



AIA® Document A104® – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the ____ day of _____ in the year 2025
(In words, indicate day, month and year.)

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

Kelso School District No. 458
601 Crawford Street
Kelso, WA 98626

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

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

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

The Owner and Contractor agree as follows.

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

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ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the entire 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. The Owner anticipates, but is not bound, to issue a Limited Notice to Proceed on or about _____.

☐ 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:

§ 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
N/A

Substantial Completion Date
N/A

§ 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.

§ 2.4 Final Completion

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

☒ Not later than () calendar days from the date of Substantial Completion of the Work.

☐ By the following date: N/A

§ 2.4.2 If the Contractor fails to achieve Final Completion as provided in this Section 2.4, liquidated damages 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~~ 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 and/or local sales tax, which shall be paid by the Owner with each progress payment.

§ 3.2.0 The Stipulated Sum is fixed and shall not be subject to adjustment in the event escalation, inflation, supply chain delays, or other market factors increase the cost of performance of the Work.

§ 3.2.1 The Stipulated Sum is based upon and includes 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;~~ any (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.)

Unit Priced Item
N/A

Units and Limitations
N/A

Price per Unit (\$0.00)
N/A

§ 3.2.3 Allowances, if any, included in the stipulated ~~sum;~~ sum (these descriptions are summary in nature, and the scope of this Work is described in the Contract Documents):

(Identify each allowance.)

Allowance Item

Allowance Price (\$0.00)

§ 3.3 Cost of the Work Plus Contractor's Fee [Not Used]

§ 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.)

N/A

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price [Not Used]

§ 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.)

N/A

§ 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 ~~(\$—),~~ N/A (\$N/A), 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 that~~ 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.)

N/A

§ 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.)

N/A

§ 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)
N/A	N/A	N/A

§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
N/A	N/A

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

N/A

§ 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~~ kinds, and quality of materials, ~~finishes-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 \$ _____ per day for each calendar day beyond the Contract Time that Substantial Completion is not timely achieved, and \$ _____ per day for each calendar day beyond the Contract Time that Final Completion is not achieved. Liquidated damages may be assessed concurrently for Substantial Completion and Final Completion, as applicable, and for multiple phases.

The Contractor and Owner agree that the liquidated damages amounts set forth herein are not penalties and are a reasonable estimation of actual damages to the Owner, as of the date of this Agreement, based on the inherent uncertainty and difficulty in calculating and quantifying damages caused by delays in the construction of school district facilities.

Without limiting any right or remedy under this Agreement or at law, the Owner may also take over and complete the Work (or any portion of the Work) at any time following the deadline for Final Completion if Final Completion of the entire Work (or any phase of the Work, if any) has not been achieved, and charge all direct and indirect costs of completion against the Contractor.

Any sums for which the Contractor is liable to the Owner may be deducted at any time by the Owner from any sums due the Contractor. In the event that no amounts are due from the Owner to the Contractor, then the Owner shall notify the Contractor in writing of the liquidated damages amount that is due, and the Contractor shall pay such amount to the Owner within thirty (30) calendar days of such notice.

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment submitted to the Owner and 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 a Schedule of Values submitted by the Contractor to the Owner and the Architect prior to commencement of the Work. The Schedule of Values shall be in accordance with Article 15.

§ 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:

§ 4.1.2.1 **Draft Application.** By the twenty-fifth (25th) day of each month, the Contractor shall submit to the Architect and Owner a report on the current progress of the Work as compared to the Contractor's construction schedule, an updated construction schedule, updated as-built drawings, and a draft, itemized Application for Payment for Work performed during that calendar month on a form supplied or approved by the Owner. This shall not constitute a payment request. The Owner, Architect, and Contractor shall meet within the next seven (7) days and confer regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The Owner or the Architect 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 payrolls, and reflecting retainage as provided elsewhere in the Contract Documents. The Contractor shall not be entitled to make any payment request, nor is any payment due the Contractor, until such data is furnished.

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than () days after the Architect receives the Application for Payment. § 4.1.2.2 **Payment Request.** After the Contractor, the Owner, and the Architect have met and conferred regarding the updated draft Application, and the Contractor has furnished all progress information required and all data requested by the Owner or the Architect under Section 4.1.2.1 above, and after the Contractor has provided the Owner and Architect with current meeting minutes, daily reports, as-built drawings, commissioning logs (if requested and required), and an updated construction schedule, the Contractor may submit a payment request no later than the fifth (5th) day of the following month in the agreed-upon amount, in the form of a notarized, itemized Application for Payment for Work properly performed during the prior calendar month on a form furnished or approved by the Owner. The Contractor shall also submit a lien release on a form furnished or approved by the Owner from each Subcontractor for whose Work the Owner paid the Contractor the prior month. The Application shall also state that prevailing wages have been paid in accordance with the pre-filed statements of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractors of any tier from the Owner's payment the prior month have been made. THE SUBMISSION OF AN APPLICATION CONSTITUTES A CERTIFICATION BY THE CONTRACTOR THAT THE WORK IS CURRENT ON THE CONTRACTOR'S CONSTRUCTION SCHEDULE, unless otherwise noted on the Application. If required by the Owner, the Contractor shall submit proof of payment to Subcontractors for prior months, such as lien releases or cancelled checks.

§ 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 along with the approved payment request a separate written payment request specifying the exact additional amount claimed due, the category in the Schedule of Values to which the payment is claimed due, the specific Work for which the additional amount is claimed due, and why the Contractor believes 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 under the subcontract (such as for unsatisfactory performance or non-payment of lower-tier Subcontractors), 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 (8) working days after the Subcontractor satisfactorily completes the remedial action identified in the notice.

(Federal, state or local laws may require payment within a certain period of time.) **§ 4.1.2.5 Payment.** Provided that an approved Application for Payment is received by the Owner and Architect as described above, the Owner shall make payment of the certified amount to the Contractor not later than thirty (30) days after the Architect certifies the Application.

