



TO: BOARD OF DIRECTORS
FROM: STEVE LIDGARD, EXECUTIVE DIRECTOR – BUSINESS SERVICES
SUBJECT: PURCHASING AGREEMENT – UTSALADY BOILERS REPLACEMENT
DATE: MARCH 3, 2020
TYPE: ACTION NEEDED

A boiler at Utsalady Elementary School is in need of replacement, according to Kevin Cruse, Maintenance Director. Kevin Cruse and Vicki Cargile, Construction Manager, developed the bid invitation. The invitation had two options. The first option was to replace the inoperable boiler with a new boiler and leave the second boiler in place. The second option was to replace both current boilers, dispose of the inoperable boiler and salvage the one operable boiler as a potential temporary replacement boiler in the future, if the need arises within the district.

The invitation was sent to seven boilers firms listed on the small works roster. The district received three bids for this project. After reviewing the bids, it was determined option two is the best option for the district. Harris Pacific Northwest, L.L.C. of Bellingham, submitted the lowest bid. The base bid is 119,400.00 plus tax for option two. There is also alternative bid for Two Taco Pumps for a total of \$6,000.00 plus tax, which we recommend the district accept. This would total \$125,400.00 plus tax for this project.

Since the low bid amount exceeds the \$50,000 purchasing limit imposed by policy 6210, school board approval prior to awarding a contract for this work is required.

Recommendation:

We recommend the board move to approve the replacement of both boilers and two Taco Pumps at Utsalady Elementary School.



26920 Pioneer Highway ☐ Stanwood, WA 98292 ☐ 360-629-1200 ☐ Fax 360-629-1242
www.stanwood.wednet.edu

AGREEMENT
BETWEEN
STANWOOD-CAMANO SCHOOL DISTRICT
AND
CONTRACTOR

This AGREEMENT is made as of the 3rd day of March, 2020, between the Stanwood-Camano School District ("School District" or "Owner") and Harris Pacific Northwest, L.L.C. ("Contractor"):

The "Owner" is: Stanwood-Camano School District 401
26920 Pioneer Highway
Stanwood, WA 98292-9548
360-629-1200

The "Contractor" is: Harris Pacific Northwest, L.L.C
3436 Airport Dr.
Bellingham, WA 98226
360 305 8888

A general description of the Project: Replace two boilers at Utsalady Elementary School

The School District and Contractor agree as follows:

ARTICLE 1
THE WORK

1.1 The Contractor shall fully execute and complete the entire Work described in the Contract Documents.

ARTICLE 2
DATES OF COMMENCEMENT AND SUBSTANTIAL AND FINAL COMPLETION

2.1 The Contractor may conduct preparatory work (planning, submittals, ordering materials, etc.) upon receipt of a Notice to Proceed from the School District's representative. Work on the site can begin after school is out March 4, 2020.

2.2 The Contractor shall achieve Final Completion no later than April 15, 2020, subject to adjustments of the Contract Time as provided in the Contract Documents.

2.3 Liquidated damages shall be zero (0) per day for each calendar day after the date specified in Section 2.2, as adjusted, that Substantial Completion is not attained. The Contractor agrees that the daily rate for liquidated damages is a reasonable estimate of actual damages, as of the date of this Agreement, based on the inherent uncertainty and difficulty in determining and quantifying damages caused by delay in the construction of school district facilities and is not a penalty.

ARTICLE 3
CONTRACT SUM

3.1 **BASE BID: \$119,400.00**, subject to additions and deductions as provided in the Contract Documents.

3.2 **ALTERNATES**, if any, which are described in the Contract Documents and are hereby accepted by the School District include:

Alternate #1: _Two Taco Pumps \$6,000.00

3.3 **CONTRACT SUM:** The School District shall pay the Contractor for the Contractor's performance of the contract the contract sum of **\$125,400.00**, which includes the base bid and alternate listed above subject to additions and deletions as provided in the Contract Documents. Sales tax on the Contract Sum is not included and shall be paid with progress payments.

3.4 Unit prices, if any, are as follows: N/A

3.5 Allowances, if any, are as follows: N/A

ARTICLE 4
PAYMENT

4.1 The School District will make payments to the Contractor on account of the Contract Sum as provided in Article 15 and elsewhere in the Contract Documents, based upon Application(s) for Payment submitted by the Contractor. The School District will make final payment, constituting the entire unpaid balance of the Contract Sum except statutory retainage, to the Contractor when the Work has achieved Final Completion, the Agreement has been fully performed, and the School District's Board of Directors has accepted the Work. The retainage shall be paid pursuant to RCW 60.28 and the Contract Documents. Payment and performance bonds are required as set forth in Section 17.3.

4.2 Payments due and unpaid under the Agreement shall bear interest as specified by RCW 39.76, not to exceed the Bank of America prime rate.

ARTICLE 5
PERMITS AND FEES

5.1 The Contractor will secure and pay for the Building Permit if needed.

5.2 The Contractor shall secure and pay, as a part of the Contract Sum, for all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the construction of the Work.

5.3 The School District shall secure and pay for necessary approvals, easements, assessments and charges required for the use or occupancy of permanent structures or permanent changes to existing facilities.

ARTICLE 6
PROPERTY INSURANCE

6.1 The Contractor shall purchase and maintain until Final Acceptance, in a company or companies lawfully authorized and admitted to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form to cover the course of construction (including all materials or equipment furnished or installed by the School District on the Project) in an amount equal to at least the full insurable value of the building or buildings at which the project will occur. This insurance shall include interests of the School District, the Contractor, and Subcontractors of any tier for the Project. This insurance shall insure against the perils of fire and extended coverage and physical loss or damage, including earthquake and flood, and shall provide "all risk" coverage for the interests of the School District, the Contractor and Subcontractors of any tier as named insureds and as loss payees, as their respective interests appear. Upon written request, the Contractor will provide a copy of its policy to the School District. Each loss may be subject to a deductible of not more than \$10,000, except that the deductible for earthquake and flood losses shall be no greater than 5% of the loss or \$100,000, whichever is more. Losses up to the deductible amount or otherwise not covered by insurance shall be the responsibility of the Contractor. The policy shall be endorsed to allow complete or partial occupancy by the School District before or after Substantial Completion. All tools and equipment of the Contractor and Subcontractors of any tier not intended as part of the construction or installation of the Work will be the sole responsibility of the Contractor. Additional insurance requirements are described in Article 17.

6.2 Upon the occurrence of a loss insured under the property insurance, the School District shall participate in and approve the adjustment and settlement of any loss with the insurers.

ARTICLE 7
ENUMERATION OF CONTRACT DOCUMENTS

Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents. The Contract Documents are enumerated as follows, except for modifications issued after execution of this Agreement:

7.1 This executed Agreement between the Stanwood-Camano School District and Contractor, including the attached General Conditions.

7.2 Any Supplementary and other Conditions of the Agreement.

7.3 The Specifications and Plans as follows:

7.4 The Drawings as follows:

7.5 The Addenda (if any) as follows:

<u>Number</u>	<u>Pages</u>
Attachment A: listing scope of work	2
General Conditions	14

7.6 Other documents forming part of the Contract Documents include:

This Agreement entered into as of the day and year first written above.

