellate court will not overturn a trial court's finding of fact when it is supported by substantial evidence in the record. *Colonial Imports, Inc. v. Carlton Nw., Inc.*, 121 Wn.2d 726, 730 n.1, 853 P.2d 913 (1993).

improperly terminated the Contract. VRP Vol. 33 at 125:18–126:25, 160:22–161:5, and 162:9–12; *see also* VRP Vol. 32 at 120:17–121:1.

Although Washington courts had not previously addressed this circumstance in the context of a single-party breach, the Court of Appeals found persuasive the Oregon opinion in *Shelter Products, Inc. v. Steelwood Construction, Inc.*, 257 Or. App. 382 (2013). In *Shelter Products*, the contractor (Catamount) terminated its contract with the subcontractor (Steelwood) for convenience. *Id*. at 386. Catamount did not provide Steelwood with notice that its work was defective or needed repair. *Id*. at 388.

The contract text regarding termination for convenience clause did not permit Catamount to both terminate for convenience and subsequently proceed against Steelwood as though it had terminated for cause. *Id*. at 399. The *Shelter Products* court was also persuaded by other jurisdictions that had recognized that after a termination for convenience, the terminating party may not claim against the terminated party for an alleged default:

> We further observe that, although, as the parties note, there are no previous Oregon cases discussing termination for convenience, there is some persuasive authority from other jurisdictions relating to the issue and that authority supports our view. In particular, we are persuaded, at least **in the absence of an opportunity to correct allegedly defective work, that, where a party has terminated a contract for convenience, that party may not then counterclaim for the cost of curing any alleged default**. *See Paragon*

> *Restoration Group, Inc. v. Cambridge Sq. Condominiums*, 839 N.Y.S. 2d 658, 660, 42 A.D. 3d 905, 906 (2007); *Tishman Contr. Corp. v. City of New York*, 643 N.Y.S. 2d 589, 590, 228 A.D. 2d 292, 293 (1996). Here, the amounts Catamount seeks to offset are costs incurred in curing an alleged default by Steelwood. The facts on summary judgment are that, after it was terminated for convenience, Steelwood did no further work on the project as required under paragraph 18. After that time, Catamount did not notify Steelwood of any alleged defects or provide it with any opportunity to correct any defective work. Indeed, the defects in question were first asserted as part of this litigation. Under the circumstances, the trial court correctly concluded on summary judgment that, **because it terminated the contract for convenience, Catamount was not entitled to offset any amounts it owed Steelwood with amounts it incurred in correcting Steelwood's allegedly defective work**.

Id. at 402–03 (emphasis added).

The Court of Appeals correctly distinguished the opinion in *Duculon Mechanical, Inc v. Shinstine/Forness, Inc.*, 77 Wn. App. 707, 893 P.2d 1127 (1995). In *Duculon*, both parties were in material breach. *Id*. at 708. In fact, the *Duculon* court's holding was premised on the plaintiff being in default. *See id*. at 713 (framing the issue as "whether a *defaulting* subcontractor's restitutionary award should be offset by the general contractor's cost to complete and repair the subcontractor's work *when the general contractor is also in default*" (emphasis added)).

Because Conway was not in breach of the Contract, the City was not entitled to a set-off without providing notice and an opportunity to cure, as

required by the Contract. "A party who has bargained for a notice-and-cure provision to protect against forfeiture and litigation is entitled to have that bargained-for protection honored." *DC Farms LLC*, 179 Wn. App. at 226. The City simply failed to satisfy contractual conditions precedent to some of its offset counterclaims.[12]

VII. CONCLUSION

The City's petition for review fails to meet the requirements of RAP 13.4(b), and it should be denied.

Respectfully submitted: August 10, 2020.

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[12] The City's reliance upon Section 1-09.5.4 of the Standard Specifications is wrong. That provision only applies to partial termination. It is Section 1-09.5.5 that applies to full contract termination, as was the case here. And the payment provisions in Section 1-09.5 do not remove the notice and cure provisions of Section 1-08.10 from the Contract.

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct: That on the 10th day of August, 2020, I arranged for service of the foregoing **ANSWER TO PETITION FOR REVIEW** to the parties to this action via Electronic Court E-Service as follows:

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