§ 4.1.4 For each progress payment made prior to ~~Substantial-Final~~ Completion of the Work, the Owner ~~may~~ will 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 the manner required by Chapter 60.28 RCW. Release of the retainage will be processed in the ordinary course of business within sixty (60) days following Final Acceptance of the Work, provided that the Owner has received the three certificates listed below; that no notice of lien has been received as provided in Chapter 60.28 RCW; that no claims have been brought to the attention of the Owner; that the Owner has no known claims under this Contract; and that release of retention has been duly authorized by the State in accordance with Chapter 60.28 RCW. Pursuant to Chapter 60.28 RCW, the following three items must be obtained by the Owner prior to release of retainage: (1) a certificate from the Department of Revenue; (2) pursuant to Chapter 50.24 RCW, a certificate from the Department of Employment Security; and (3) 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.)*

%—Interest shall be as specified in Chapter 39.76 RCW, not to exceed the Bank of America prime rate plus two percent (2%) per annum.

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, less retainage, 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;
- .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;
- .4 Final Acceptance by the Owner's Board of Directors has occurred; and
- .5 the requirements of Article 15 are complete.

§ 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 Owner's final payment will be made as required by the Contract Documents after completion of all of the requirements listed in Article 15. Retainage will be released to the Contractor in accordance with statutory requirements and Section 4.1.4 of this Agreement.

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

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- ☒ Litigation in a court of competent jurisdiction in the County in which the Project is located
- ☐ Other (*Specify*)

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 and revised AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

~~§ 6.1.2 Building information modeling exhibit, dated as indicated below:
(Insert the date of the building information modeling exhibit incorporated into this Agreement.)~~

§ 6.1.3 The Supplementary and other Conditions of the ~~Contract~~ Contract are contained in the Project Manual:

Document	Title	Date	Pages
<u>See Exhibit A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

§ 6.1.4 The ~~Specifications~~ Specifications are those contained in the Project Manual and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
<u>See Table of Contents</u>	<u>N/A</u>		<u>N/A</u>

§ 6.1.5 The ~~Drawings~~ Drawings are those referenced in the Project Manual and are as follows:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
<u>See Exhibit A</u>	<u>N/A</u>	

§ 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

[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.2 Other documents, if any, listed below:

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

☒ Exhibit A: Project Manual, including Drawings and Specifications

☒ Exhibit B: Department of Labor and Industries Prevailing Wage Rates

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, ~~Agreement and information reflected therein~~, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. The Contract Documents are complementary. 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 Owner or 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. Unless specifically enumerated in this Agreement, the Contract Documents do not include other documents such as the advertisement or invitation to bid, Instructions to Bidders, other information furnished by the Owner in anticipation of receiving bids, the Contractor's bid (the "Bid"), or portions of Addenda relating to bidding requirements, all of which are identified as the "Bidding Documents." 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 or a revision to a Contract Document having precedence over the original document and later Addenda having precedence over earlier:

.1 This Agreement (revised A104-2017) (written amendments having precedence);

.2 Any Special Conditions;

.3 Any Supplementary Conditions; and

.4 Drawings (large-scale having precedence over small-scale, and written or computed dimensions having precedence over scaled (dimensions), material and system schedules, and Specifications.)

If there is any inconsistency or internal ambiguity between the Drawings, schedules, or Specifications, the Contractor shall make an inquiry to the Owner and the Architect to determine how to proceed. Unless otherwise ordered in writing by the Owner or the Architect, the Contractor shall provide the better quality of, or the greater quantity of, any Work or materials, as reasonably interpreted by the Owner or the Architect, at no change in the Contract Sum or Contract Time. In the event that Work is shown on Drawings but not contained in Specifications or schedules, or contained in Specifications or schedules but not shown on the Drawings, the Work as shown or contained as determined by the Owner shall be provided at no change in the Contract Sum or Contract Time, according to Drawings, schedules, or Specifications to be issued by the Architect consistent with and reasonably inferable from the Work shown.

§ 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 Contractor and the Architect or the

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Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor (although the Owner does not waive any third-party beneficiary rights it may otherwise have as to Subcontractors of any tier), (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This Contract is a standard form created by the AIA with modifications that have been mutually agreed to by the parties. As such, the parties agree that neither party shall be considered the author of the Contract, and any ambiguities shall be neutrally construed.

§ 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.~~ Drawings, Specifications, and other similar materials through which the Work to be executed by the Contractor is described.

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

§ 7.5.1 The Architect and the Architect's consultants ~~shall~~ shall, subject to any right of the Owner, be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and ~~will~~ will, subject to any right of the Owner, 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~~ Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to ~~the~~ protocols established pursuant to Sections 7.6 and 7.7, ~~if any,~~ solely and exclusively for execution of ~~the Work.~~ the Work under the Contract Documents and with respect to the Project. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. Upon request, all copies of the Instruments of Service, except the Contractor's record set, shall be suitably accounted for to the Architect or returned to the Architect upon completion of the Work. The Contractor may retain one (1) record set. The Contractor, Subcontractors, 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-Architect,~~ and the Architect's consultants.

§ 7.6 Digital Data Use and Transmission

~~The parties shall agree upon written~~ Unless already provided in the Agreement or in the Contract Documents, the parties shall endeavor to agree upon protocols governing the transmission and use of, and reliance on, of Instruments of Service or any other information or documentation in digital form. Any electronic files or information will be provided only for convenience and shall be verified by the Contractor.