STANWOOD-CAMANO SCHOOL DISTRICT

Harris Pacific Northwest, L.L.C

By: _____
(Signature)

By: Dan Martin
(Signature)

(Printed Name)

DAN Martin
(Printed Name)

(Title)

General Manager
(Title)



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Attachment A

**Stanwood-Camano School District No. 401
Boiler Replacement for:**

Utsalady Elementary School
608 Arrowhead Road
Camano Island, WA 98282

**Project No. 0166
Bids Due 2:00 pm, Thursday, February 13, 2020**

PROJECT OVERVIEW:

Utsalady Elementary School uses two Patterson-Kelly 1700 Thermific gas fired non-condensing boilers for the purpose of heating the building. One of the boilers has a ruptured heat exchanger resulting in the need for boiler replacement. Currently, the remaining boiler (one) PK1700 is carrying the heating load of the building without redundancy.

- The fuel source is natural gas
- Existing boilers operate on 120VAC
- Existing boiler pumps are Taco 1600 series, operate on 480VAC 3-phase
- Building Management System (DDC)
 - A. Enables the boilers and pumps.
 - B. Monitors supply and return water temps.
 - C. Controls the boiler and enables through maintaining a supply temp based on outside air temperature using a reset function.

Stanwood-Camano School District would like to review two options for replacement of the PK boiler(s) with KN boiler(s).

OPTION ONE

Scope of Work:

Leave the existing Patterson-Kelly PK1700 boiler in operation and replace the inoperable Patterson-Kelly PK1700 boiler with a new KN-20 boiler. This creates a concern with operating a condensing boiler in conjunction with the non-condensing boiler.

- Required permits
- Demo and dispose of one existing gas-fired boiler (B-2), including piping, electrical and system components, as required for new work
- Install one new KN-20 condensing boiler
- Increase the size of the housekeeping pad, if necessary
- Provide and install condensate piping and neutralizer kit terminating into floor drain
- Demo and replace existing boiler flue with AL29-4C boiler flue, including new venting terminations and roof flashings

- Increase the size of the housekeeping pad, if necessary
- Reuse existing butterfly isolation valve
- Replace existing triple duty valve with a new check valve and isolation valve
- Disconnect and reconnect to natural gas, include any changes in piping or fittings
- Mechanical insulation
- Install EPO switch - if required by code
- Reuse existing boiler pumps – if appropriately sized for KN-20
- Repair and patch sheetrock, adjacent surfaces etc., demo'd to accommodate new work
- Electrical demolition and installation required to complete the boiler replacement
- Low voltage and controls wiring connections
- Manufacturer startup and test
- Programming and controls changes required on DDC graphics front end
- KN20 boiler to be primary and PK1700 to be secondary
- Warranty
- Prevailing wages with forms

OPTION TWO:

Scope of Work:

Replace both PK1700 boilers with two KN-16 boilers

- Required permits
- Demo and dispose of two existing gas-fired boilers, including piping, electrical and system components, as required for new work.
- Install two new KN-16 condensing boilers
- Increase the size of the housekeeping pad, if necessary
- Provide and install condensate piping and neutralizer kits terminating into floor drain
- Demo and replace existing boiler flues with AL29-4C boiler flue, including new venting terminations and roof flashings
- Reuse existing butterfly isolation valves
- Replace existing triple duty valves with a new check valve and isolation valve
- Disconnect and reconnect to natural gas, include any changes in piping or fittings
- Mechanical insulation
- Install EPO switch - if required by code
- Reuse existing boiler pumps – if appropriately sized for KN-16
- Repair and patch sheetrock, adjacent surfaces etc., demo'd to accommodate new work
- Electrical demolition and installation required to complete the boiler replacement
- Low voltage and controls wiring connections
- Manufacturer startup and test
- Programming and controls changes needed on DDC graphics front end
- Boilers operate in master/slave function upon enable command from DDC
- Warranty
- Prevailing wages with forms

GENERAL CONDITIONS

ARTICLE 8

THE CONTRACT DOCUMENTS

8.1 The Contract Documents form the Contract and consist of this Agreement, the General Conditions (including any Supplemental or Special Conditions), Drawings, Specifications, Addenda, other documents listed in this Agreement and changes issued after execution of this Agreement, all of which are as fully a part of the Contract as if attached to this Agreement or repeated in it.

8.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one is as binding as if required by all. Performance by the Contractor is required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

8.3 The Contract Documents shall not be construed to create a contractual relationship of any kind between the School District and a Subcontractor of any tier or between any person or entity other than the School District and Contractor.

8.4 The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

8.5 The term "A/E" means the entity listed as such on the first page of this Agreement, if any. The A/E may be an architect, engineer or similar consultant, and is not necessarily a licensed architect or engineer. If "None" or "N/A" is listed for the A/E, or upon written notification from the School District, the School District or its designated representative will perform all of the functions of the A/E described herein. The A/E, if any, is not an agent of the School District, and is not authorized to speak on behalf of or bind the School District.

8.6 The Contractor's execution of the Agreement is a representation and acknowledgement that the Contractor has visited the site and become familiar with the local conditions under which the Work is to be performed, that the Contract Sum is reasonable compensation for the Work, and that the Contract Time is adequate for the performance of the Work. The Contractor's execution of the Agreement is a further representation and acknowledgement that the Contractor has carefully checked and verified all pertinent figures and that it has carefully examined the Contract Documents and the Project site, including any existing structures, and that

it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished, and all other requirements of the Contract Documents, as well as the surface conditions and other matters that may be encountered at the Project site or affect performance or cost of the Work. THE FAILURE OF THE CONTRACTOR FULLY TO ACQUAINT ITSELF SHALL NOT IN ANY WAY RELIEVE IT FROM THE RESPONSIBILITY FOR PERFORMING THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS AND WITHIN THE CONTRACT TIME AND FOR THE CONTRACT SUM.

8.7 Organization of the Specifications into divisions, sections, articles, and arrangements of the Drawings are for convenience only and shall not be construed as, nor imply a division of the Work among Subcontractor, nor establish the extent of Work, to be performed by any trade. The Contractor shall be responsible for the division of the Work and for coordinating the allocation of the Work among its Subcontractors and suppliers.

8.8 If there is any inconsistency in the Contract Drawings, or between the Drawings and the Specifications, unless otherwise ordered in writing by the School District, the Contractor shall provide the better quality of, and the greater quantity of, the Work or materials. The Contractor shall immediately report any conflict, error, or discrepancy in the Contract Documents to the A/E and the School District. The Contractor shall not proceed with the affected Work until it receives a written interpretation or clarification from A/E.

ARTICLE 9

ADMINISTRATION OF THE AGREEMENT

9.1 The School District, with assistance from the A/E, will provide administration of the Agreement. The School District must approve in writing all changes in the Contract Sum or Time and all Change Orders, Construction Change Directives, and payments to the Contractor.

9.2 The A/E is not an agent of the School District, and is not authorized to speak on behalf of or bind the School District. Neither any representative of the School District (other than the Board or its designee) nor the A/E is authorized to revoke, alter, enlarge, relax or release any requirements of the Contract Documents, nor to approve or accept any portion of the Work, nor to issue instructions contrary to the Contract Documents.

9.3 The School District or the A/E may disapprove, condemn or reject work when, in its opinion, the Work does not conform to the Contract Documents. The School District or the A/E may require special inspection or testing of any Work in accordance with the

provisions of the Contract Documents whether or not such Work is then fabricated, installed or completed.

9.4 If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents or fails to carry out the Work in accordance with the Contract Documents, the School District, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the School District to stop the Work shall not give rise to a duty on the part of the School District to exercise this right for the benefit of the Contractor or any other person or entity.

