



AIA[®] Document A104[™] – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the ____ day of _____ in the year Two Thousand Twenty-
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Longview School District No. 122
2715 Lilac Street
Longview, Washington 98632

and the Contractor:
(Name, legal status, address and other information)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

for the following Project:
(Name, location and detailed description)

HVAC Improvements Project 1A: Cascade Middle School, Columbia Heights Elementary School, and Northlake Elementary School
2821 Parkview Drive (Cascade)
2820 Parkview Drive (Columbia Heights)
2210 Olympia Way (Northlake)
Longview, Washington 98632

The Architect:
(Name, legal status, address and other information)

Integrus Architecture
117 South Main Street, Suite 100
Seattle, Washington 98104

The Owner and Contractor agree as follows.

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ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐ The date of this Agreement.

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☒ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

☐ Not later than () calendar days from the date of commencement of the Work.

☒ By the following date: The Contractor shall achieve Substantial Completion of the entire Work no later than August 18, 2023, and shall achieve Final Completion within thirty days of achieving Substantial Completion.

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

☒ Stipulated Sum, in accordance with Section 3.2 below

☐ Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

☐ Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be (\$—), _____ Dollars (\$ _____), subject to additions and deductions as provided in the Contract Documents. This amount does not include Washington State or local sales tax.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.2.2 Unit prices, if any, are as follows; these descriptions are summary in nature, and the scope of this work is described in the Contract Documents:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 3.2.3 Allowances, if any, included in the stipulated sum:

(Identify each allowance.)

Item	Price
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~~§ 3.3 Cost of the Work Plus Contractor's Fee~~

~~§ 3.3.1~~ The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

~~§ 3.3.2~~ The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

~~§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price~~

~~§ 3.4.1~~ The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

~~§ 3.4.2~~ The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

~~§ 3.4.3 Guaranteed Maximum Price~~

~~§ 3.4.3.1~~ The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. *(Insert specific provisions if the Contractor is to participate in any savings.)*

~~§ 3.4.3.2~~ The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.4.3.3 Unit Prices, if any:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item

Price

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

§ 3.4.3.6 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

§ 3.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

The Owner will assess, and the Contractor will be responsible for, liquidated damages in the amount of \$500 per day for each calendar day beyond the Contract Time that Substantial Completion of each site is not timely achieved. This liquidated damage amount shall apply separately and independently for each site, so if two or more sites are not timely complete the liquidated damage amount will be assessed for each site.

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor to the Architect prior to commencement of the Work. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Owner and the Architect may reasonably require. The Schedule of Values shall allocate, and list as separate line items, at least 3% of the Contract Sum to the Work to be completed between Substantial Completion and Final Completion. One half of this amount shall be allocated for punch list work; the other half shall be for providing approved operations and maintenance data, delivery of record drawings, warranties and bonds, extra stock, and all other documentation, work, or items necessary to achieve Final Completion. None of these percentages is the statutory retainage described in Section 4.1.4 or any other retainage but rather requires the Contractor to recognize that the Contractor and its Subcontractors will expend significant costs in advancing the Work from Substantial Completion to Final Completion. These amounts are not earned until Final Completion is accomplished.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows: month.

§ 4.1.2.1 **Draft Application.** Within the first three days of each month, the Contractor shall submit to the Architect a report on the current progress of the Work as compared to the Contractor's CPM Construction Schedule, an updated Construction Schedule, and a draft, itemized application for payment for Work performed during the prior calendar month on a State of Washington Application for Payment on Contract form approved by the Owner. This shall not constitute a payment request. The Contractor, the Architect and the Owner shall meet within the next ten days and confer regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The

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Architect or the Owner may request the Contractor to provide data substantiating the Contractor's right to payment as the Owner or the Architect 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.

§ 4.1.2.2 Payment Request. Within ten days after the Contractor and the Owner have met and conferred regarding the draft application, and the Contractor has furnished all data requested, the Contractor may 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 Owner. Among other things, the Application shall state that prevailing wages have been paid in accordance with the prefiled statement(s) of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractors from the Owner's prior payments have been made. The submission of this Application constitutes a certification that the Work is current on the Progress Schedule, unless otherwise noted on the Application.

§ 4.1.2.3 Disputed Amounts. 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, within the same time periods, submit to the Owner and the Architect 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.

§ 4.1.2.4 Payments to Subcontractors. No payment request shall include amounts for a Subcontractor that the Contractor does not intend to pay to the Subcontractor. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor determines that part or all of the payment otherwise due to the Subcontractor will be withheld from the Subcontractor for unsatisfactory performance, the Contractor may withhold the amount as allowed under its subcontract, but it shall give the Subcontractor, the Owner and the Architect written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor payment, and pay the Subcontractor within eight working days after the Subcontractor satisfactorily completes the remedial action identified in the notice.

§ 4.1.3 Provided that an approved Application for Payment is received by the Architect ~~not later than the day of a month,~~ and the Owner as described above, the Owner shall make payment of the certified amount to the Contractor not later than ~~the day of the month.~~ If an ~~thirty~~ days after the Architect certifies the Application. If an approved Application for Payment is received by the Architect and the Owner after the date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect ~~receives the~~ certifies the approved Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 For each progress payment ~~made prior to Substantial Completion of the Work, the made, the~~ Owner may withhold retainage from the payment otherwise due as follows:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

Five percent (5%) retainage will be held and applied by the Owner as a trust fund in a manner required by RCW 60.28, "Lien for Labor, Materials, Taxes on Public Works." Release of the retainage will be processed in the ordinary course of business upon the expiration of sixty days following Final Acceptance of the Work by the Owner provided that no notice of lien shall have been given as provided in RCW 60.28, that no claims have been brought to the attention of the Owner and that the Owner has no known claims under this Contract; and provided further that release of retention has been duly authorized by the State. The following items must be obtained prior to release of retainage: pursuant to RCW 60.28, a certificate from the Department of Revenue; pursuant to RCW 50.24, "Contributions by Employers," a certificate from the Department of Employment Security; and a certificate from the Department of Labor and Industries.

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

%—Payments due and unpaid under the Contract Documents shall bear interest as specified in RCW 39.76, not to exceed Bank of America prime rate plus two percent.

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2** ~~the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and~~
- .3** ~~a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.~~ 15.7.1, Final Acceptance has occurred, and the requirements of Article 15 are completed.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

The retainage will be paid to the Contractor in accordance with statutory requirements.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 21.6 of this Agreement

☐ Litigation in a court of competent jurisdiction

☒ Other *(Specify)*

Litigation in Cowlitz County Superior Court

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed revised AIA Document A104™-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

~~**§ 6.1.2** AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

~~*(Insert the date of the E203-2013 incorporated into this Agreement.)*~~

~~**§ 6.1.3** The Supplementary and other Conditions of the Contract:~~ **§ 6.1.3** The Project Manual dated 2022 and all documents therein:

Document

Title

Date

Pages

See the Table of Contents in the Project Manual.

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Further, this contract is funded through the U.S. Department of Education's "Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund" (ESSER Fund). See Article 19 and the attached "§5.5 Contract provisions and related matters" for applicable Federal ESSER terms and conditions.

§ 6.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

See the Table of Specifications in the Project Manual.

Section	Title	Date	Pages
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§ 6.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

See the Index of Drawings in the Project Manual.

Number	Title	Date
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§ 6.1.6 The Addenda, if any:

Number	Date	Pages
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Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits:

(Check all boxes that apply.)

☐ ~~Exhibit A, Determination of the Cost of the Work.~~

☐ ~~AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204 2017 incorporated into this Agreement.)~~

☐ ~~The Sustainability Plan:~~

Title	Date	Pages
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☐ ~~Supplementary and other Conditions of the Contract:~~

Document	Title	Date	Pages
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.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents.)

Department of Labor and Industries Prevailing Wage Rates.

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ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. 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 shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of a conflict or discrepancy among or in the Contract Documents, interpretation shall be governed in the following priority, with an Addendum to a Contract Document having precedence over the original document and later Addenda having precedence over earlier:

- .1 Agreement (revised A104-2017) (written amendments having precedence)
- .2 Any Special Conditions
- .3 Any Supplementary Conditions
- .4 Specifications
- .5 Drawings (large-scale having precedence over small-scale, and written or computed dimensions having precedence over scaled dimensions)
- .6 Material and systems schedules.