§ 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model by the Contractor without agreement to ~~written~~ protocols governing the use of, and reliance on, the information contained in the ~~model-model,~~ shall be at the ~~using or relying party's~~ Contractor's sole risk and without liability to ~~the other party and its contractors or consultants,~~ the Owner, the Architect, and 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 to the other party, such notice shall be provided in writing to the ~~designated representative~~ Designated Representative of the party to whom the notice is addressed (as listed in Section 19.4 or Section 19.5 of this Agreement) and shall be deemed to have been duly served if delivered in person, by mail, by courier, by e-mail, or by electronic transmission in accordance with ~~a building information modeling exhibit, AIA Document E203™-2013,~~ Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with ~~a building information modeling exhibit, 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.)

N/A

§ 7.9.2 Notwithstanding Section 7.9.1, 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~~ Designated Representative of the party to whom the notice is addressed ~~by certified or registered mail, or by courier providing proof of delivery (as listed in Section 19.4 or Section 19.5 of this Agreement)~~ by certified or registered mail, by courier providing proof of delivery, or by e-mail if the e-mail is clearly marked in the "re" line as a Notice of Claim or 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

§ 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.~~ The Owner is the person or entity identified as such in this Agreement and means the School District's Board of Directors. The "Owner" does not include teachers, the school principal, school staff, custodians, maintenance or safety workers, or consultants that may contact the Contractor or be present at the Project site.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the ~~site~~ site except to the extent that the Contract Documents otherwise require the Contractor to provide and/or maintain survey information.

§ 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 under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.~~ The Owner shall secure and pay only for the building permit and other necessary environmental approvals, easements, assessments, and related charges required for the use or occupancy of permanent structures, including all utility charges needed for occupancy, unless identified as the Contractor's responsibility in the Contract Documents. The Contractor is responsible for securing and paying for all other required licenses and permits.

§ 8.1.5 A waiver of any provision of the Contract Documents can only be made in writing and by the Owner's Board of Directors or designee. No other person is authorized to grant such waivers on behalf of the Owner.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which perform the Work in a good and workmanlike manner, or to correct Work that is not in accordance with the requirements of the Contract Documents, or repeatedly or materially fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order 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 Documents, the Owner may, after five (5) 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 Architect may, pursuant to Section 15.4.3, The Owner may 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. The right of the Owner to correct the Work pursuant to this Section shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of itself or others. 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 claim pursuant to Article 21.

ARTICLE 9 — CONTRACTOR

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, bonded (if required by the Contract Documents), and insured in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative. Execution of the Contract by the Contractor is a representation that the Contractor has visited the Project site, become generally familiar with local conditions under which the Work is to be performed-performed, and correlated personal observations with requirements of the Contract Documents. By executing this Contract, the Contractor represents and acknowledges that:

- .1 the Contract Sum is reasonable compensation for all the Work;
- .2 the Contract Time is adequate for the performance of the Work;
- .3 it has carefully examined the Contract Documents and the Project site, including any existing structures;
- .4 it is performing with its own forces any percentage of Work specified in the Contract Documents or Bidding Documents;
- .5 it has satisfied itself as to the:
 - (1) nature, location, character, quality, and quantity of the Work;
 - (2) physical labor, materials, equipment, goods, products, supplies, Work, services, and other items to be furnished, along with all other requirements of the Contract Documents;
 - (3) surface conditions and other foreseeable conditions 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, local regulations, disposal, handling and storage of materials, equipment, and other items;
 - (4) availability and quality of labor, water, electric power, utilities, drainage;
 - (5) availability and condition of roads;
 - (6) normal climatic conditions and seasons;
 - (7) physical conditions at the Project site and the surrounding locality;
 - (8) topography and ground surface conditions; and

(9) equipment and facilities needed to complete the Work and at all times during the performance of the Work.

Failure by the Contractor to fully acquaint itself with any such condition or matter shall not in any way relieve the Contractor from its responsibility for performing the Work in accordance with and full conformance to the Contract Documents within the Contract Time and the Contract Sum.

§ 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 ~~any existing conditions and verify any existing conditions, including all general reference points and any interfering existing conditions,~~ related to that portion of the Work before commencing activities affected thereby, and shall observe any conditions at the ~~site affecting it.~~ Project site affecting it and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing such activities. 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 the 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 and the 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 all applicable laws, statutes, ordinances, codes, rules-building codes, rules, and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to except for design-build elements (if any) for which the Contractor does have such responsibility. The Contractor shall promptly report in writing to the Owner and the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner or the Architect may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to the Contract Documents. 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, assembly details, and procedures, for safety 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 principals, 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.~~ Subcontractors of any tier.

§ 9.2.3 If the Work involves the expansion and modernization of an existing structure, the Contractor shall take care that the new Work covered by this Agreement properly interfaces and is compatible with existing structures. The Contractor will 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 existing structures, if any.

§ 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 the 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 Project site 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 or 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. The Contractor may enter into a separate agreement to secure heat and utilities from the Owner, if available.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. Work, including observance of any drug testing and all smoking, tobacco, drug, alcohol, parking, safety, weapons, background checks, sexual harassment, and other rules governing the conduct of personnel at the Project site. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall be responsible to the 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. 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. The Contractor shall ensure that all persons performing the Work comply with the Owner's policies and do not engage in inappropriate conduct or inappropriate contact with students or staff. Neither the Contractor nor any of its Subcontractors of any tier shall utilize any employee at the Project site or permit any contact between children and any employee who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapter 9A.32 RCW or Chapter 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9A.68A RCW, sexual offenses under Chapter 9A.44 RCW where a minor is a victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under Chapter 9A.64.030 RCW, or violation of similar laws of another jurisdiction. The Contractor shall remove from the Work and Project site any employee or other person who has engaged in such actions or who the Owner reasonably considers objectionable without change in the Contract Sum or Contract Time. Without limiting the generality of the foregoing, the Contractor shall also ensure by appropriate provisions in each subcontract agreement that the Contractor may remove from the Work and Project site any Subcontractor or Subcontractor's employee who has engaged in such action. Failure to comply with these requirements is grounds for immediate termination of the Agreement for cause.