9.5 The School District or the A/E may call, schedule and conduct job meetings, which the Contractor and representatives of its Subcontractors shall attend, to discuss such matters as procedures, progress, problems and scheduling.

9.6 The School District and the A/E may visit the site at intervals each considers appropriate to the stage of the Work to become generally familiar with the progress and quality of the completed Work. However, neither will be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

9.7 The School District may occupy the site during the course of the Work.

ARTICLE 10 THE CONTRACTOR

10.1 The Contractor shall perform, supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, personnel and procedures, for safety, and for coordinating all portions of the Work under the Agreement. The Contractor shall be and operate as an independent contractor in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. The Contractor is not authorized to enter into any agreements or undertakings for or on behalf of the School District or to act as or be an agent or employee of the School District.

10.2 The Contractor shall provide and pay for all labor, materials, equipment, tools, machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

10.3 **Materials.** With the exception of bulk materials, all materials shall be delivered to the site in original containers as packaged by the manufacturer with the label intact. Upon request, the Contractor shall provide

a certificate of compliance for bulk materials. The Contractor warrants and guarantees that title to Work, materials and equipment covered by an Application for Payment, whether incorporated in the Work or not, will pass to the School District no later than the time of payment free and clear of liens.

10.4 **Workers.** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall be responsible to the School District for the acts and omissions of the Contractor's employees, Subcontractors of any tier and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor. At no change to the Contract Sum or Contract Time, the School District may provide written notice requiring the Contractor to remove from the Work any employee or other person carrying out the Work that the School District considers objectionable. If the Work is being performed at a site in active school use or where there is a likelihood of contact with children, a person shall be unfit and removed from the site if he or she has pled guilty to or has been convicted of any felony crime involving the physical injury or death of a child (RCW 9A.32 or RCW 9A.36 but not RCW 46.61— motor vehicle violation), the physical neglect of a child (RCW 9A.42), sexual offenses against a minor (RCW 9A.44), sexual exploitation of a child (RCW 9.68A), the sale or purchase of a minor child (RCW 9A.64.030), promoting prostitution of a child (RCW 9A.88), or violation of similar laws of another jurisdiction. Failure to comply with this Section 10.4 shall be grounds for the immediate termination of this Agreement for cause.

10.5 **Warranty.** The Contractor warrants that materials and equipment furnished under the Contract will be of good quality and new, that the Work will be performed in a skilled, high quality, and workmanlike manner, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions or deviations from the Drawings or Specifications not properly approved and authorized, is defective. The Contractor's warranty excludes remedy for damage caused by abuse, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Upon request, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the Contract Documents. Warranties shall be provided as required by the Contract Documents, and the School District's receipt of a warranty inconsistent with the terms of the Contract Documents shall not constitute acceptance of those terms.

10.6 Taxes and Fees. The School District shall pay to the Contractor local and Washington State sales based on the Contract Sum with progress payments. The Contractor shall pay for all other types of taxes and fees for the Work or portions thereof provided by or through the Contractor, including but not limited to consumer, use, B&O, income, or other taxes that are legally enacted at the time bids are received whether or not yet effective or merely scheduled to go into effect. The Contractor shall secure and pay for permits and government fees, licenses and inspections necessary for the proper execution and completion of the Work, except as specifically provided herein.

10.7 Legal Compliance. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work. The Contractor shall promptly notify the School District and A/E in writing if the Contractor observes the Drawings and/or Specifications to be at variance with them.

10.8 Submittals. The Contractor shall review, approve and submit to the School District or A/E with reasonable promptness Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. The Work shall be in accordance with approved submittals, but approved submittals shall not change the requirements of the Contract Documents.

10.9 Progress Schedule. Within seven (7) days of execution of this Agreement, the Contractor shall submit a preliminary schedule of the Work to the School District. Failure to do so shall constitute a material breach of the Contract and a material breach of the conditions of the bid bond. Within thirty (30) days after execution of the Agreement, and before any progress payment becomes due, the Contractor, after consultations with its Subcontractors, shall submit a Progress Schedule to the School District. Neither the School District nor the A/E will, however, be required to review or approve the substance or sequence of the Progress Schedule, which shall be the Contractor's sole responsibility. The Contractor will be responsible for planning, scheduling, managing, and reporting the progress of the Work in accordance with the specific methods and submittals described in the Contract Documents. The Contractor shall use the Progress Schedule to plan, coordinate, and prosecute the Work in an orderly and expeditious manner.

10.10 Clean-Up. The Contractor shall keep the site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. Prior to completion of the Work or otherwise at the School District's request, the Contractor shall remove all waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from the Project site. If the Contractor fails to do so, the School District may do so and charge to the Contractor all costs incurred.

10.11 Access. The Contractor shall provide the School District and the A/E access to the Work in preparation or progress wherever located.

10.12 Royalties and Patents. The Contractor shall pay all royalties and license fees, shall defend all suits or claims for infringement of patent or other intellectual property rights, and shall hold the School District and A/E harmless from claims, damages, losses and expenses, direct and indirect, including but not limited to costs and attorneys' fees incurred on such claims and in proving the right to indemnification.

10.13 Indemnification. Subject to the following conditions including the subparagraphs below, and to the fullest extent permitted by law, the Contractor shall defend, indemnify, reimburse, and hold harmless the School District and A/E and their respective agents, employees, consultants, successors and assigns (together, the "Indemnified Parties") from and against all claims, damages, losses and expenses, direct and indirect, or consequential, including but not limited to costs, attorneys' fees, and litigation expenses incurred on such claims and in proving the right to indemnification, arising out of or resulting from the performance of the Work, any act or omission of the Contractor, its agents, any of its Subcontractors of any tier, and anyone directly or indirectly employed by the Contractor or Subcontractors of any tier (together, the "Indemnitor").

The Contractor will fully defend, indemnify, reimburse and hold harmless the Indemnified Parties for the sole negligence of the Indemnitor. In the event of concurrent negligence, the Contractor will defend, indemnify, reimburse, and hold harmless the Indemnified Parties for the concurrent negligence of the Indemnitor to the extent of the Indemnitor's negligence.

The Contractor agrees to being added by the School District as a party to any mediation, arbitration, or litigation with third parties in which the School District alleges indemnification or contribution from an Indemnitor. The Contractor agrees that all of its Subcontractors of any tier will, in their subcontracts, similarly stipulate; in the event any does not, the Contractor shall be liable in place of such Subcontractor(s). To the extent a court or arbitrator strikes any portion of this indemnification provision for any reason, all remaining provisions shall retain their vitality and effect.

In claims against any person or entity indemnified under this Section 10.13 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 10.13 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor of any tier under workers' compensation acts, disability benefit acts or other

employee benefit acts. After mutual negotiation of the parties, the Contractor waives immunity as to the School District, the A/E and their consultants only under Title 51 RCW, "Industrial Insurance." IF THE CONTRACTOR DOES NOT AGREE WITH THIS WAIVER, IT MUST PROVIDE A WRITTEN NOTICE TO THE SCHOOL DISTRICT PRIOR TO THE DATE FOR THE RECEIPT OF BIDS, OR THE CONTRACTOR WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY.

The provisions of this Section shall survive the expiration or termination of this Agreement.