In the event that Work is shown on drawings or described in schedules but not described in specifications, the Work as described or shown shall be provided at no change in the Contract Sum or Contract Time despite not being described in specifications.

§ 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other 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.

§ 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Subject to the rights of the Owner, the Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized-granted a limited license to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors,

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Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, an agreement for the use of such building information model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice or a Claim to the other party, such notice or Claim shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic ~~transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:~~ transmission. (If other than in accordance with AIA Document E203–2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 7.9.2 Notice of Claims and Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of ~~delivery~~ of delivery, or by email if the email is clearly marked in the regarding line as a Notice of Claim or as a Claim.

§ 7.10 Relationship of the Parties

~~Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the~~ The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

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~~§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.~~

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site except to the extent that the Contract Documents otherwise require the Contractor to provide and/or maintain survey information. The Owner is the person or entity identified as such in the Agreement and means the School District's Board of Directors. The "Owner" does not include teachers, the school principal, staff, custodians, maintenance or safety workers, or other Owner employees or consultants that may contact the Contractor or be present at the Project sites. A WAIVER OF ANY PROVISION OF THE CONTRACT DOCUMENTS CAN ONLY BE MADE IN WRITING AND BY THE SCHOOL DISTRICT'S BOARD OF DIRECTORS. No other person is authorized to grant such waivers on behalf of the Owner.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required to be secured by the Contractor under Section 9.6.1, the Owner shall secure and pay for other necessary the necessary environmental approvals, easements, assessments, and related charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to perform Work in a good and workmanlike manner, or to correct Work which is not in accordance with the requirements of the Contract Documents, or materially or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order, signed personally or by an agent specifically so empowered by the Owner, to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or fails or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, or fails to perform a provision of the Contract, the Owner may, after five days' written notice to the Contractor and without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the The Owner or Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor represents and acknowledges that the Contract Sum is reasonable compensation for all the Work, that it is performing with its own forces any percentage of Work specified in the Contract Documents or Bidding Documents (not including general conditions), that the Contract Time is adequate for the performance of the Work, 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 conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, disposal, handling and storage of materials,

equipment and other items; availability and quality of labor, water, electric power and utilities; normal climatic conditions and seasons; physical conditions at the Project site and the surrounding locality; and equipment and facilities needed preliminary to and at all times during the performance of the Work.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Drawings, Specifications, and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of and verify any existing conditions related to that portion of the Work before commencing activities affected thereby and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner and Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. If the Contractor believes that additional cost or time is involved because of any design errors or omissions or inconsistencies noted by the Contractor during this review, or clarifications or instructions issued by the Owner or the Architect in response to the Contractor's notices or requests for information, the Contractor shall make Claims as provided herein.

§ 9.1.3 The Contractor shall comply with but is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report in writing to the Owner and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor's designated representative shall have express authority to bind the Contractor with respect to all matters under this Contract. The Contractor will provide a project superintendent who will be on site continuously while work is being performed during the duration of the Project. The Owner shall have the right to approve the superintendent and project manager as well as any field engineers. The Contractor shall 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, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. The Contractor shall be 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 on behalf of the Owner or to act as or be an agent or employee of the Owner. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall be fully and solely responsible for the jobsite safety thereof unless the Contractor gives timely written notice to the Owner and Architect that such means, methods, techniques, sequences or procedures may not be safe.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors of any tier and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.2.3 The Contractor shall take care that the new Work covered by this Agreement properly interfaces and is compatible with the existing structure. The Contractor should perform or direct performance of whatever reasonable on-site investigation may be necessary to determine the condition of the existing structure so that the Work which will result from this Agreement is compatible and interfaces with the as-built conditions of the existing structure.

§ 9.2.4 The Contractor shall perform such detailed examination, inspection and quality surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Contract Documents. The Contractor shall plan and lay out all Work in advance of operations so as to coordinate all Work without delay or revision. The Contractor shall be responsible for coordination of all the Drawings related to specific locations. The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Under no conditions shall a section of Work proceed prior to preparatory Work having been completed and made satisfactory to receive the related Work. The Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory Work that has been executed to receive its Work and has notified the Contractor (who shall notify the Owner and Architect in writing) of any defects

or imperfections in preparatory Work that will, in any way, affect satisfactory completion of the Work. The lack of such notification shall constitute an acceptance of preparatory Work, and a waiver of any later Claim or defect therein.

§ 9.2.5 Any investigations of hidden or subsurface conditions have been made for design purposes. The results of these investigations may be included in the Project Manual or otherwise available for the convenience of bidders but are not a part of the Contract Documents. While the Contractor may consider such investigation results, there is no guarantee, express or implied, that the conditions indicated are representative of those existing throughout the sites or that unforeseen developments may not occur. The Contractor is solely responsible for reasonably interpreting the information and extrapolating beyond the testing location, including each individual boring, test pit or other location.

§ 9.2.6 The Contractor shall do no Work without applicable Drawings, Specifications, or written modifications or, where required, Shop Drawings, Product Data, or Samples, unless instructed to do so in writing by the Architect and the Owner.

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 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.

§ 9.3.3 After the Contract has been executed, the Owner and Architect may consider a written request for the substitution of material or products in place of those specified in the Contract Documents only under exceptional circumstances described in, and following the procedures of, the Contract Documents. The written request must include the specifications for the material or product and any proposed change in the Contract Sum or Contract Time. The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification. By requesting a substitution, the Contractor represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified (or if not equal or better in all respects, the Contractor shall identify such deficiencies), that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs of any kind, has been presented, that it waives any other known or unknown Claim for an increase in Contract Sum or Contract Time resulting from the substitution, that it has coordinated with affected Subcontractors and the proposed substitution will not impact other parts of the Work, and that it will coordinate the installation of the substitute if accepted and make all associated changes in the Work.

§ 9.3.4 The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

§ 9.3.5 The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. At no change to the Contract Sum or Contract Time, the Owner may provide written notice requiring the Contractor to remove from the Work any employee or other person carrying out the Work that the Owner considers objectionable. Pursuant to Washington law, a person shall be unfit if he or she is a registered sex offender or 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.32), 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. The Contractor shall not permit any contact between children at the Project site and any such employee. Failure to comply with these requirements is grounds for immediate termination of the Agreement for cause.

§ 9.3.6 Apprenticeship.

§ 9.3.6.1 Pursuant to RCW 39.04.320, no less than fifteen percent (15%) of the Labor Hours shall be performed by apprentices, unless a different amount is permitted or otherwise required by law.

§ 9.3.6.2 Apprenticeship hours shall be performed by participants in training programs approved by the Washington State Apprenticeship Council.

§ 9.3.6.3 "Labor Hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor hours" includes hours performed by workers employed by the Contractor and all Subcontractors working on the Project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements of RCW 39.12.

§ 9.3.6.4 During the term of this Contract, the Owner may adjust the apprenticeship labor hour requirement upon its finding or determination that includes:

- (1) A demonstration of lack of availability of apprentices in the geographic area of the Project;
- (2) A disproportionately high ratio of material costs to labor hours that does not make feasible the required minimum levels of apprenticeship participation;
- (3) Demonstration by participating contractors of a good faith effort to comply with the requirements of RCW 39.04.300, 39.04.310 and 39.04.320;
- (4) Small contractors or subcontractors (e.g., small or emerging businesses) would be forced to displace regularly employed members of their workforce;
- (5) The reasonable and necessary requirements of the Contract render apprentice utilization infeasible at the required level (e.g., the number of skilled workers required and/or limitations on the time available to perform the Work preclude utilization of apprentices); or
- (6) Other criteria the Owner deems appropriate, which are subject to review by the office of the Governor.

§ 9.3.6.5 The Contractor shall report apprentice participation to the Owner at least monthly, or directly to L&I, on forms provided or approved by the Owner. In addition, copies of monthly certified payroll records may be requested to document the goal including copies with any birthdates and social security numbers (and any other sensitive personal information) redacted so as such copies may be used to respond to any public records requests. The reports will include:

- (1) The name of the Project;
- (2) The dollar value of the Project;
- (3) The date of the Contractor's notice to proceed;
- (4) The name of each apprentice and apprentice registration number;
- (5) The number of apprentices and labor hours worked by them, categorized by trade or craft;
- (6) The number of journey level workers and labor hours worked by them, categorized by trade or craft; and
- (7) The number, type, and rationale for the exceptions granted.