§ 9.3.2.1 The Contractor shall perform a record check through the Washington State Patrol criminal identification system under RCW 43.43.830 through 834, RCW 10.97.030, and RCW 10.97.050 and through the Federal Bureau of Investigation for all employees of the Contractor and Subcontractors who will be performing Work on the Project site. The record check shall include a fingerprint check using a complete Washington state criminal identification

fingerprint card. The Owner shall provide necessary cooperation associated with the required record check. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous two (2) years, the Owner or the Contractor may waive the requirement. The costs associated with the record check shall be included as part of the Contract Sum. The Contractor shall represent to the Owner in writing that it has complied with this requirement. On the Owner's request, the Contractor shall provide copies of all background checks and a log of persons who have been on the Project site.

§ 9.3.3 After the Contract has been executed, the Owner and the 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 be submitted on the Architect's substitution form and 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 explicit, written 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 known or unknown Claim for an increase in the Contract Sum or Contract Time resulting from the substitution; that it has coordinated with affected Subcontractors; that the 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. The Contractor will be responsible for the reasonable costs of any time the Owner and/or the Architect expends in reviewing a substitution request. Neither the Owner nor the Architect will be responsible for the performance of the substituted product, regardless of whether or not the substitution request is accepted.

§ 9.3.4 Apprenticeship.

§ 9.3.4.1 Pursuant to RCW 39.04.320, the Contractor shall achieve any apprentice participation specified in the Contract Documents or as otherwise required by law.

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

§ 9.3.4.3 "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.

§ 9.3.4.4 During the term of this Contract, the Owner may adjust the apprentice 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 apprentice 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.

§ 9.3.4.5 The Contractor shall report apprentice participation to the Owner at least quarterly, on forms provided or approved by the Owner. In addition, copies of quarterly certified payroll records may be requested to document the goal. 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.

§ 9.3.5 The Contractor and its Subcontractors of all tiers shall submit certified payrolls in accordance with RCW 39.12.120.

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

§ 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 explicitly 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 be completed strictly in accordance with the Drawings and Specifications, 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. Documents, and that the Work will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered requirements, including substitutions not properly approved and authorized, shall be defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, by abuse by the Owner, 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. 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. usage, but does not exclude any implied warranty that may be available by applicable law. If requested by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used as part of the Work. The Contractor is not relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents.

§ 9.4.1 All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner. The Contractor shall collect, assign, and deliver to the Owner any specific written guarantees and warranties given by others and required by the Contract Documents. Prior to furnishing the Owner with written guarantees and warranties, the Contractor shall provide copies to the Owner and the Architect for review and approval.

§ 9.4.2 All warranties required by the Contract Documents shall commence in accordance with Section 15.6.3 and shall survive Substantial Completion, Final Completion, and Final Acceptance.

§ 9.5 Taxes

The Contractor shall pay all taxes, including sales, consumer, use, business and occupation, income, and other similar taxes that are legally enacted when bids are received or negotiations concluded, received, whether or not yet effective or merely scheduled to go into effect. The only taxes excluded from the Contract Sum and separately reimbursable are Washington State and local sales taxes that will be paid by the Owner with each progress payment based on the Contract Sum.

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

§ 9.6.1 Unless otherwise explicitly provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies for, without reimbursement and as part of the Contract Sum, all permits other than the initial building permit (which will be the Owner's responsibility), and all other fees, licenses, and inspections required by government agencies necessary, including without limitation Subcontractor permits and fees, 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. Work.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, District and Board policies (as applicable), and lawful orders of public authorities applicable to performance of the Work. The Contractor shall coordinate and schedule all Work with permitting agencies, utility companies, and other such agencies with jurisdictional authority necessary for proper execution and completion of the Work. The Contractor shall keep the Owner informed of communications with these authorities and utilities. The

Contractor shall be responsible for providing all information needed by permitting agencies, utility companies, and other agencies determined to have jurisdictional authority within thirty (30) days after issuance of the Notice to Proceed to the extent necessary for site access and, for other purposes, as soon as necessary to obtain and coordinate permits, utility, and other such connections. The Contractor shall obtain all permit renewals during the course of the Work. The Contractor is responsible for providing information and fees to the Department of Labor and Industries. The Contractor shall promptly notify the Owner and the Architect if the Drawings or 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~~ 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 and Meetings

§ 9.8.1 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 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.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.

§ 9.8.1.1 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 and within fourteen (14) days after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work ("construction schedule"), which shall be consistent with the milestone requirements of 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 schedule submitted to the Owner and the Architect and shall promptly notify the Owner and the Architect of any deviations from the schedule.

§ 9.8.1.2 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 progress 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 capable of being viewed and printed by the Owner. 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.

§ 9.8.1.3 The Contractor shall allocate in the Schedule of Values a separate line item of the Contract Sum for scheduling, which shall cover both the initial schedule and all monthly updates. The Contractor shall request payment for this line item with each Application for Payment, based upon the overall percentage of completion of the Project. For any month that the Contractor fails to submit a satisfactory construction schedule or an accurate schedule update identifying accurately the current status of the Work, the Contractor shall not be entitled to any payment for scheduling for that month, and the allocation for scheduling for that month shall, at the Owner's option, be permanently deducted from the Contract Sum by Change Order.

§ 9.8.1.4 The Contractor shall also prepare and keep current a schedule for submittals and a schedule for the purchase and receipt of items required for performance of the Work, identifying submittal and requested approval dates and showing lead times between purchase order placement and delivery dates, which shall both be integrated with the Contractor's construction schedule. The Contractor shall furnish the Owner and the Architect with copies of all purchase orders and acknowledgments and fabrication, production, and shipping schedules for all major items on the critical path within ten (10) days of Contractor's receipt of each purchase order, acknowledgment, or schedule. Neither the Owner nor the Architect shall be deemed to have approved or accepted any such material, or its schedule, nor deemed to have waived this requirement if some or all of the material is not received. The Contractor should expect a response time of at least twenty-one (21) days for the Architect's review of submittals and at least fourteen (14) additional days for review by the Architect's consultants. Complex, inter-related or multiple submittals will often take longer. Neither the Owner nor the Architect can guarantee response times from governmental authorities, such as permitting agencies or review of any required deferred submittals. If the Contractor fails to submit a submittal schedule acceptable to the Owner, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals or any resulting delay in the procurement of material.