10.14 Prevailing Wages.

10.14.1 Pursuant to RCW 39.12, no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" (in effect as of the date that bids are due) as determined by the Industrial Statistician of the Department of Labor and Industries, ESAC Division, PO Box 44540, Olympia, WA 98504-4540, Telephone (360) 902-5335. The schedule of the prevailing wage rates for the locality or localities where this Work will be performed is attached and made a part of this Contract by reference as though fully set forth herein; if not attached, then the applicable prevailing wages are determined as of the date bids are due for the county in which the Project is located and are also available at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. A copy is available for viewing at the School District's office and a hard copy will be mailed upon request. To the extent that there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates, the applicable rates under WAC 296-127-011 shall apply at no increase to the Contract Sum. The Contractor shall provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. The Industrial Statistician will answer questions relating to prevailing wage data upon request.

10.14.2 Pursuant to RCW 39.12.060, in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature, and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the Department of Labor and Industries, whose decision therein shall be final and conclusive and binding on all parties involved in the dispute.

10.14.3 The Contractor shall defend, indemnify, and hold the School District harmless, including attorneys' fees, from any violation or alleged violation of RCW 39.12 ("Prevailing Wages on Public Works") or RCW 51 ("Industrial Insurance"), including without limitation RCW 51.12.050, by the Contractor, any Subcontractor of any tier, or any person performing Work on behalf of the Contractor or any Subcontractor of any tier.

10.15 The Contractor shall comply with all applicable provisions of RCW 49.28.

10.16 Pursuant to RCW 49.70 and WAC 296-62-054 *et seq.*, the Contractor shall provide the School District copies of and have available at the Project site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control of or used by Contractor or any Subcontractor at the Project site.

10.17 The Contractor shall maintain and preserve for at least *three (3) years* from the date of final payment all books, ledgers, records, documents, estimates, bidding documents, correspondence, logs, schedules, electronic data and other evidence relating or pertaining to the costs incurred by the Contractor in connection with or related to the Agreement and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the Contract Documents and with all costs, charges and other amounts of whatever nature for which reimbursement or payment is or may be claimed under the Contract. The Contractor agrees to make available at all reasonable times at the office of the Contractor all such records for inspection, audit and reproduction (including electronic reproduction) by the School District and its representatives. These requirements shall be applicable to each Subcontractor of any tier and included in each Subcontract and purchase order issued with respect to the Work. The Contractor agrees, on behalf of itself, its representatives, and Subcontractors of any tier and their representatives, that any rights under RCW 42.56 will commence at Final Acceptance, and that the invocation of such rights at any time by the Contractor or a Subcontractor of any tier or their representatives shall initiate an equivalent right to disclosures from the Contractor and Subcontractors of any tier for the benefit of the School District. Because of the importance of the access of such records to the School District in the case of a Claim, if the Contractor or any Subcontractor fails to fully comply with the requirements of this section with regard to any Claim, such Claim shall be deemed to be waived.

ARTICLE 11 SUBCONTRACTORS

11.1 A "Subcontractor" is a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site or to supply materials or equipment. A "Subcontractor of any tier" includes Subcontractors as well as all lower level sub- subcontractors and suppliers.

11.2 As soon as practicable after award of the Agreement, the Contractor shall confirm in writing to the School District the names of the Subcontractors for each portion of the Work. The Contractor shall not contract with any Subcontractor to whom the School District has made a reasonable and timely objection or different from the one

listed in conjunction with the bid, if any. Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor to be bound to the Contractor by the terms of the Contract Documents to the extent of the Work to be performed by the Subcontractor and to assume toward the Contractor the obligations and responsibilities that the Contractor, by the Contract Documents, assumes toward the School District, and (2) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

11.3 The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors). The Contractor shall furnish to the School District such releases of liens and claims and other documents as the School District may request from time to time to evidence such payment (and discharge). The School District may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are furnished. The Contractor shall defend, indemnify, and hold harmless the School District from any liens, including all expenses and attorneys' fees. Nothing in the Contract Documents shall create any obligation on the part of School District or A/E to pay or to see to the payment of any moneys due any Subcontractor of any tier or other person or entity, except as may otherwise be required by law.

ARTICLE 12
CONSTRUCTION BY SCHOOL DISTRICT OR BY
SEPARATE CONTRACTORS

12.1 The School District reserves the right to perform construction or operations related to the Project with the School District's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations at the site under conditions similar to those of the Contract Documents. The Contractor shall coordinate its Work with such separate contractors and the School District's own forces.

12.2 The Contractor shall afford the School District and separate contractors reasonable opportunity for the introduction and storage of materials and equipment and shall connect and coordinate the Contractor's construction and operations with the School District and separate contractors.

ARTICLE 13
CHANGES IN THE WORK

13.1 The School District, without invalidating the Agreement, may order changes in the Work consisting of additions, deletions or modifications, and the Contract Sum and Contract Time will be adjusted accordingly. Changes in the Work, the Contract Sum and/or the Contract Time shall be authorized only by written Change

Order signed by the School District, the A/E and the Contractor or by written Construction Change Directive signed by the School District and the A/E. The School District must approve in writing all changes in the Contract Sum or Contract Time and all Change Orders, Construction Change Directives, and payments to the Contractor.

13.1.1 Minor Change in the Work. A Minor Change in the Work is a written instrument signed by the School District authorizing minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Sum or the Contract Time and are consistent with the overall intent of the Contract Documents. The Contractor shall promptly proceed with the Minor Change in the Work.

13.1.2 Change Orders. A Change Order is a written instrument signed by the School District and the Contractor stating their agreement upon a change in the Work; the amount of the adjustment in the Contract Sum, if any; and the extent of the adjustment in the Contract Time, if any.

13.1.3 Construction Change Directives. A Construction Change Directive is a written order prepared and signed by the School District and the A/E that directs a change in the Work and states a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. It shall be used in the absence of total agreement on the terms of a Change Order. The Contractor shall promptly proceed with the change in the Work described in the Construction Change Directive. As soon as possible, and within seven (7) days of receipt, the Contractor shall advise the School District in writing of the Contractor's agreement or disagreement with the cost or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

13.2 Before authorizing a change in the Work, the School District or A/E may request that the Contractor propose the amount of change in the Contract Sum, if any, and the extent of change of the Contract Time, if any, arising from the propose change in the Work. A Change Order Proposal is a request for information and pricing only. The Contractor is to submit information, pricing, and time impact, if any, to the School District and A/E within five (5) working days of receipt of the Change Order Proposal. If the parties cannot agree on the cost or credit to the School District from a Change in the Work, the Contractor shall keep and present, in such form as the School District may prescribe, an itemized accounting together with supporting data. The total cost of any change or Claim shall be limited to the reasonable value of the following:

13.2.1 Direct labor costs: The prevailing hourly wage for the laborers, journeymen, and foremen performing and/or directly supervising the changed Work

on the site. The premium portion of overtime wages may not be included unless pre-approved in writing by the School District. The hourly cost shall be based upon basic wages and mandatory fringe benefits and workers' insurances.

13.2.2 Direct material costs: An itemization of the quantity of materials necessary to perform the change in the Work and the net cost therefor.

13.2.3 Construction equipment usage costs: An itemization of the actual length of time construction equipment appropriate for the Work will be used solely on the change in the Work at the site times the lower of the actual rental receipt or applicable current state, NECA, Data Quest, or MCA rental cost. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work.

13.2.4 Cost of any change in insurance or bond premium. Upon request, the Contractor shall provide the School District with supporting documentation.