§ 9.3.6.6 To comply with the changes to RCW 39.04.320 that are effective as of January 1, 2020, the following provisions also apply:

- (1) This Section 9.3.6 specifies that the 39.04.320 apprenticeship goals should be met;
- (2) The Owner shall provide a monetary incentive of One Thousand Dollars for meeting these goals;
- (3) The Contractor shall pay a monetary penalty of One Thousand Dollars for not meeting these goals;
- (4) The Owner is not in a position within existing resources to identify an expected cost value to be included in the bid associated with meeting these goals; and
- (5) Contractor and its Subcontractors are not required to exceed these apprenticeship utilization requirements.

§ 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will be performed in a skillful and workmanlike manner, that the Contractor will exercise reasonable care in performing the Work, that the Work will strictly be completed in accordance with Drawings and Specifications, and that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed or supervised by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage, but does not exclude any implied warranty that may be available by applicable law. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance

with Section 15.6.3. If requested by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor is not relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents. Warranties in the Contract Documents shall survive Final Completion and Final Acceptance. The Contractor shall collect, assign, and deliver to the Owner any specific written guarantees and warranties given by others. Prior to furnishing the Owner with written guarantees and warranties, the Contractor shall provide copies to the Owner and Architect for review and approval.

§ 9.5 Taxes

The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Washington State sales tax will be paid by the Owner to the Contractor. A proportionate amount of the sales tax, in accordance with the sales tax rate at the project site, will be added to each payment voucher issued to the Contractor. All other taxes shall be paid by the Contractor.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, Owner will pay only for any permits and governmental fees explicitly listed as the Owner's responsibility in the Contract Documents, and the Contractor shall secure and pay for all as a part of the Contract Sum all other governmental fees and permits, including without limitation all subcontractor permits and fees including plan check fees for deferred submittals, application fees and review fees for any and all shop drawings or bidder designed systems, any inspection fees not covered by the initial building permit fee, including reinspection fees, mechanical and electrical permits, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor will be responsible for, and will not be reimbursed for, license fees or any renewals or penalties. The Contractor shall coordinate and schedule all Work with permitting agencies and utility companies necessary for completion of the Work.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall promptly notify the Architect and Owner if the Drawings and Specifications are observed by the Contractor to be at variance therewith. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual, reasonable costs and the allowances under Section 3.2.3, except where the allowance is based upon a unit price specified in the Agreement in which case the unit prices shall be used in lieu of actual costs. Allowances are defined in the Contract Documents due to the uncertainty in the scope, price and quantity of the Allowance items at the time the Contract was executed. The Contractor must provide the Owner with written notice of its intent to exceed an allowance amount, with estimates and justification (providing the Owner with the opportunity to approve or reject the excess costs) before exceeding an allowance amount.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor will be responsible for planning, scheduling, managing and reporting the progress of the Work in accordance with all of the specific methods and submittals described in the Contract Documents. The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The Work ("construction schedule"), which shall be consistent with the milestones set forth in the Contract Documents. Neither the Owner nor the Architect have responsibility for the substance of the Contractor's construction schedule. The construction schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and

Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall perform the Work, and shall attain completion of the Work, in accordance with the most recent construction schedule submitted to the Owner and Architect and shall promptly notify the Owner and Architect of any deviations from the construction schedule.

§ 9.8.1.1 The Contractor's construction schedule shall be prepared by a competent scheduler, and used by the Contractor to plan, prosecute, and coordinate the Work in an orderly and expeditious manner. The construction schedule shall be submitted as both a paper copy and in native electronic format, any of which must include data files that can be loaded onto the Owner's copy of the scheduling software and be capable of being printed. The Contractor's construction schedule may be used by the Owner and the Architect to evaluate progress and status at the various stages of the Project, allocate funds consistent with the Schedule of Values, determine the impact of any changes to the Contract, and establish the basis for progress payments. Such review shall not constitute an approval or acceptance of the Contractor's construction means, methods or sequencing, or its ability to complete the Work in a timely manner.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect. The Contractor shall not be entitled to any adjustment in the Contract Time, the Contractor's construction schedule, or the Contract Sum, or to any additional payment of any sort by reason of the loss or use of any float time, including time between the Contractor's anticipated completion date and end of the Contract Time, whether or not the float time is described as such on the Contractor's construction schedule. To ensure that the Owner is substantively aware and effectively able to mitigate any Project delays, the Contractor shall not be entitled to any extension of time, compensable or otherwise, for any delay that occurred during any time the Contractor has not timely submitted an updated construction schedule as required by the Contract Documents.

§ 9.8.3 The Contractor shall prepare and submit at the weekly Project status meetings three-week look-ahead schedules that relate to the overall construction schedule. At each weekly meeting with the Owner, the Contractor shall also submit (1) a short interval schedule in bar chart form showing the activities planned for the next week, and (2) a report showing actual starts and finishes from planned progress from the previous week.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents be responsible for tracking the status of submittals. The Contractor shall review for compliance with the Contract Documents, note any deviations from the Contract Documents, and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work. Upon completion of the Work, the Contractor shall certify that the record documents reflect complete and accurate "as-built" conditions and shall deliver the documents as well as the approved permit set of plans in good condition to the Architect for submittal to the Owner in accordance with the provisions of the Contract Documents. Satisfactory maintenance of up-to-date record drawings will be a requirement for approval of progress payments.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and/or the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the

limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project. The Contractor shall only use waste receptacles provided by the Contractor and will appropriately dispose of any waste material off site.

§ 9.13 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall law and subject to the conditions of this Section 9.15, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them ("Indemnified Parties") from and against all claims, damages, losses and expenses, direct and indirect, or consequential, including but not limited to attorneys' fees, fees and costs incurred on such claims and in proving the right to indemnification, arising out of or resulting from or connected to 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 ("Indemnitor"), provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, Indemnitor, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.1.1 The Contractor shall fully defend, indemnify, and hold harmless the Indemnified Parties for the sole negligence of the Indemnitor.

§ 9.15.1.2 If such claims are caused by or are resulting from the sole negligence of the Indemnified Parties, their agents or employees, then the Contractor shall have no duty to defend, indemnify, and hold harmless the Indemnified Parties.

§ 9.15.1.3 If such claims are caused by or are resulting from the concurrent negligence of (i) the Indemnified Parties or the Indemnified Parties' agents or employees, and (ii) the Contractor or the Contractor's agents or employees, then the

Contractor shall be obligated to defend, indemnify, and hold harmless the Indemnified only to the extent of the Indemnitor's negligence.

§ 9.15.1.4 The Contractor agrees to being added by the Owner or the Architect as a party to any arbitration or litigation with third parties in which the Owner or Architect alleges indemnification or contribution from the Contractor, any of its Subcontractors of any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The Contractor agrees that all of its Subcontractors of any tier shall, in their subcontracts, similarly stipulate; in the event any does not, the Contractor shall be liable in place of such Subcontractor(s) of any tier. To the extent any portion of this Section 9.15 is stricken by a court or arbitrator for any reason, all remaining provisions shall retain their vitality and effect.

§ 9.15.1.5 The obligations of the Contractor under this Section 9.15 shall not be construed to negate, abridge, or otherwise reduce any other right or obligations of indemnity which would otherwise exist as to any party or person described in this Section 9.15. To the extent the wording of this Section 9.15 would reduce or eliminate an available insurance coverage of the Contractor or the Owner, this Section 9.15 shall be considered modified to the extent that such insurance coverage is not affected.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, Subcontractor of any tier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or 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 Owner, the Architect, and their respective 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 OWNER PRIOR TO THE DATE FOR THE RECEIPT OF BIDS, OR THE CONTRACTOR WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY.

§ 9.16 Prevailing Wages.

§ 9.16.1 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. The schedule of the prevailing wage rates for the locality or localities where this contract will be performed is attached to the executed contract and made a part of the Contract Documents by reference as though fully set forth herein; if not attached, then the applicable prevailing wages are determined as of the Bid Date for the county in which the Project is located and are available at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. A copy is available for viewing at the Owner'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 applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the Contract Sum. It is the Contractor's responsibility to ensure that the correct prevailing wage rates be paid. The Contractor shall provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. Questions relating to prevailing wage data should be addressed to the Industrial Statistician upon request.