§ 9.8.2.1 The Contractor shall utilize and comply with the Contractor's construction schedule and shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect. 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.

§ 9.8.2.2 The Contractor's construction schedule shall be prepared using a generally accepted and readily available scheduling software acceptable to the Owner; no other scheduling software shall be allowed. The construction schedule shall be based upon a critical path method ("CPM") analysis of construction and related activities and sequence of operations needed for the orderly performance and completion of all separable parts of the Work in accordance with the Contract and within the Contract Time. The schedule shall be in the form of a precedence diagram and activity listing, and shall be time-scaled. It shall include the Notice to Proceed date, the dates of interim milestones, the date(s) of Substantial Completion, and the date(s) of Final Completion in accordance with the Contract Documents. The critical path shall be clearly indicated on the construction schedule. No more than twenty percent (20%) of the progress activities shall be on the critical path, and no more than thirty percent (30%) shall have less than five (5) days' float. At the Architect's discretion, the Contractor may be required to prepare and submit an electronic spreadsheet (formatted in a manner compatible with MS Excel) that allocates the approved Schedule of Values to the appropriate scheduled activities contained in the construction schedule. The schedule shall show in detail and in order the sequence of all significant activities, their descriptions, start and finish dates, durations, links, and dependencies, necessary to complete all Work and any separable parts thereof. Predecessor and successor reports identifying links and relationships shall be provided if requested by the Architect or Owner.

§ 9.8.2.3 Should the Contractor fail to meet any scheduled date as shown on the current Contractor's construction schedule, the Contractor shall, if requested, be required at its own expense to submit within five (5) days of the request an updated Contractor's construction schedule at no cost to the Owner. If the Contractor's progress indicates to the Owner that the Work will not be Substantially Complete within the Contract Time or will not meet a scheduled date as shown on the construction schedule, the Contractor shall, at its own expense, increase its work force and/or working hours to bring the actual completion dates of the activities into conformance with the Contractor's construction schedule and Substantial Completion within the Contract Time. The Contractor shall reschedule and also submit a revised construction schedule at its own expense within five (5) days of notice from the Owner or the Architect that the sequence of Work varies significantly from that shown on the construction schedule showing Work to complete on original Contract Time with approved extensions. The Owner may withhold some or all of the progress payments until such time as the Contractor has provided an approved revised construction schedule satisfactory to the Owner. Neither

the Owner nor the Architect will be obligated to review the substance or sequence of the Contractor's construction schedule or otherwise determine whether it is correct, appropriate or attainable.

§ 9.8.2.4 In the event the Contractor is entitled to a change in the Contract Time, the adjustment to the Contract Time shall be limited to the change in the critical path of construction activities. Any float time to activities not on the critical path shall belong to the Project (i.e., the Contractor, the Owner and the Architect), and may be used by the Project to optimize its construction process. Any float time between the end of the final construction activity and Substantial Completion shall belong to the Owner, and may be used by the Owner in determining if the Contract Time should be extended for changes in the Contract or for delays caused by the Owner. The Contractor will not be entitled to any adjustment in the Contract Time, the construction schedule, or the Contract Sum, or to any additional payment of any sort by reason of the Owner's use of float time between the end of the final construction activity and the Substantial Completion date or 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.

§ 9.8.3.1 During the period commencing with the issuance of Notice to Proceed and ending with the date of Final Completion of the Work, the Contractor shall attend and participate in and ensure applicable Subcontractors of any tier and suppliers attend and participate in: (1) a preconstruction meeting; (2) regular weekly on-site Project status meetings scheduled by the Owner or by the Architect to review progress of the Work, to review progress of the Work, to discuss the Contractor's progress reports, to obtain necessary Owner's or Architect's approvals, and generally to keep the Owner and Architect informed and involved in the progress of the Project; (3) monthly scheduling meetings, which shall occur by the 20th of each month and, when requested by the Owner, be attended by the Contractor and the Contractor's scheduler (the individual responsible for preparing the Contractor's CPM construction schedule and updates), to discuss (a) the current progress of the Work as compared to the most recent Contractor's construction schedule, (b) necessary updates to the Contractor's construction schedule to conform to the Contract and the current status of the Work, all of which shall be required prior to the Contractor submitting its next Application for Payment to the Owner, and (c) other scheduling related issues; and (4) other meetings scheduled from time to time by the Owner or by the Architect to review progress of the Work and other pertinent matters.

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

§ 9.8.3.3 At each monthly meeting with the Owner, the Contractor shall submit (a) an updated Contractor's construction schedule (printed from the CPM and based on the CPM baseline schedule) accurately identifying the current status of the Work and showing the activities planned for the next month and (b) a report showing actual start and finish dates compared to the original CPM baseline from the previous month. The schedule shall show, among other details, all Work activities numbered according to the CPM baseline schedule, any submittal or delivery activities with less than five (5) days' float, and any permitting, testing, or inspection activities by others. The updated Contractor's construction schedule shall display actual start dates and percent completion or actual finish dates if the activity is one-hundred percent (100%) complete. Any changes in logic or duration of the activities contained in the updated Contractor's construction schedule, insertion of new activities, or deletion of planned activities, shall be submitted in a separate report describing such changes.