13.2.5 Subcontractor costs: Payments the Contractor makes to Subcontractors for changed Work performed by Subcontractors of any tier. The cost of Work for Subcontractors of any tier shall be determined in the same manner as prescribed in this Section.

13.2.6 Fee: The allowance for all combined overhead, profit, and other costs, including all office, home office, extended and site overhead (including project manager, project engineer, superintendent and general foreman time), and all delay and including impact costs of any kind, added to the total cost to the School District of any Change Order or any Claim for additional work or extra payment of any kind on this Project shall be strictly limited to the following schedule:

- .1 For the Contractor, for any materials or work performed by the Contractor's own forces, 15% of the cost.
- .2 For the Contractor, for materials or work performed by its Subcontractor, 8% of the amount due the Subcontractor.
- .3 For each Subcontractor (including lower tier subcontractor involved), for any materials or work performed by its own forces, 15% of the cost.
- .4 For each Subcontractor, for materials or work performed by its subcontractors of any lower tier, 8% of the amount due the sub-subcontractor.
- .5 The cost to which the Fee is to be applied shall be determined in accordance with Sections 13.2.1-4.

13.3 Dispute Resolution. All claims, disputes and other matters in question of the Contractor, direct or indirect, arising out of, or relating to, the Contract Documents or the breach thereof ("Claims"), except Claims which have been waived under the terms of the Contract Documents, shall be decided exclusively by the following dispute resolution procedure. The Contractor shall diligently carry on the Work and maintain the Progress Schedule during the dispute resolution procedure, including any litigation proceedings, unless the parties mutually agree in writing otherwise.

13.3.1 Notice of Claim. The Contractor shall submit notice of all Claims to the School District in writing within *fourteen (14) days* of the event giving rise to them and shall include a clear description of the event and its probable effect. Failure to comply with these requirements shall constitute waiver of the Claim.

13.3.2 Claim Submission. Within *thirty (30) days* of the Notice of Claim, the Contractor shall provide the School District in writing with a Claim, which shall include a clear description of the Claim, all changes in cost and in time (direct, indirect, impact, and otherwise) to which the Contractor and Subcontractors of any tier are entitled, and data supporting the Claim. The claim of a Subcontractor may be brought only through the Contractor and only after the Contractor notifies the School District in writing that the Contractor has reviewed and agrees with the Claim.

13.3.3 Informal Resolution. At the School District's request, a representative of the Contractor and the School District shall meet, confer, and attempt to resolve the Claim. This meeting will take place at a mutually convenient time and location within *thirty (30) days* of the request, unless the School District elects to proceed directly to mediation.

13.3.4 Mediation. The Contractor may bring no litigation against the School District unless the Claim is first subject to non-binding mediation under the Construction Industry Mediation Procedures of the American Arbitration Association ("AAA"). This requirement cannot be waived except by an explicit written waiver signed by the School District and the Contractor. If the parties are unable to agree on a mediator within *thirty (30) days* of receipt of the written request for mediation, either party may submit a request for mediation to the AAA. An officer of the Contractor and the Superintendent or designee of the School District, both having full authority to settle the Claim, must attend the mediation session. To the extent there are other parties in interest, such as Subcontractors and insurers, their representatives, with full authority to settle the Claim, shall also attend the mediation session. Unless the School District and Contractor mutually agree in writing otherwise, all unresolved Claims in the Project shall be considered at a single mediation session which shall occur prior to Final Acceptance by the School District.

13.3.5 **Litigation.** The Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered in the dispute resolution procedures of Sections 13.3.1 through 13.3.4 above. All unresolved Claims of the Contractor shall be waived and released unless the Contractor has strictly complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) 120 days after the Date of Substantial Completion as designated in writing by the School District or (b) sixty (60) days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by School District and the Contractor. The pendency of a mediation (calculated as the period from the written request for mediation through the day following the mediation proceeding) shall toll these filing requirements.

13.4 **Notices and Claims.** All notices and Claims shall be made in writing as required by the Agreement.

13.4.1 Any notice of a Claim of the Contractor against the School District and any Claim of the Contractor, whether under the Agreement or otherwise, must be made pursuant to and in strict accordance with the applicable provisions of the Contract Documents. Failure to comply with these requirements shall constitute waiver of the Claim. No act, omission, or knowledge, actual or constructive, of the School District or the A/E shall in any way be deemed to be a waiver of the requirement for timely written notice and a timely written Claim unless the School District and the Contractor sign an explicit, unequivocal written waiver approved by the School District's Board of Directors.

13.4.2 The fact that the School District and the Contractor may continue to discuss or negotiate a Claim that has or may have been defective or untimely under the Contract shall not constitute waiver of the provisions of the Contract Documents unless the School District and Contractor sign an explicit, unequivocal written waiver approved by the School District's Board of Directors.

13.4.3 The Contractor expressly acknowledges and agrees that the Contractor's failure to timely submit required notices or timely submit Claims has a substantial impact upon and prejudices the School District, including but not limited to the inability to fully investigate or verify the Claim, mitigate damages, choose alternative options, adjust the budget, delete or modify the impacted Work, and/or monitor time, cost and quantities. For these and other reasons, the parties stipulate that the School District is prejudiced by the Contractor's failure to submit timely notices or Claims as required by the Contract Documents.

13.5 **Claims for Concealed or Unknown Conditions.** If conditions unknown to the Contractor are encountered at the site that are (1) concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of

an unusual nature, which differ materially from those ordinarily found and generally recognized as inherent in activities of the character provided for in the Contract Documents, then the Contractor shall give written notice to the School District promptly before conditions are disturbed and in no event later than seven (7) days after the first observance of the conditions. The Contractor shall make any Claim arising from such condition in accordance with the dispute resolution procedure in Section 13.3.

13.6 **Claims for Consequential Damages.** The Contractor and School District waive certain Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes without limitation:

.1 damages incurred by the School District for loss of income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal and home office overhead and expenses including without limitation the compensation of personnel stationed there, for losses of financing, business and reputation, for losses on other projects, for loss of profit, and for interest or financing costs.

This mutual waiver is applicable to all consequential damages of any cause, including without limitation due to either party's termination in accordance with Article 19. However, nothing contained in this Section 13.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents or to preclude damages specified in the Contract Documents or to preclude the Contractor's obligation to indemnify the School District for direct, indirect, or consequential damages alleged by a third party.

13.7 The Contractor (including Subcontractors) shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar damages.

ARTICLE 14 **TIME**

14.1 Time limits stated in the Contract Documents are of the essence of the Agreement. By executing the Agreement, the Contractor confirms that the

Contract Time is a reasonable period for performing the Work.

14.2 If, through no fault of the Contractor or a Subcontractor of any tier, the Work is delayed by changes ordered in the Work, unanticipated general labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, delays caused by the School District or its separate contractors, or any causes beyond the Contractor's control, or by other causes that may justify delay, then the Contract Time shall be extended by Change Order to the extent the critical path is affected. The Contractor (including Subcontractors) shall be entitled to damages for delay, the total limited to the liquidated rate of Section 2.3, only where the School District's own actions or inactions were the actual, substantial cause of the delay and where the Contractor could not have reasonably avoided the delay by the exercise of due diligence. If a delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the Contract Sum.

14.3 THE TIMELY COMPLETION OF THIS PROJECT IS ESSENTIAL TO THE SCHOOL DISTRICT. The School District will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time; however, it would be difficult if not impossible to determine the amount of such damages. Consequently, the Agreement includes provisions for liquidated damages. The School District's right to liquidated damages is not affected by partial completion, occupancy, or beneficial occupancy.