Mailing	Department of Labor and Industries
Address:	Prevailing Wage Office
	PO Box 44540
	Olympia, WA 98504
Telephone:	(360) 902-5335
Facsimile:	(360) 902-5300

§ 9.16.2 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 of the state, and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute.

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

§ 9.16.4 The Contractor shall comply with all applicable provisions of RCW 49.28 ("Hours of Labor").

§ 9.16.5 Prevailing wage rates shall be the maximum wage rate payable for any Change in the Work.

§ 9.17 PROJECT MANAGEMENT

§ 9.17.1 The Contractor shall employ competent, experienced managers, including a project manager, superintendent, foremen, and necessary assistants, who shall be present at the Project site during performance of the Work and until termination of the Contract in accordance with the Contract Documents or Substantial Completion is attained. Similarly, appropriate Subcontractor supervisory personnel (foreman level or above) shall also be present at the Project site whenever such Subcontractor is performing Work, whether before or after Substantial Completion.

§ 9.17.2 The Contractor's project manager, superintendent, and foremen shall be employees of the Contractor. The project manager, superintendent and foremen shall represent the Contractor, and communications given to any of them shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications may be confirmed on request. The Contractor's foremen shall not be employed on any other project during the course of the Work.

§ 9.17.3 The Contractor, within seven days after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent and project manager. The Owner or Architect may reply within a reasonable time to the Contractor stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or project manager or (2) that the Architect or Owner requires additional time to review. Failure of the Owner or Architect to reply within a reasonable time shall constitute notice of no reasonable objection. The Contractor shall not employ a proposed superintendent or project manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent or project manager without the Owner's consent, which shall not unreasonably be withheld or delayed.

ARTICLE 10 ARCHITECT

§ 10.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. The Architect is not the agent of the Owner and is not authorized to agree on behalf of the Owner to changes in the Contract Sum or Contract Time, or to direct the Contractor to take actions that change the Contract Sum or Contract Time. The "Architect" may not be a licensed architect, but may instead be an engineer.

§ 10.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 10.3 The Architect will visit the site-site, but not as the agent of the Owner, at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The presence of the Architect or the Owner at the site shall not in any manner be construed as assurance that the Work is being completed in compliance with the Contract Documents, nor as evidence that any requirement of the Contract Documents of any kind, including notice, has been met or waived.

§ 10.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not. Neither the Owner nor the Architect will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not. Neither the Owner nor the Architect will have control over or charge of and will

not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and ~~certify~~ make recommendations to and otherwise assist the Owner to determine the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Architect ~~has and~~ the Owner each have authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable to the Contractor for results of any interpretations or decisions rendered in good faith.

§ 10.9 The Architect's and/or Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the bidding documents or the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of ~~the Work~~ the Work, which list shall be consistent with any listing required by the Bidding Documents. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. A reasonable objection shall include without limitation lack of "responsibility" of the proposed Subcontractor, as defined in RCW 39.26.160(2) or the Contract Documents or Bidding documents, or lack of qualification as required within the technical sections of the Project Manual. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

§ 11.4 The Contractor shall promptly pay any undisputed sums it owes to Subcontractors. The Contractor shall promptly pay and (and secure the discharge of) any liens asserted by all persons or entities properly furnishing labor, services, equipment, materials or other items in connection with the performance of the Work by, through or on account of the Contractor. The Contractor shall furnish to the Owner such releases of claims and other documents as may be requested by the Owner from time to time to evidence such payment (and discharge). The Owner may withhold 150% of the amount of any lien unless the Contractor either (1) furnishes to the Owner such releases of claims and other documents as may be requested by the Owner from time to time to evidence such payment (and discharge) or (2) provides a reasonably acceptable surety bond to protect the Owner, the Project and the Site from lien claims. The Owner may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are so furnished. The Owner may issue joint checks payable to the Contractor and the lien claimant. The Contractor

shall defend, indemnify, and hold harmless the Owner from any liens, including all expenses and attorneys' fees, except to the extent a lien has been filed because of failure of payment by the Owner.

§ 11.5 The Contractor shall verify responsibility criteria for each first-tier Subcontractor. A Subcontractor of any tier that engages other Subcontractors must verify responsibility criteria for each of its lower-tier Subcontractors. Verification shall include that each Subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in the Instructions to Bidders.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in the Contract Documents except that the Contractor shall have no claim for such construction or operations to the extent disclosed in the bidding documents or Contract Documents

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. The Contractor shall provide proposed changes in the Contract Sum and Contract Time (if any) as soon as reasonably possible and within five days of the Owner's or Architect's request. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment, or as otherwise provided in this Agreement. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order. The execution of a Change Order shall constitute a waiver of Claims by the Contractor arising out of the scope of Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. Change Orders shall be on an AIA Change Order form or its equivalent acceptable to the Owner.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and Architect and shall not proceed to implement the change in the Work unless the Owner and Contractor agree on such change in writing or the Owner issues a Construction Change Directive.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed. Soils reports or other reports available to the Contractor or from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the Contractor shall give written notice to the Owner and Architect promptly before conditions are disturbed and in no event later than seven days after the first observance of the conditions. If such conditions differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall make any resulting Claim in accordance with the dispute resolution procedure in Article 21. No increase to the Contract Sum or Contract Time shall be allowed if the Contractor knew or should have known of the concealed conditions prior to its executing the Contract. If the Contractor encounters such a condition for which it seeks additional time or money, Contractor shall not commence any work or incur any additional job site costs in regard to the condition without written direction to do so from the Owner, except in the case of an emergency and except as may otherwise be required by any environmental or natural resource regulation.

§ 13.5 CLAIMS FOR ADDITIONAL COST OR TIME

§ 13.5.1 Claims for an increase in the Contract Sum or an extension of the Contract Time must be made before proceeding to execute the Work and within seven days after the occurrence of the event giving rise to the Claim. No claim shall be valid unless so made. The Contractor is not required to provide an advance written Claim for Claims relating to an emergency endangering life or property, in which case the Contractor shall proceed and then notify the Owner. Claims for additional cost resulting from a Claim for additional Contract Time shall not exceed the least cost reasonably necessary of achieving the completion date.

§ 13.6 WRITTEN NOTICE OF CLAIMS

§ 13.6.1 Any Claim of the Contractor against the Owner for damages, additional payment for any reason, or extension of time, whether under the Contract or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written notice and claim therefor is made pursuant to and in strict accordance with the applicable provisions of the Contract. No act, omission, or knowledge, actual or constructive, of the Owner or the Architect, including without limitation subsequent discussion, negotiation or consideration of the Claim, shall in any way be deemed to be a waiver of the requirement for timely written notice and for timely written Claims unless the Owner provides the Contractor with an explicit, unequivocal written waiver of timely notice and Claim.

§ 13.7 PRICING COMPONENTS

§ 13.7.1 If the Owner and Contractor cannot agree on the cost or credit to the Owner from a Change in the Work, or from an event giving rise to a claim, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with supporting data. Approval may not be given without such itemization. Failure to provide data requested by the Owner shall constitute waiver of any claim for changes in the Contract Time or Contract Sum. The total cost of any increase or decrease in the Contract Sum shall be limited to the reasonable value, as determined by the Architect and the Owner, of the following:

§ 13.7.2 Direct labor costs: These are the labor costs determined either by estimated or actual number of additional craft hours and the hourly costs necessary to perform the change in the Work. The hourly cost shall be based upon the following:

- .1 Basic wages and fringe benefits: Basic wages include the hourly wage rate (without markup or labor burden) and fringe benefits as included in the applicable prevailing wage rate per trade at the time of bid. Fringe benefits are paid by the Contractor to the employee as part of basic wages and as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, and may include hourly benefits for pension, annuity, training, and union benefits, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, and journeymen performing the changed Work on the site. The premium portion of overtime wages or holiday wages is not included unless pre-approved in writing by the Owner. Costs paid or incurred by the Contractor for vacations, per diem, bonuses, stock options, or discretionary payments to employees are not reimbursable. Prevailing wage rates shall be the maximum wage rate payable for any Change in the Work.

- .2 Workers' insurances: Direct contributions to the State of Washington as industrial insurance, medical aid, and supplemental pension by class and rates established by the Washington Department of Labor and Industries. These costs are added to basic wages as part of the hourly costs necessary to perform the changes in the Work.
- .3 Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA), and State Unemployment Compensation Act (SUCRA). These costs are added to basic wages as part of the hourly costs necessary to perform the changes in the Work.