§ 9.8.4 The Contractor shall maintain and contemporaneously provide to the Owner, an electronic, word processed daily report for each work day during the Contract Time, whether or not any Work is performed, and for each non-work day in which Work is performed at the Project site. The daily report must identify all activities performed related to the Work, including but not limited to numbers of workers by trade, equipment in use, inspections, and performance of Change Order and Construction Change Directive Work. The daily report shall be completed electronically on a form approved by the Owner. The Contractor shall electronically submit (via email) a daily report to the Owner and the Architect on the work day following the day covered in the report.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to 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, approve in writing, and submit to the Owner and 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, accepted submittals with no exceptions taken.

§ 9.9.2 Shop Drawings, Product Data, ~~Samples~~ Samples, and similar submittals are not Contract Documents. Their purpose is for the Contractor to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review and acceptance of such submittals by the Owner or the Architect is subject to the limitations set forth in the Contract Documents and shall not constitute an approval of the Contractor's means and methods or a waiver or modification of any requirement of the Contract Documents. Informational submittals upon which the Owner or the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be (but are not required to be) returned by the Owner or Architect without action.

§ 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 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.

§ 9.9.4 Shop Drawings, Product Data, Samples, and similar submittals shall be maintained at the Project site, shall be updated by the Contractor at least weekly, shall be available at all times to the Owner and the Architect, and shall be assembled and delivered to the Architect for submittal to the Owner upon completion of the Work. Satisfactory maintenance of up-to-date record drawings will be a requirement for approval of progress payments. 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.

§ 9.9.5 The Contractor shall allocate in the Schedule of Values a separate line item for ongoing maintenance and completion of as-built drawings. The Contractor shall request payment for this line item with each Application for Payment, based upon the overall percentage of completion of the Project. For any month that the Contractor fails to accurately and completely update the as-built drawings satisfactory to the Owner, the Contractor shall not be entitled to any payment for as-built drawings for that month, and the monthly allocation for as-built drawings shall, at the Owner's option, be permanently deducted from the Contract Sum by Change Order.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, permits, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Portions of the Project site may be occupied and in use during construction and the Contract Documents may identify required phasing, sequencing, and safety measures. The Contractor is responsible for coordinating its Work with any occupation or use at no increase to the Contract Sum or Contract Time and at no disruption to the occupancy or use. The Contractor shall be solely responsible for determining and implementing all necessary safety provisions.

§ 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. In addition, existing structures and facilities, including but not limited to buildings, landscaping, utilities, topography, streets, curbs, and walks, that are damaged or removed due to excavations or other construction operations of the Contractor, shall be patched, repaired or replaced by the Contractor to the satisfaction of the Owner and the Architect, the owner of such structures and facilities, and governmental authorities having jurisdiction. In the event the governmental authorities require that the repairing and patching be done with their own labor and/or materials, the Contractor shall abide by such regulations and shall pay for such Work at no additional cost to the Owner.

§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding ~~area~~ area, including roads, free from accumulation of waste materials and rubbish caused by operations under the Contract. The Contractor shall furnish portable garbage and recycling containers at the Project site for use by all trades, shall use only containers provided by the Contractor, and shall appropriately dispose of material off site. At the Owner's request and, in any event, at the completion of the Work, the Contractor shall remove or recycle waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

§ 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~~ Architect and to the Owner.

§ 9.15 Indemnification

~~§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, 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, law and subject to the following conditions including the subparagraphs below, the Contractor shall defend, indemnify, hold harmless, and reimburse the Owner, its board members, officials, employees, consultants, students, and volunteers, the Architect, the Architect's consultants, and the agents and employees, and successors and assigns, of any of them (collectively, the "Indemnified Parties"), from, for, and against third-party claims, damages, losses (including loss of use) and expenses, direct and indirect or consequential, including but not limited to costs, design professional and consultant fees, and attorneys' fees incurred on such claims and in proving the right to indemnification, arising out of or resulting from performance of the Work, 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 Work or the acts or omissions of the Contractor, a Subcontractor, Subcontractor of any tier, their agents and anyone directly or indirectly employed by any of them, 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-liable ("Indemnitor"). Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which that would otherwise exist as to a party or person described in this Section 9.15.1.~~

§ 9.15.1.1 The Contractor will fully defend, indemnify, hold harmless, and reimburse the Indemnified Parties for the sole negligence or willful misconduct of the Indemnitor.

§ 9.15.1.2 If claims, damages, losses, and/or expenses arise from the concurrent negligence of (1) the Owner, and (2) the Indemnitor, the Contractor's obligations to defend, indemnify, hold harmless, and reimburse the Indemnified Parties under this Section 9.15 shall be effective only to the extent of the Indemnitors' negligence.

§ 9.15.1.3 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 will, 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 that any portion of this Section 9.15 is stricken or reformed by a court or arbitrator for any reason, all remaining provisions shall retain their vitality and effect. 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 any available insurance coverage, this Section 9.15 shall be considered modified to the extent that such insurance coverage is not affected. This Section 9.15 shall survive completion, acceptance, final payment, and termination of the Contract.

§ 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 a Subcontractor of any tier under workers' compensation acts, disability benefit acts or other employee benefit acts. After mutual negotiation of the parties, the Contractor expressly waives immunity as to the Indemnified Parties under Title 51 RCW, "Industrial Insurance." IF THE CONTRACTOR DOES NOT AGREE WITH THIS WAIVER, IT MUST PROVIDE A WRITTEN NOTICE TO THE OWNER AT LEAST TEN (10) DAYS PRIOR TO THE DATE FOR THE RECEIPT OF BIDS, OR THE CONTRACTOR WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY.

§ 9.16.1 Prevailing Wages.

§ 9.16.1.1 Pursuant to Chapter 39.12 RCW, Washington's Prevailing Wage Act, 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 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 the Work will be performed is 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 also available for review at the Owner's office and will be mailed upon request. The Contractor shall keep a paper copy at the Project site. 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, or if no schedule is attached, the applicable published rates shall apply with no increase to the Contract Sum. It is the Contractor's responsibility to ensure that the correct prevailing wage rates are 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

§ 9.16.1.2 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.