ARTICLE 15 PAYMENTS AND COMPLETION

15.1 Progress Payments. Payments shall be made as provided in Article 4 of this Agreement. Progress payments will be made monthly for Work duly approved and performed during the calendar month preceding the Application for Payment according to the following procedure.

15.1.1 Schedule of Values. At least *ten (10) days* before the first Application for Payment, the Contractor shall submit to the School District a Schedule of Values, allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the School District may require. This schedule, unless objected to by the School District, shall be used as a basis for reviewing the Contractor's Applications for Payment. This schedule shall not allocate more than 2% of the Contract Sum to mobilization. This schedule shall allocate at least 5% of the Contract Sum to that portion of the Work between Substantial Completion and Final Completion, to an item entitled "Final Documentation and Punchlist Completion," which will be

paid as part of the final payment. This is not a statutory retainage.

15.1.2 Draft Application. At the last scheduled meeting of each month, the Contractor shall submit to the A/E a report on the current progress of the Work as compared to the Contractor's Progress Schedule, and a draft, itemized Application for Payment for Work performed during that calendar month on a form supplied or approved by the School District. This shall not constitute a payment request. The Contractor, the School District, and the A/E shall confer prior to the last working day of the month regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The A/E or the School District may request the Contractor to provide data substantiating the Contractor's right to payment as the School District or A/E may require, such as copies of requisitions from Subcontractors of any tier, lien releases, and certified payroll records, and reflecting retainage as provided elsewhere in the Contract Documents. The Contractor shall not be entitled to make a payment request, nor is any payment due the Contractor, until such data is furnished.

15.1.3 Payment Request. After the Contractor and the School District have met and conferred regarding the draft Application for Payment, and the Contractor has furnished all data requested, the Contractor may, within *five (5) days* of the first of the month, submit a payment request in the agreed-upon amount, in the form of a notarized, itemized Application for Payment for Work performed during the prior calendar month on a form supplied or approved by School District. Among other things, the Application shall state that prevailing wages have been paid in accordance with the pre-filed statement(s) of intent to pay prevailing wages on file with the School District and that all payments due Subcontractors from the School District's prior payments have been made. The submission of an Application constitutes a certification that (1) all payments due Subcontractors from the School District's prior payments have been made and (2) the Work is current on the Progress Schedule, unless otherwise noted on the Application. If the Contractor believes it is entitled to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, the Contractor may submit to the School District a separate written payment request specifying the exact additional amount due, the category in the Schedule of Values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due.

15.1.4 Payments to Subcontractors. No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to

withholding from the Subcontractor for unsatisfactory performance, the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor and the School District written notice of the remedial actions that that must be taken and pay the Subcontractor within *eight (8) working days* after the Subcontractor satisfactorily completes the remedial action identified in the notice.

15.2 Prevailing Wages. Pursuant to RCW 39.12, the Contractor is not entitled to any payment until the Contractor and all Subcontractors of any tier have submitted a "Statement of Intent to Pay Prevailing Wage" to the School District. The statement must be approved by the Industrial Statistician of the Department of Labor and Industries before it is submitted to the School District. The Contractor and Subcontractors shall pay all fees required by the Department of Labor and Industries, including fees for the approval of the "Statement of Intent to Pay Prevailing Wages." Approved copies of the "Statement of Intent to Pay Prevailing Wages" must be posted where workers can easily read them.

15.3 Progress payments. The School District shall make progress payments within *thirty (30) days* of its receipt of an approved payment request.

15.4 Withheld Payments. Payments may be withheld on account of (1) defective Work not remedied, (2) claims filed by third parties, (3) failure of the Contractor to make payments due to Subcontractors or for labor, materials or equipment, (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (5) damage to the School District or another contractor, (6) reasonable evidence that the Work will not be completed within the Contract Time, (7) failure to carry out the Work in accordance with the Contract Documents, or (8) liquidated damages. When the School District intends to withhold all or part of a payment for unsatisfactory performance, the School District will provide the Contractor, within *ten (10) days* after the School District's receipt of the Application for Payment, written notification of the reasons that all or part of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.

15.5 Substantial Completion.

15.5.1 When the Contractor believes that the Work has achieved Substantial Completion, it shall notify the School District in writing. When the School District agrees, it will issue a Certificate of Substantial Completion. Substantial Completion is the stage in the progress of the Work when the construction is sufficiently complete, in accordance with the Contract Documents, so the School District can fully utilize the Work (or the designated portion thereof) for its intended use. All Work other than incidental corrective or punchlist work and final cleaning shall have been completed. The Work is not Substantially Complete if all systems and parts affected by the Work are not

usable or if utilities affected by the Work are not connected and operating normally. The fact that the School District may use or occupy the Work or designated portion thereof does not indicate that the Work is Substantially Complete, nor does such occupation toll or change any liquidated damages due the School District.

15.5.2 Immediately before partial or complete occupancy, the School District will schedule an inspection tour of the area to be occupied. A representative of the School District, A/E and Contractor will jointly tour the area and record items still remaining to be finished and/or corrected. The Contractor shall also supply and install any items missed by the inspection but required or necessary for Final Completion, notwithstanding their not being recorded during the inspection tour.

15.5.3 If the Contractor fails to complete all of the punchlist items within the period of time scheduled between Substantial and Final Completion then, upon *three (3) days'* written notice to the Contractor, the School District shall have the right (but not the obligation) to take over performance of such punchlist work and to charge the Contractor all costs thereof.

15.6 Final Payment. Pursuant to RCW 60.28, completion of the Contract Work shall occur when the School District's Board of Directors formally accepts the Project as complete ("Final Acceptance"). The School District shall not be required to accept the Project as complete before required occupancy permits have been issued and the Contractor completes the Work and submits the items listed below to the School District. Final Payment shall not become due until after Final Acceptance.

- .1 An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the School District or its property might in any way be responsible or encumbered, have been paid or otherwise satisfied,
- .2 consent of surety to final payment,
- .3 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least *thirty (30) days'* prior written notice has been given to the School District,
- .4 a written statement that the Contractor knows of no substantial reason why the insurance will not be renewable,
- .5 other data establishing that all Subcontractors, material suppliers, and laborers have been paid,

.6 pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from the Contractor and from each Subcontractor certified by the Industrial Statistician of the Department of Labor and Industries, with the fees paid by the Contractor or Subcontractor,

.7 a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to the Project (including, without limitation, city/county building departments, health districts and utility districts; attach a copy of each of these closed or signed-off permits),

.8 pursuant to RCW 60.28.021, certificates from the Department of Revenue and the Department of Labor and Industries,

.9 pursuant to RCW 50.24, a certificate from the Department of Employment Security,

.10 all warranties, guarantees, certificates, spare parts, specified excess material, and other documents or items required by the Contract Documents, and

.11 a hard copy of as-built drawings and specifications, delivered in a clear, clean and legible condition.

If any Subcontractor of any tier refuses to furnish a release or waiver required by the School District, the School District may retain in the fund, account, or escrow funds such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the School District all money that the School District may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

Final payment shall be made pursuant to RCW 60.28 after the Contractor has properly submitted certificates from the Department of Revenue, the Department of Labor and Industries and, pursuant to RCW 50.24, a certificate from the Department of Employment Security.