§ 13.7.3 Direct material costs: This is an itemization, including material invoice, of the quantity and cost of additional materials necessary to perform the change in the Work. The unit cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in advance by the Owner. Discounts and rebates based on prompt payment shall accrue to the Contractor only if the Contractor offers the Owner the opportunity to make such prompt payment to obtain the discount or rebate but the Owner declines the opportunity.

§ 13.7.4 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment appropriate for the Work will be used solely on the change in the Work at the site times the applicable rental cost as established by the lower of the local prevailing rate published in The Rental Rate Blue Book by Data Quest, San Jose, California, as modified by the AGC/WSDOT agreement or the actual rate paid as evidenced by rental receipts. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Site solely for the change in the Work. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the work.

If more than one rate is applicable, the lowest rate will be utilized. The rates in effect at the time of the performance of the Change work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright.

§ 13.7.5 Cost of any change in insurance or bond premium: This is defined as:

- .1 Contractors' liability insurance: The cost (expressed as a percentage) of any changes in the Contractor's liability insurance arising directly from the changed Work; and
- .2 Public works bond: The cost (expressed as a percentage) of the change in the Contractor's premium for the Contractor's statutorily required performance and payment bonds arising directly from the changed Work.

Upon request, the Contractor shall provide the Owner with supporting documentation from its insurer or surety of any associated cost incurred.

§ 13.7.6 Subcontractor costs: These are payments the Contractor makes to Subcontractors for changed Work performed by Subcontractors. The Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section 13.7.

§ 13.7.7 Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including project manager, project engineer, other engineers, project foremen, estimator, superintendent and their vehicles and assistants), taxes (except for sales tax), warranty, safety costs, printing and copying, quality control/assurance, small or hand tool charges (tools which cost \$500 or less and are normally furnished by the performing contractor), preparation of as-built drawings, impact on unchanged Work, Claim preparation, acceleration, and delay and impact costs of any kind, added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. It shall be limited in all cases to the following schedule:

- .1 The Contractor shall receive 12% of the cost of any materials supplied or work properly performed by the Contractor's own forces.

- .2 The Contractor shall receive 7% of the amount owed directly to a Subcontractor or Supplier for materials supplied or work properly performed by that Subcontractor or Supplier.
- .3 Each Subcontractor of any tier shall receive 12% of the cost of any materials properly supplied or work performed by its own forces.
- .4 Each Subcontractor of any tier shall receive 5% of the amount it properly incurs for materials supplied or work performed by its suppliers or subcontractors of any lower tier.
- .5 The cost to which this Fee is to be applied shall be determined in accordance with Section 13.7.2 – 13.7.5.
- .6 The total summed Fee of the Contractor and all Subcontractors of any tier shall not exceed 23%. If the Fee would otherwise exceed 23%, the Contractor shall proportionally reduce the Fee percentage for the Contractor and all Subcontractors except for the Subcontractor supplying material or performing work with its own forces.

If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction. The parties acknowledge that the fees listed in this Section are substantially greater than the fees and overhead normally included in determining the Contract Sum bid; that these higher percentages are a sufficient amount to compensate the Contractor for all effects and impacts of Changes in the Work; and that the resultant overcompensation of the Contractor for some Changes compensates the Contractor for any Changes for which the Contractor believes the percentage is otherwise insufficient. The cost of any changed Work or of any other increase or decrease in the Contract Sum, including a Claim, shall not include, among other things, consultant costs, attorneys' fees, or Claim preparation expenses. Such items are not recoverable from the Owner.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the ~~Architect~~ Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the ~~Architect~~ Owner may determine, subject to the provisions of Article 21. Such causes do not entitle the Contractor to an increase in the Contract Sum. The Contractor shall re-schedule its Work as necessary so as to achieve completion dates. Any delay shall be measured by the change in the actual critical path of construction. The Contractor shall recover damages for delay from the Owner only if the acts or omissions of the Owner or persons acting for the Owner were the actual, substantial cause of the delay and the Contractor could not have reasonably avoided the delay by the exercise of due diligence. The Contractor 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, cumulative impact, or similar damages.

§ 14.6 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction, and that the Work was on schedule (or not behind schedule through the fault of the Contractor) at the time the adverse weather conditions occurred. Neither the Contract Time nor the Contract Sum will be adjusted for normal inclement weather. The Contractor shall be entitled to a change in the Contract Time only (but not a change in the Contract Sum) if the Contractor can substantiate to the reasonable satisfaction of the Owner and Architect that there was materially greater than normal inclement weather considering

the full term of the Contract Time and using a ten-year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale closest to the Project, and that the alleged abnormal inclement weather actually extended the critical path of the Work. The change in the Contract Time shall be provisional until Substantial Completion has been achieved, at which time the change in the Contract Time shall be the extent to which the total net accumulated number of calendar days lost due to inclement weather from commencement of the Work until Substantial Completion exceeds the total net accumulated number to be expected for the same period from the aforesaid data.

§ 14.7 The Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts, overtime operations and weekend and holiday work as may be necessary to insure completion of the Work within the Contract Time and the approved Contractor's construction schedule. If the Contractor fails substantially to perform in a timely manner in accordance with the Contract Documents and, through the fault of the Contractor or Subcontractor(s) of any tier fails to meet the Contractor's construction schedule, the Contractor shall take such steps as may be necessary to immediately improve its progress by increasing the number of workers, shifts, overtime operations or days of work or other means and methods, all without additional cost to the Owner.

§ 14.8 THE TIMELY COMPLETION OF THIS PROJECT IS ESSENTIAL TO THE OWNER. The Owner will incur serious and substantial special, incidental and consequential 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, provisions for liquidated damages are included in the Contract. The Owner's right to liquidated damages is not affected by partial completion, occupancy, or beneficial occupancy. Liquidated damages due to the Owner may be apportioned between the Owner and Contractor according to their relative responsibility for the delay.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect, Owner and Article 4. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment. Payments shall be made as provided in Article 4 of this Agreement. Applications for Payment shall be in a form satisfactory to the Owner and Architect.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 — the documents enumerated in Article 6, including all Modifications thereto;
- .2 — a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 — a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 — a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and

~~.5—a list of any contingency amounts included in the Control Estimate for further development of design and construction.~~

~~§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.~~

~~§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.~~

~~§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.~~

§ 15.3 Applications for Payment

~~§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. See Article 4.~~

~~§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.~~

~~§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.~~

~~§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.~~

§ 15.4 Certificates for Payment

~~§ 15.4.1 The Architect will, within seven days after receipt of the Contractor's approved Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.~~

~~§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified.~~

The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers 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 Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 unsatisfactory prosecution of the Work by the Contractor, including but not limited to repeated or material failure to carry out the Work in accordance with the Contract Documents with the Contract Documents;
- .8 failure to submit statements of intent or affidavits pertaining to wages paid as required by statute;
- .9 failure to submit a properly updated Construction Schedule;
- .10 liquidated damages;
- .11 failure to properly maintain as-builts;
- .12 failure to properly submit daily construction records;
- .13 failure to properly submit certified payrolls; or
- .14 failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment.

§ 15.4.4 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and

litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.5.5 Pursuant to RCW 39.12, "Prevailing Wages on Public Works," the Contractor will not receive any payment until the Contractor and all Subcontractors of any tier have submitted state-approved "Statements of Intent to Pay Prevailing Wage" to the Owner. The statement must have the approval of the Industrial Statistician of the Department of Labor and Industries before it is submitted to the Owner. The statement must include the Contractor's registration number, the number of workers in each trade classification, and the applicable wage rate for each trade listed. The Contractor agrees to provide each Subcontractor of any tier with a schedule of applicable prevailing wage rates. The Contractor and the respective Subcontractors of any tier 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.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work 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 are not usable, if any applicable occupancy permit (temporary or final) has not been issued, if any related utilities are not connected and operating normally, or if the Work is not accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy some or all of the Project does not indicate that the Work is substantially completed or that liquidated damages are tolled, changed, or eliminated.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the ~~Architect~~ Owner determines that the Work or designated portion thereof is substantially complete, ~~the Architect will~~ the Owner will direct the Architect to issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. ~~Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~

§ 15.7 Final Completion and Final Payment

§ 15.7.1 ~~Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds~~ The Contractor shall notify the Architect and the Owner in writing when the Contractor considers the Work ready for final inspection and complete. Upon receipt of the Contractor's written notice, the Architect will promptly make an inspection. Within 15 days after receiving the written notice, the Owner will either accept Final Completion of the Work or notify the Contractor of Work yet to be performed. If the Architect determines that some or all the punch list items are not yet completed, the Contractor shall be responsible to the Owner for all costs, including Architect's fees, for any subsequent Architect's inspections to determine compliance with the punch list. When the Architect finds all punch list items complete, the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the

Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. notify the Owner and the Contractor in writing.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees. When the Owner and Architect find that the Work has been so concluded, the appropriate permit(s) have been issued, and the Contractor has submitted all the items below to the Owner, the Contractor may submit a final Application for Payment. The Architect will then promptly issue a final Certificate for Payment stating that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The date of Final Completion is the date the Owner executes the Architect's final Certificate for Payment.