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

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

§ 9.16.4 Pursuant to Chapter 49.70 RCW, "Worker and Community Right to Know Act," and WAC 296-62 et seq., the Contractor shall provide to the Owner and have copies 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. The Contractor shall not be entitled to an increase in the Contract Time or Contract Sum arising from its failure or alleged failure to comply with this statute or regulation.

§ 9.16.5 Certified Asbestos-Free, Lead-Free, and Hazardous Material-Free Products: All products and materials incorporated into the Project as part of the Work shall be certified as "asbestos-free" and "lead-free" by United States standards, and shall also be free of all hazardous materials. At the completion of the Project, the Contractor shall submit Certifications of Asbestos-Free and of Lead-Free Materials certifying that all materials and products incorporated into the Work meet the requirements of this Section and shall also certify that materials and products incorporated into the Work are free of hazardous materials.

§ 9.16.6 The Contractor shall be responsible for labor peace on the Project and shall at all times use its best efforts and exercise its best judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances, and shall at all times maintain Project-wide labor harmony.

§ 9.17 Project Management

§ 9.17.1 The Contractor shall employ and assign competent, experienced managers, including a project manager, superintendent, foreman, and necessary assistants, who shall be present at the Project site during performance of the Work. The Contractor's superintendent shall be present at the Project site whenever Work is being performed, which shall be not less than eight (8) hours per day, five (5) days per week, unless the job is closed down due to a legal holiday, a general strike, conditions beyond the control of the Contractor, termination of the Contract in accordance with the Contract Documents occurs, or Substantial Completion is attained. After Substantial Completion, a qualified, experienced representative of the Contractor with authority to bind the Contractor shall remain at the Project site full-time until Final Completion is attained. Similarly, appropriate Subcontractor supervisory personnel (foreman level or above) shall also be present at the Project site whenever Subcontractors of any tier are performing Work, whether before or after Substantial Completion.

§ 9.17.2 The Contractor's project manager, superintendent, and foreman shall be employees of the Contractor. The project manager, superintendent, and foreman 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. Neither the superintendent nor the Contractor's project manager shall be changed without the approval of the Owner, which shall not be unreasonably withheld. The Contractor's superintendent and foreman shall not be employed on any other project during the course of the Work.

§ 9.17.3 The Contractor, within seven (7) 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 Owner or the Architect requires additional time to review. Failure of the Owner or the 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 the 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.

§ 9.17.4 The Contractor shall allocate in the Schedule of Values a separate line item for its project manager, superintendent, and foreman. The Contractor shall request payment for these line items with each Application for Payment, based upon the overall percentage of completion of the Project. For any month that the Contractor fails to provide a full-time superintendent, a full-time foreman, or a project manager for at least the amount of time indicated in the Contract Documents or, if not so indicated, at least forty (40) hours per person, the Contractor shall not be entitled to payment for the applicable Project management allocation in the Schedule of Values, and the monthly allocation, as applicable, shall be permanently deducted from the Contract Sum by Change Order.

ARTICLE 10 ARCHITECT

§ 10.1 The Architect will ~~assist the Owner to provide administration of the Contract as described in the Contract Documents and will be an Owner's representative~~ assist the Owner to provide administration of the Contract as described in the Contract Documents and will be an Owner's representative, but not the Owner's agent, during construction, until the date the Architect issues the final Certificate for Payment, for Payment and from time to time during the one (1) year period for correction of Work. 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, nor to waive provisions of the Contract Documents, nor to direct the Contractor to take actions that change the Contract Sum or Contract Time, nor to accept notice or Claims on behalf of the Owner. The "Architect" may not be a licensed architect, and may instead be an engineer or other qualified design professional.

§ 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~~ Architect, as a representative but not an agent of the Owner, may visit the site at intervals appropriate to the stage of the construction to become generally familiar with and to keep the Owner reasonably informed about 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 ~~Neither the Owner nor the Architect will 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 Owner or the Architect at the Project site shall not in any manner be construed as assurance that the Work is being completed in compliance with the Contract Documents, including any safety requirements, nor as evidence that any requirement of the Contract Documents of any kind, including notice, has been met or waived. The Contractor shall reimburse the Owner for any amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.~~

§ 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) any 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. Neither the Owner nor the Architect will be responsible for defining the extent of any subcontract or dealing with disputes between the Contractor and third parties.~~

§ 10.5 Based on the Architect's observations and 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~~ Both the Owner and the Architect have authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work. Neither this authority of the Owner or the Architect, nor a decision made in good faith either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of the Owner or the Architect or their representatives to the Contractor, Subcontractors of any tier, their agents or employees, or other persons or entities performing portions of the Work.

§ 10.7 The Architect will review and ~~approve or take other appropriate action upon,~~ approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, and other submittals required by the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the

Contract Documents. The Architect's review also shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures.

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

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

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 or to supply materials or equipment. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. A "Sub-subcontractor" or "lower-tier Subcontractor" is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site or to supply materials or equipment.

§ 11.1.2 The designation of terms in this article is not meant to change or alter the definitions contained in Chapter 60.28 RCW, "Lien for Labor, Materials, Taxes on Public Works," Chapter 39.12 RCW, "Prevailing Wages on Public Works," or other statutory definitions of a subcontractor for the purposes of such statutes.