15.7 Waivers.

15.7.1 Final Payment to Contractor. Acceptance of final payment by the Contractor shall constitute a waiver of Claims except those previously made in writing and identified in writing as unsettled on the final Application for Payment.

15.7.2 Change Orders. The execution of a Change Order shall constitute a waiver of Claims by the Contractor arising out of the Work to be performed or

deleted pursuant to the Change Order, except as specifically described in the Change Order. If the Contractor adds to a Change Order, a Construction Change Directive, or any other document a reservation of rights that has not been initialed by the School District, any amounts previously agreed shall be considered disputed and not yet payable unless the costs are re-negotiated or the reservation is withdrawn or changed in a manner satisfactory to and initialed by the School District. If the School District makes payment for a Change Order or an Application for Payment that contains a reservation of rights not initialed by the School District to indicate agreement with the reservation, and if the Contractor negotiates the check for such payment, then the reservation of rights shall be deemed waived, withdrawn, and of no effect.

15.7.3 Failure to Exercise. The School District's failure to exercise any of its rights under the Contract shall not constitute a waiver of any past, present, or future right or remedy. Any waiver by the School District of any right or remedy under the Contract must be in writing and shall apply only to the right or remedy specified.

15.8 Retainage.

15.8.1 Single Payment. If a single payment, rather than progress payments, is to be made to the Contractor, there will be no retainage withheld.

15.8.2 Progress Payments. If progress payments are to be made to the Contractor:

.1 Pursuant to RCW 60.28, the School District will reserve 5% from the moneys the Contractor earns on estimates during the progress of the Work, to be retained as a trust fund for the protection and payment of the claims of any person arising under the Agreement and the state with respect to taxes, fees, and penalties that may be due from the Contractor.

.2 The money reserved may, at the option of the Contractor, be (1) retained in a fund by the School District until *forty-five (45) days* following Final Acceptance; or (2) deposited by the School District in an interest-bearing account, and not subject to withdrawal until *forty-five (45) days* following Final Acceptance; or (3) placed in escrow with a bank or trust company until *forty-five (45) days* following Final Acceptance.

.3 If money is retained from the Contractor, it may retain payment of not more than 5% from the moneys earned by any Subcontractor, provided that the Contractor pays interest to the Subcontractor at the same interest rate it receives from its reserved funds.

15.9 Warranty of Title. The Contractor warrants and guarantees that title to Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the School District no later than the time of payment, free and clear of liens.

**ARTICLE 16
PROTECTION OF PERSONS AND PROPERTY**

16.1 The Contractor shall be solely responsible for, and neither the School District nor the A/E shall have responsibility for, all aspects of safety related to this Contract and the Work, including initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein; and (3) other property at the site or adjacent thereto. The Contractor shall maintain the site and perform the Work in a manner that meets all statutory and common law requirements for the provision of a safe place to work. This requirement shall apply continuously and not be limited to working hours.

16.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by the Contractor, a Subcontractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 10.13.

16.3 The Contractor shall bear the risk of any loss, damage or destruction of its own property, including without limitation its tools, trailers and equipment, whether rented or owned, to the extent that they will not be incorporated in the Work. Any insurance provided by the School District will not cover any such loss, damage or destruction.

**ARTICLE 17
INSURANCE AND BONDS**

17.1 Contractor's Liability Insurance.

17.1.1 The Contractor shall purchase from and maintain during the life of this Agreement, at its own cost in a company or companies admitted to do business in the State of Washington, possessing a Best's policy holder's rating of A- or better and a financial rating of no less than VII, and reasonably acceptable to the School District, an occurrence-based Commercial General Liability Insurance

Policy which shall provide bodily injury and property damage liability on the Contractor's operations, including its Subcontractors of any tier; owned, non-owned and hired vehicles; on work the Contractor may subcontract or sublet to others; and on the indemnity provisions of this Agreement. This insurance will name the School District and its employees as additional insureds for Work performed under this Agreement. The Contractor's policy shall be designated primary coverage for both defense and indemnity, and any School District policies excess. Such limits of liability insurance shall have per project general aggregate provisions and shall not be less than the following:

.1 \$1,000,000 Combined Single Limit for both bodily injury and property damage liability per occurrence and \$2,000,000 general aggregate;

.2 \$1,000,000 per accident for bodily injury liability including sickness, disease or death and property damage liability because of damage to or destruction of property of others, including loss of use thereof arising out of the operation of automobiles.

.3 \$1,000,000 for personal injury liability for damages that are sustained by (1) a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person.

.4 \$1,000,000 for claims involving blanket contractual liability insurance including those applicable to the Contractor's obligations under Section 10.13.

.5 In addition, the Contractor shall maintain a true umbrella policy that provides excess limits over the primary layer, in an amount not less than \$5,000,000.

17.1.2 The insurance described above shall include coverage for underground, collapse and explosion exposures.

17.1.3 In addition, the Contractor shall purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit and other similar employee benefit acts in the State statutory amount and Employer's Liability with coverage of at least \$500,000.

17.1.4 Before commencing the Work, and, in any event, within *ten (10) days* after the School District has issued its notice of intent to award a contract, the Contractor shall furnish the School District with Certificates of Insurance and endorsements as evidence of all insurance required by the Contract Documents. All policies and certificates must be signed copies and shall contain provision that coverages afforded under the

policies cannot be materially altered, allowed to expire or canceled without first giving *thirty (30) days* written notice by certified mail to the School District. The Contractor shall furnish to the School District copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage of limits.

17.1.5 Coverage shall be maintained without interruption from the date of commencement of the Work until the date of Final Acceptance, except for any coverage required to be maintained after Final Acceptance. Completed operations coverage shall remain in force for *three (3) years* after Final Acceptance.

17.1.6 If the School District is damaged by the failure of the Contractor to maintain any of the above insurance or to so notify the School District, than the Contractor shall bear all costs properly attributable thereto. THE SCHOOL DISTRICT MAY WITHHOLD PAYMENT PENDING RECEIPT OF ALL CERTIFICATES OF INSURANCE. Failure to withhold payment shall not constitute a waiver.

17.1.7 The School District's specification or approval of any insurance coverage or amount shall not relieve or decrease the liability of the Contractor under the Contract Documents or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the Contract, the indemnification provision, or applicable law. The Contractor may, at its expense, purchase different or additional coverage.

17.2 Property Insurance.

17.2.1 The requirements for property insurance are addressed in Article 6 above.

17.2.2 The School District and Contractor waive all rights against (1) each other and any of their Subcontractors of any tier, agents and employees each of the other, and (2) any A/E, A/E's consultants, separate contractors described in Article 12, if any, and any of their subcontractors of any tier, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Article 6 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the School District as fiduciary. The School District does not waive subrogation rights to the extent of its property insurance on structures or portions of structures that do not comprise the Work. The policies shall provide such waivers of subrogation by endorsement or otherwise.

17.3 Payment and Performance Bonds.

17.3.1 The Contractor shall secure payment and performance bonds in the full amount of the Contract Sum plus sales tax, pursuant to RCW 39.08, from a surety company or companies licensed to do business in the

State of Washington. The Contractor shall deliver evidence of its bondability to the School District within *ten (10) days* of bid opening. Within *ten (10) days* of entering into the Agreement, the Contractor shall deliver two copies of the bonds to the School District and one copy to the A/E. THE SCHOOL DISTRICT MAY DECLINE TO ENTER INTO THE CONTRACT IF EVIDENCE OF BONDABILITY IS NOT RECEIVED, AND THE SCHOOL DISTRICT MAY WITHHOLD ITS NOTICE TO PROCEED AND/OR WITHHOLD PAYMENT TO THE CONTRACTOR UNTIL SUCH BONDS ARE RECEIVED.