§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 claims reserved by the Owner in writing and any audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and ~~identified by that payee as unsettled at the time of the final Application for Payment.~~ attached by that payee as unsettled to the final Application for Payment.

§ 15.7.5 Final payment shall not become due until the Owner's Board of Directors has formally accepted the Project ("Final Acceptance"). To achieve Final Acceptance, the Architect must have issued a final Certificate for Payment, any applicable permits must have been issued, Final Completion must have occurred, and the Contractor must have submitted the following to the Owner:

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied (Affidavit of Payment of Debts and Claims, AIA form G706 or equivalent),
- .2 a certificate evidencing that any insurance required by the Contract Documents to remain in force after Final Acceptance is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner,
- .3 a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents,
- .4 consent of surety, if any, to final payment (AIA form G707 or equivalent),
- .5 other data establishing payment or satisfaction of or protection against obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner (Contractor's Affidavit of Release of Liens, AIA form G706A or equivalent). If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees,
- .6 pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from the Contractor and from each Subcontractor of any tier certified by the Industrial Statistician of the Washington State Department of Labor and Industries, with the fees paid by the Contractor or Subcontractor,
- .7 a letter from the Architect indicating that the Work is complete and recommending Final Acceptance of the Project by the Owner,
- .8 certification that the materials in the Work are "lead-free" and "asbestos-free,"
- .9 record documents that reflect complete and accurate "as-built" conditions and the approved permit set of plans in good condition, and

- .10 all warranties, guarantees, manuals, operation instructions, O&M manuals, certificates, spare parts, maintenance stock, specified excess material, and other documents or items required by the Contract Documents.

§ 15.7.6 Pursuant to RCW 60.28, completion of the Contract Work shall occur upon Final Acceptance.

§ 15.5.5 If a Subcontractor or supplier of any tier refuses to furnish a release or waiver required by the Owner, the Owner may (a) retain in the fund, account, or escrow funds in 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, or (b) accept a bond from the Contractor, satisfactory to the Owner, to indemnify the Owner against such lien. If any such lien remains unsatisfied after all payments from the retainage are made, the Contractor shall refund to the Owner all moneys that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 15.7.7 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. Reservations of rights will be deemed waived and are void unless the reserved rights are specifically described in detail to the satisfaction of the Owner and are initialed by the Owner. If the Contractor adds a reservation of rights that has not been initialed by the Owner to any Change Order, Construction Change Directive, Change Order proposal, Application for Payment or any other document, all amounts therein shall be considered disputed and not due or payable unless and until costs are re-negotiated or the reservation is withdrawn or changed in a manner satisfactory to and, in all cases, initialed by the Owner. If the Owner makes payment for a Change Order or an Application for Payment that contains a reservation of rights not initialed by the Owner 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.

§ 15.7.8 The Contractor shall maintain books, ledgers, records, documents, estimates, bids, correspondence, logs, schedules, electronic data and other evidence relating to the costs and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges and other amounts of whatever nature incurred directly or indirectly on the Work. The Contractor shall preserve such records for a period of three years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. Within seven days of the Owner's request, the Contractor agrees to make available at the office of the Contractor during normal business hours all records for inspection, audit and reproduction including electronic copying by the Owner or 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, except fixed-price Subcontracts where the price is \$25,000 or less. The Contractor agrees, on behalf of itself and Subcontractors of any tier or their respective 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 Owner. Failure to fully comply with this requirement shall also constitute a material breach of contract and shall conclusively waive any claim for additional costs asserted by the Contractor or Subcontractor of any tier that fails to so comply.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall have the right to control and shall take reasonable precautions for 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, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from

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damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property ~~caused in whole or in part arising out of the Contractor's Work, whether~~ by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and ~~start-up~~start-up, which adjustments shall be accomplished as provided in Article 13 of this Agreement. The Contractor shall proceed with the Work in areas not affected.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that (a) such damage, loss, or expense is due to the fault or negligence of the party seeking ~~indemnity~~indemnity or (b) that such hazardous materials were identified as the Contractor's responsibility in the Contract Documents.

§ 16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 16.2.4 Pursuant to RCW 49.70, "Worker and Community Right to Know Act," and WAC 296-901 et seq., the Contractor shall provide the Owner copies of and have available at the Project Site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Contractor or any Subcontractor of any tier at the Project Site. Contractor shall not be entitled to any additional Contract Time or compensation arising from its failure or alleged failure to comply with this statute or regulation.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located~~located and possessing a Best's policyholder's rating of A- or better and a financial rating of no less than VIII and reasonably acceptable to the Owner. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

Completed operations coverage shall remain in effect for six years from Substantial Completion.

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~(\$) each occurrence, (\$) general aggregate, and (\$) one million dollars (\$1,000,000) each occurrence,~~ two million dollars (\$2,000,000) per project general aggregate, and two million dollars (\$2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

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- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.15.

This insurance shall also cover work the Contractor may subcontract or sublet to others, premises, products/completed operations, personal injury, blanket contractual liability, and explosion, collapse or underground (XCU). This insurance will name the Owner, the Architect, their consultants, employees, and representatives, and any required governmental agencies as additional insureds on ISO Form CG 20 10 11/85 or its equivalent and will include a severability of interest (cross liability clause) for Work performed under this Contract. The Contractor's policy shall be designated primary coverage for both defense and indemnity, and any Owner's policies excess.

In addition, the Contractor shall maintain an umbrella policy which provides excess limits following form over the primary layer, in an amount not less than \$5,000,000. The insurance required by above shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater.

§ 17.1.2.1 The Contractor shall ensure and require that Subcontractors of all tiers have insurance coverage to cover bodily injury and property damage on all operations and all vehicles owned or operated by Subcontractors of all tiers in the amount of \$1,000,000 per occurrence with a \$2,000,000 aggregate limit. Also, the Subcontractors shall name the Contractor and the Owner as an additional insured including completed operations and giving 30 days' notice of cancellation. The additional insured endorsement shall be issued on an ISO 20 10 11 85 form or its equivalent.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than (\$—)one million dollars (\$\$1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits (industrial insurance), disability benefit and other similar employee benefit acts in at statutory limits with coverage of at least \$500,000 each occurrence / \$500,000 each accident.

§ 17.1.6 Employers' Liability (Stop Gap Liability insurance) with policy limits not less than (\$—) each accident, (\$—) each employee, and (\$—) one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) each employee, and two million dollars (\$2,000,000) policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, shall maintain the Professional Liability insurance for six years following Substantial Completion, and with policy limits of not less than (\$—) per claim and (\$—) one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, shall maintain the Pollution Liability insurance for six years following Substantial Completion, and with policy limits of not less than (\$—) per claim and (\$—) one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ~~(\$) per claim and (\$) one million~~ dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor. Any such any deductible or self-insured retentions must be acceptable to the Owner.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims ~~caused in whole or in part by the Contractor's negligent acts or omissions arising out of or caused by the Contractor's work during the Contractor's operations;~~ and (2) the Owner as an additional insured for claims ~~caused in whole or in part by the Contractor's negligent acts or omissions arising out of or caused by the Contractor's work for which loss occurs during completed operations.~~ The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms ~~CG 20 10 07 04, CG 20 37 07 04, form CG 20 10 11 85, and,~~ with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.14 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage

Limits

§ 17.1.15 If the Owner is damaged by the failure of the Contractor to maintain any of the above insurance or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. THE OWNER MAY WITHHOLD PAYMENT PENDING RECEIPT OF ALL CERTIFICATES OF INSURANCE WITH ENDORSEMENTS ATTACHED. Failure to withhold payment shall not constitute a waiver.

§ 17.1.16 The Owner's specification or approval of the insurance in this Contract or of its 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, indemnification, or applicable law provisions. The Contractor may, at its expense, purchase larger coverage amounts.

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 17.2.2 Property Insurance

~~§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and maintain its standard property insurance sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.~~

~~§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project its standard property insurance that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.~~

~~§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner Contractor shall be responsible for all loss not covered because of such deductibles or retentions up to \$25,000 per loss, unless the loss was caused by the Owner or by a natural occurrence, in which case the Owner shall be responsible for the deductibles or retentions.~~

~~§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, property insurance protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.~~

~~§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements. Not used.~~

~~§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~

§ 17.2.2.7 Waiver of Subrogation

~~§ 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, Section 17.2.2.1, except such rights as they have to proceeds of such insurance. The Owner does not waive the subrogation rights to the extent of its property insurance on structures or portions of structures that do not comprise the Work. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or~~

entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.7.2 ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

N/A

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 ~~The Owner shall have the right to require the Contractor to furnish bonds covering~~ Contractor shall secure from a surety company acceptable to the Owner, admitted and licensed in the State of Washington, and shall pay for and maintain bonds covering the faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract. under the Contract Documents, each in the full amount of the Contract Sum plus sales tax, pursuant to RCW 39.08, "Contractor's Bond." Within two days after the issuance of the Notice of Intent to Award Contract, the Contractor shall deliver evidence of its bondability to the Owner, and within ten days of entering into the Contract, the Contractor shall deliver the originals of the bonds to the Owner and copies to the Architect. THE OWNER MAY DECLINE TO ENTER INTO THE CONTRACT IF EVIDENCE OF BONDABILITY IS NOT RECEIVED. THE OWNER MAY WITHHOLD ITS "NOTICE TO PROCEED" AND/OR WITHHOLD PAYMENT TO THE CONTRACTOR UNTIL SUCH SURETY BONDS ARE RECEIVED.

§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly and at no cost to the Owner correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, ~~unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work expense.~~

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under ~~Section 15.6.3, the Contract Documents,~~ or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it according to the requirements of this Section with no change in the Contract Sum promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a specific written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an

opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty, the Contractor. If the Contractor does not promptly initiate work to correct the Work designated in the notice, the Owner may proceed to correct the Work, the Owner may dispose of materials and equipment as it sees fit, and the Contractor will be liable for all costs. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment, other.

§ 19.2 Governing Law

The Contract shall be governed by the internal law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6. The Contractor shall abide by the provisions of all applicable Washington statutes. Those statutes include, but are not limited to:

- .1 Contractor Registration and Related Requirements. Pursuant to RCW 39.06, "Registration, Licensing of Contractors," 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, "Registration of Contractors." The Contractor shall: have a current state unified business identifier number; have industrial insurance coverage for the Contractor's employees working in Washington as required in Title 51 RCW; have an employment security department number as required in Title 50 RCW; have a state excise tax registration number as required in Title 82 RCW, and; 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).
- .2 Law Against Discrimination. Contractor should comply with pertinent statutory provisions relating to public works of RCW 49.60.
- .3 Provisions for Aged and Handicapped Persons. Contractor should comply with pertinent statutory provisions relating to public works of RCW 70.92.
- .4 Safety Standards. Contractor should comply with pertinent provisions of Chapter 296-155 WAC, "Safety Standards for Construction Work," including without limitation trench safety requirements.
- .5 Unemployment Compensation. Pursuant to RCW 50.24 in general and RCW 50.24.130 in particular, the Contractor shall pay contributions for wages for personal services performed under this Agreement or arrange for a bond acceptable to the commissioner.
- .6 Drug-Free Workplace. The Contractor and all Subcontractors of any tier shall fully comply with all applicable federal, state, and local laws and regulations regarding drug-free workplace, including the Drug-Free Workplace Act of 1988. 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.
- .7 Tobacco-Free Environment. Smoking or use of any kind of lighted pipe, cigar, cigarette or any other lighted smoking equipment or material, including vaping and any smokeless tobacco products, is prohibited on all school district property.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to or provided by the Owner, or with the appropriate public authority, and the Owner shall bear all related costs of necessary tests, inspections, and approvals. The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. The independent testing agency shall prepare the test reports, logs and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's designated representative:

(Name, address, email address and other information)

Patti Bowen
Executive Director of Business Services
Longview School District No. 122
2715 Lilac Street
Longview, Washington 98632
(360) 575-7017
pbowen@longview.k12.wa.us

All communications shall be directed to the Owner's Project Manager at the address below, except for notices required by this Agreement, which shall be directed to the Owner's Designated Representative above.

Andy Twyman, VMA
Project Manager
ESD 112 Construction Services Group
16703 SE McGillivray Blvd, Suite 240
Vancouver, Washington 98683
andrew.twyman@esd112.org
(360) 921-8294

§ 19.5 The Contractor's designated representative:

(Name, address, email address and other information)

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 19.7 Federal ESSER Terms. In addition to the terms herein, because this Project is funded through the U.S. Department of Education's "Education Stabilization Fund Program Elementary and Secondary School Emergency Relief Fund" (ESSER Fund), the following terms and conditions also apply to this Project:

§ 19.7.1 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, for all contracts that qualify as "federally assisted construction contracts" as defined in 41 CFR 60-1.3, Contractor agrees to comply with the equal opportunity clause at 41 CFR 60-1.4(b), incorporated herein by reference, and Executive Order 11246,

"Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60.

§ 19.7.2 Davis Bacon Act. If the contract is in excess of \$2,000 and involves construction, alteration, or repair of real property, Contractor shall comply with the Davis-Bacon Act (40 USC 3141-3144 and 3146-3148), as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under the Davis-Bacon Act, Contractor must pay wages to laborers and mechanics at a rate not less than the minimum wages specified in wage determinations made by the Secretary of Labor. In addition, Contractor must pay wages not less than once per week and otherwise comply with the applicable requirements of the clause at 29 CFR 5.5(a), which is incorporated herein in full. (See <https://www.ecfr.gov/current/title-29/subtitle-A/part-5>.) As this Project is also subject to Washington Prevailing Wage requirements, Contractor and its Subcontractors of all tiers must pay the higher of the two wages (Prevailing and Davis-Bacon) when they are not the same.

§ 19.7.3 Copeland "Anti-Kickback" Act. If the contract is in excess of \$2,000 and involves construction, alteration, or repair of real property, Contractor shall comply with the Copeland "Anti-Kickback" Act (40 USC 3145), including pertinent Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Copeland "Anti-Kickback" Act provides in part that Contractor shall be prohibited from inducing, by any means, any person employed in the construction, alteration, or repair of public work, to give up any part of the compensation to which it is otherwise entitled.

§ 19.7.4 Contract Work Hours and Safety Standards Act. If the contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Contractor must calculate the wages of every mechanic and laborer on the basis of a standard, 40-hour work week. Work in excess of the standard work week is permissible if the worker is compensated at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 USC 3704 are applicable to construction work and provide that no laborer or mechanic shall be required to work in surroundings or under working conditions that are hazardous, unsanitary, or dangerous. These requirements do not apply to the purchases of supplies or materials ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

§ 19.7.5 Bayh-Dole Act. If the contract is for developmental, experimental, or research work, under a "funding agreement," as defined at 37 CFR 401.2(a), Contractor shall provide for the rights of the federal government and the Owner in any resulting invention pursuant to 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and meet the requirements of 37 CFR Part 401 and implementing regulations, if any, issued by the awarding agency.

§ 19.7.6 Clean Air Act and Federal Water Pollution Control Act. If the contract is in excess of \$150,000, Contractor shall comply with all applicable standards, orders, and regulations issued per the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1389). Any violations shall be reported to the federal awarding agency and the regional office of the Environmental Protection Agency ("EPA").