ARTICLE 18 CORRECTION OF WORK

18.1 The Contractor shall promptly and within no more than *fourteen (14) days* of notice from the School District or A/E correct Work rejected or failing to conform to the requirements of the Contract Documents at any time through a period of *one (1) year* from the date of Substantial Completion of the Agreement or by terms of a longer manufacturer's warranty or an applicable special warranty required by the Contract Documents. The provisions of this Article apply to Work done by Subcontractors of any tier as well as to Work done by direct employees of the Contractor.

18.2 If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents or fails to carry out the Work in accordance with the Contract Documents, the School District, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated, and the School District may take over and correct some or all of the non-conforming Work at the Contractor's cost.

18.3 Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents. Establishment of the time period of *one (1) year* as described above relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

ARTICLE 19 TERMINATION OF THE CONTRACT

19.1 **Termination for Cause by Contractor.** If the School District fails to make payment of undisputed amounts for a period of *sixty (60) days* through no fault of the Contractor, the Contractor may, upon *seven (7) additional days'* written notice to the School District, terminate the Agreement and recover from the School District payment for all Work properly executed and for

proven loss with respect to materials, equipment, tools, and construction equipment and machinery.

19.2 Termination for Cause by School District. The School District may, upon *five (5) days'* written notice to the Contractor, terminate (without prejudice to any right or remedy of the School District) the whole or any portion of the Work for cause, including but not limited to the following circumstances:

- .1 the Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time;
- .2 the Contractor is in material default of or materially breaches any provisions of this Agreement;
- .3 the Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency;
- .4 the Contractor fails to supply a sufficient number of properly skilled workers or proper materials;
- .5 the Contractor fails to make prompt payment to Subcontractors or for materials or labor;
- .6 the Contractor materially disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or
- .7 the Contractor fails to comply with the provisions of RCW 28A.400.330 by permitting a worker on the Project who has been convicted of or pled guilty to a felony crime involving children as described in Section 10.4.

19.3 Termination for Convenience by School District. The School District may, at any time upon *five (5) days'* written notice to the Contractor, terminate (without prejudice to any right or remedy of the School District) the whole or any portion of the Work for the convenience of the School District. The School District shall be liable to Contractor only for those costs reimbursable to Contractor in accordance with the following.

- .1 The amount due under Articles 4 of this Agreement for the performance of the Work terminated through the date of termination;
- .2 Other pre-approved costs, consistent with Section 13.2, necessary and reasonably incurred in connection with the termination of Work.

The total sum to be paid to the Contractor under this Section 19.3 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made.

19.4 Effects of Termination.

19.4.1 Unless the School District directs otherwise, after receipt of a notice of termination from the School District pursuant to Sections 19.2 or 19.3, the Contractor shall promptly:

- .1 stop Work under the Agreement on the date and as specified in the notice of termination;
- .2 place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of any portion of the Work that is not terminated;
- .3 procure cancellation of all orders and subcontracts, upon terms acceptable to the School District, to the extent that they relate to the performance of terminated Work;
- .4 assign to the School District all of the right, title and interest of the Contractor under all orders and subcontracts, in which case the School District shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 with the School District's approval, settle outstanding liabilities and claims arising out of the termination of orders and subcontracts not assigned to the School District;
- .6 transfer title and deliver to the entity or entities designated by the School District the fabricated or unfabricated parts, Work in process or completed, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed information and other property related to the Work;
- .7 use its best efforts to sell any property of the types referred to in Section 19.4.1.6. The Contractor may acquire any such property under the conditions prescribed by and at a price or prices approved by the School District, and the proceeds of any such transfer or disposition may be applied to reduce any payments to be made by the School District to the Contractor;
- .8 take such action as may be necessary or as directed by the School District to preserve and protect the Work and property related to this Project in the possession of the Contractor in which the School District has an interest; and

.9 continue performance only to the extent not terminated.

19.4.2 The Contractor shall refund to the School District any amounts the School District paid to the Contractor in excess of costs reimbursable under Section 19.3.

19.4.3 The damages and relief from termination specifically provided for in Article 19 shall be the Contractor's sole entitlement in the event of termination. In the event that the School District improperly terminates the Contractor for cause, the termination will automatically convert to a termination for convenience under Section 19.3.

ARTICLE 20 MISCELLANEOUS PROVISIONS

20.1 Applicable Law. The Agreement shall be governed by the laws of the State of Washington, without regard to its choice of law provisions.

20.2 Statutes. The Contractor shall abide by the provisions of all applicable Washington statutes. The statutes referenced in the Contract Documents are not meant to be a complete list and should not be relied upon as such.

20.3 Contractor Registration and Related Requirements. Pursuant to RCW 39.06, the Contractor shall be registered and licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27. The Contractor shall: (1) have a current state unified business identifier number; (2) have industrial insurance coverage for the Contractor's employees working in Washington as required in Title 51 RCW; (3) have an Employment Security Department number as required in Title 50 RCW; (4) have a state excise tax registration number as required in Title 82 RCW; and (5) not be disqualified from bidding on any public works contract under RCW 39.06.010 (unregistered or unlicensed contractors) or RCW 39.12.065(3) (prevailing wage violations).

20.4 Law Against Discrimination. The Contractor shall comply with pertinent statutory provisions related to RCW 49.60.

20.5 Provisions for Aged and Handicapped Persons. The Contractor shall comply with pertinent statutory provisions related to RCW 70.92.

20.6 Safety Standards. The Contractor shall comply with pertinent provisions of Chapter 296-155 WAC, "Safety Standards for Construction Work," including without limitation the trench safety requirements.

20.7 Unemployment Compensation. Pursuant to RCW 50.24 in general and RCW 50.24.130 in particular, the Contractor shall pay contributions for wages

for services performed under this Agreement or arrange for a bond acceptable to the commissioner.

20.8 Drug-Free Workplace. The Contractor and all Subcontractors shall fully comply with all applicable federal, state, and local laws and regulations regarding drug-free workplace. Any person not fit for duty for any reason, including the use of alcohol, controlled substances, or drugs, shall immediately be removed from the Work.

20.9 Tobacco-Free Environment. Smoking or use of any kind of pipe, cigar, cigarette, e-cigarette, or any other smoking equipment, material, or tobacco product is prohibited on all School District property.

20.10 Asbestos Removal. To the extent this Project involves asbestos removal, the Contractor shall comply with RCW 49.26 and any provisions of the Washington Administrative Code promulgated thereunder.

20.11 Assignment. The Contractor shall not let, assign, or transfer this Agreement, or any interest in it or part of it including Claims hereunder, without the written consent of the School District.

20.12 Complete Agreement. This Contract is the complete, integrated, and exclusive statement of the contract between the Contractor and School District with respect to the Work and any related services to be furnished pursuant to this Contract. It supersedes and merges with any prior or contemporaneous agreements, commitments, representations, and negotiations, whether oral or written, including but not limited to proposals, invoices, and terms and conditions of the Contractor, whether or not attached to this Contract. The Contractor acknowledges that it has not been induced to enter into this Contract by any representations or promises not specifically stated in this Contract. No addition to or modification of this Contract or any waiver shall be binding on either party unless explicitly made in writing and executed by the Contractor and the School District.

End of Section