§ 19.7.7 Suspension and Debarment. Contractor represents and warrants that it is not listed on the governmentwide Excluded Parties List System in the System for Award Management in accordance with OMB guidelines at 2 CFR Part 180 that implement Executive Orders 12549 and 12689. This list contains the names of parties debarred, suspended, or otherwise excluded from federal contracting activities. Contractor must include requirements to comply with this regulation in any lower tier contracts it enters into. Contractor shall have a continuing duty during the term of this contract to disclose to the Owner any occurrence that would prevent Contractor from making the representations contained in this section.

§ 19.7.8 Byrd Anti-Lobbying Amendment. If the contract is in excess of \$100,000, Contractor and its subcontractors shall file the certification required by this statute and associated regulations. Each tier shall certify to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining a federal contract, grant or any other award covered

by 31 USC 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining a federal award. Such disclosures shall be forwarded from tier to tier up to highest level grant recipient.

§ 19.7.9 Procurement of Recovered Materials. Generally, state agencies, political subdivisions, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("Section 6002"). If applicable, Contractor shall comply with the requirements of Section 6002. These requirements include (1) procuring only items (designated in EPA guidelines at 40 CFR Part 247) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 19.7.10 Domestic Preferences. Contractor should, to the extent practicable and consistent with applicable law, provide a preference for the purchase, acquisition, or use of products, or materials produced in the United States (including but not limited to iron, steel, aluminum, cement, and other manufactured products). The requirements of this section must be included in all contracts and purchase orders under this contract. "Produced in the United States" means, for iron and steel products, that all manufacturing processes from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, glass (including optical fiber), aggregates (such as concrete), and lumber.

§ 19.7.11 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Contractor shall not obligate or expend funds provided under this contract to (1) procure or obtain, (2) extend or renew a contract to procure or obtain; or (3) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Per Public Law 115-232, section 889, "covered telecommunications equipment" means any of the following:

- a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- b. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- c. Telecommunications or video surveillance services provided by such entities or using such equipment.
- d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

§ 19.7.12 The attached "§5.5 Contract provisions and related matters" are hereby inserted in full into this Agreement. As used therein, "contracting officer" shall mean the Owner's representative and "contractor" means the "Contractor."

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, for a period of 30 days after payment is due and owing, and except as provided by RCW 60.28.080, the Contractor may, upon seven additional days' notice to the Owner and the Architect, during which period the Owner has the right to cure, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including fees applicable to the project. The total recovery of the Contractor shall not exceed the unpaid balance of the Contract Sum.

Init.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may upon seven calendar days' written notice to the Contractor terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Contract for cause if the Contractor

- .1 materially or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make prompt payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 materially or repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of ~~substantial breach of a provision of the Contract Documents~~ a material or substantial breach of or default under a provision of the Contract Documents;
- .5 fails to comply with Sections 9.3.5;
- .6 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial and Final Completion of the Work within the Contract Time; or
- .7 is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency.

If, after the Contractor has been terminated pursuant to this Section, it is determined that none of the circumstances set forth in Section 20.2.1 exists, then the termination shall be for convenience under Section 20.3.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, ~~upon certification by the Architect that sufficient cause exists to justify such action~~, Owner may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven calendar days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:

(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

The Owner shall be liable to Contractor only for those costs reimbursable to Contractor in accordance with the following plus ten percent of the actual costs recovered under this Section: (1) the amount due under Article 15 of this Agreement for the performance of the Work completed and not terminated, and (2) other pre-approved costs, consistent with Section 13.7, necessary and reasonably incurred in connection with the termination of the Work. The total sum to be paid to the Contractor under this Section 20.3 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made.

§ 20.4 EFFECTS OF TERMINATION

§ 20.4.1 Unless the Owner directs otherwise, after receipt of a Notice of Termination from the Owner pursuant to Section 20.2 or 20.3, the Contractor shall promptly:

- .1 stop Work under the Contract 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 Owner, to the extent that they relate to the performance of Work terminated;
- .4 assign to the Owner all of the right, title and interest of the Contractor under any orders and subcontracts, in which case the Owner 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 Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;
- .6 transfer title and deliver to the entity or entities designated by the Owner the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, 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 plans, drawings, information and other property related to the Work;
- .7 use its best efforts to sell any property of the types referred to in Section 20.4.1.6. The Contractor may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the Owner to the Contractor;
- .8 take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to this Project in the possession of the Contractor in which the Owner has an interest; and
- .9 continue performance only to the extent not terminated.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. ("Claims"), except claims which have been waived under the terms of the Contract Documents, shall be decided exclusively by the following dispute resolution procedure unless the parties mutually agree in writing otherwise. Such matters, except those waived as provided for in Section 21.11 Article 21, Section 13.6, and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, if the Owner and Contractor cannot come to a mutual resolution of the Claims, be subject to mediation as a condition precedent to binding dispute resolution. This requirement cannot be waived except by an explicit written waiver.

§ 21.2 Notice of Claims

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The Contractor shall submit a written notice to the Owner of all Claims within seven days of the event giving rise to them and shall include a clear description of the event leading up to the Claim. The Contractor shall submit a written Claim within thirty days of the notice and shall include in the Claim a clear description of the Claim, the proposed change in the Contract Sum and/or Contract Time of the Claim and provide data supporting the Claim. Failure to comply with these requirements shall constitute waiver of the Claim. The Claim shall include all changes, direct and indirect, in cost and in time to which the Contractor (and Subcontractors of any tier) is entitled. Neither a Request for Information, nor an Owner's request for or the Contractor's response to a Change Order proposal, nor a notice of potential or future claim shall constitute a Claim.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law,

but in any case not more than 10 years after the date of Substantial Completion of the Work, this Contract and applicable law. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines. deadlines prior to resolution of the matter by mediation.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. in writing otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association then in effect, and shall be held in Seattle, Washington unless the parties agree upon another location. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, Agreement. The parties will attempt to mutually agree upon a mediator; if the parties cannot agree on a mediator within thirty days of receipt of the request, either party may file the request with the American Arbitration Association. The mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. This mediation requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor.

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Claims, disputes and other matters in question arising out of or relating to the Contract that are not resolved by mediation, except matters relating to aesthetic effect and except those waived as provided for in Article 21, and Sections 13.6, 15.7.3 and 15.7.4, shall be decided by litigation unless the parties mutually agree in writing otherwise. All unresolved Claims shall be waived and released unless the Contractor has complied with the time limits of the Contract Documents, and the Contractor has served and filed litigation within the earlier of (a) 60 days after Final Acceptance, or (b) 120 days after Substantial Completion. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor. The pendency of a mediation (commencing upon the written request for mediation) shall toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or thirty days after the date of the mediation session. These requirements are not applicable to any Owner's claim against the Contractor for defective work.

§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). **Written Notice and Waiver.** All notice and Claims shall be made in writing as required by the Contract. Any notice of a Claim of the Contractor against the Owner and any Claim of the Contractor, whether under the Contract Documents or otherwise, must be made pursuant to and in strict accordance with the applicable provisions of the Contract. No act, omission, or knowledge, actual or constructive, of the Owner or the Architect shall in any way be deemed to be a waiver of the requirement for timely, written notice and a timely, written Claim unless the Owner and the Contractor sign an explicit, unequivocal written waiver approved by the Owner's Board of Directors. The fact that the Owner and the Contractor may consider, discuss or negotiate an untimely, defective or waived Claim shall in no way be deemed to constitute a waiver of any notice or other provision of the Contract Documents unless the Owner and the Contractor sign an explicit, unequivocal written waiver approved by the Owner's Board of Directors. 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 Owner, including but not limited to the inability to 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 Owner is prejudiced by the Contractor's failure timely to submit notices or Claims as required by the Contract Documents.

~~§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.~~

~~§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

§ 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 21.11 Waiver of Claims for Consequential Damages

~~The~~ Unless specifically provided for in other provisions of the Contract Documents, the Contractor and Owner waive 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 Owner for rental expenses, ~~for losses of use, 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, ~~and for loss of profit except anticipated profit arising directly from the Work, for losses on other projects, for financing costs, and for loss of profit on the Work properly performed.~~

This mutual waiver is also applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Documents, or to preclude an obligation of the Contractor to indemnify the Owner for direct, indirect or consequential damages alleged by a third party.

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

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)

§5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis- Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home

addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is

not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates

of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.



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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Graehm Wallace, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 15:51:32 PT on 10/31/2022 under Order No. 2114314097 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)