§ 11.2 When applicable, the Contractor shall comply with RCW 39.30.060 regarding the listing of certain Subcontractors on the Bid form with which the Contractor, if awarded the Contract, will subcontract directly. Unless otherwise stated in the Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after award of the Contract, and not later than seven (7) days after award, shall notify the Owner and Architect in writing of the Subcontractors or suppliers proposed for each of the principal portions of the Work (i.e., at least two percent (2%) of the Contract Sum), consistent with the listing requirements of the Bidding Documents, as well as the proprietary names and the suppliers of the principal items or systems of materials and equipment proposed for the Work. The Contractor shall organize this list of Subcontractors in the same sequence as the Specifications index, and state the Work category followed by the name of the Subcontractor and/or fabricator (or "Contractor" where a portion of the Work is by the Contractor's own forces). The list shall be accompanied by evidence of any qualifications required within the technical sections of the Project Manual and satisfactory to the Owner and the Architect. The list shall be updated promptly as part of the payment process if additional Subcontractors of any tier are engaged. If the Agreement is executed, no progress payment will become due until this information is so furnished. 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 written objection. A reasonable objection shall include, without limitation, lack of "responsibility" of the proposed Subcontractor as defined in RCW 39.26.160(2) and/or the Contract Documents or Bidding Documents, or lack of qualification as required by the Contract Documents. If the proposed but rejected Subcontractor was qualified under the Contract Documents, "responsible" under Washington law and the Bidding Documents, and 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-remedies~~, and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner. Upon request, the Contractor shall within seven (7) days provide to the Owner copies of the written agreements between the Contractor and any

Subcontractor. The Owner will endeavor to keep these agreements confidential subject to its obligations under Chapter 42.56 RCW.

§ 11.4 The Contractor shall promptly pay amounts 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 at least 150% of the amount of any claim or lien unless the Contractor either: (1) furnishes to the Owner such releases of claims and liens 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 or claim claimant. The Contractor shall defend, indemnify, and hold harmless the Owner from any claims or 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 schedule, supervise, and coordinate the operations of all Subcontractors of any tier, including any suppliers of early procurement items. No subcontracting of any of the Work shall relieve the Contractor from its responsibility for the complete performance of the Work in accordance with the Contract Documents or from its responsibility for the performance of any other of its obligations under the Contract Documents. The Contractor will be solely responsible for any scope gaps in its contracts with Subcontractors, including gaps that result from Subcontractor exclusions. The Contractor is responsible for the timely, accurate and appropriate Subcontractor coordination of the Work of lower-tier Subcontractors.

§ 11.6 The Contractor agrees to diligently, and using its best efforts, cause each Subcontractor of any tier to correct, at that Subcontractor's own expense, all Work performed by the Subcontractor of any tier that is defective in material or workmanship or otherwise fails to conform to the Contract Documents, including all necessary removal, replacement and/or repair of any other portion of the Project which may be damaged in removing, replacing or repairing any portion of the Project. If any Subcontractor of any tier defaults in its obligation promptly to correct any such deficiency, the Contractor shall be responsible for correcting the deficiency.

§ 11.7 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. The Contractor shall coordinate its Work and cooperate and not interfere with such Separate Contractors. If the Contractor believes that delay or additional cost is involved due to the performance of work by Separate Contractors, the Contractor shall have no Claim for such delay or additional cost to the extent the expected work of Separate Contractors was 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.theirs.

§ 12.3 The Owner shall be reimbursed and held harmless by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, lack of cooperation, improperly timed activities, or defective construction of the Contractor. The To the extent recoverable from a Separate 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.

§ 12.4 If part of the Contractor's Work depends on proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner and the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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. 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, Work as set forth in this Article 13, 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. 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 or in the manner described in Section 13.5. Before effectuating a change in the Work, the Owner may request the Contractor, through a Change Order proposal, to propose the amount of change in the Contract Sum, if any, and the extent of change in the Contract Time, if any, arising from the proposed change in the Work. The Contractor shall submit its responsive proposal as soon as possible and within fourteen (14) days, and shall in good faith specify the components and amounts by which the Contract Sum and/or Contract Time would change. Labor, materials and equipment shall be limited to and itemized in the manner described in Section 13.5 for the Contractor and Subcontractors. If the Contractor fails to respond within this time, the Owner may withhold some or all of a progress payment otherwise due until the tardy proposal is received. If the Owner explicitly accepts the proposal in writing, the Owner and the Contractor will be immediately bound to the terms of the proposal, the change will be included promptly in a future Change Order, and the change in the Work described in the proposal shall commence expeditiously. The Owner may reject the proposal, in which case the Owner may either not effectuate the change in the Work or may order the change through a Construction Change Directive or supplemental instruction or an order for a minor change in the Work. The Owner and the Architect may confer directly with Subcontractors of any tier concerning any item proposed to the Owner under this Article.

§ 13.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following: (1) the change in the Work; (2) the amount of the adjustment, if any, in the Contract Sum; and (3) the extent of the adjustment, if any, in the Contract Time. 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, references, or incorporates 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.

§ 13.2.2 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement (such as through mutual execution of a Change Order) on

adjustment, if any, in the Contract Sum or Contract Time, or both. A Construction Change Directive may be used in the absence of total agreement on the terms of a Change Order. In the absence of an agreed cost, the use of a Construction Change Directive does not constitute an agreement that the directive constitutes a change in the Work, the Contract Sum, or Contract Time. A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be incorporated into a Change Order.

§ 13.2.3 The Owner and the Architect will also 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 the 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.

§ 13.3 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 Architect and shall not proceed to implement the change in the Work. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved. In the absence of an agreed cost, the Contractor shall advise the Architect in writing as soon as possible, and within seven (7) days of receipt, of the Contractor's agreement or disagreement with the proposed adjustment or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. The Contractor's response shall reasonably specify the reasons for its disagreement and the adjustment or other terms that it proposes. Without such timely written response, the Contractor shall conclusively be deemed to have accepted the Owner's proposed adjustment. The Contractor's disagreement shall not relieve the Contractor of its obligation to comply promptly with any written notice issued by the Owner or the Architect. The adjustment shall then be determined by the Architect in accordance with the provisions of the Contract Documents. The ultimate adjustment shall not exceed the amount submitted.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or soils reports or other reports available to the Contractor 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 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 the Architect promptly before conditions are disturbed and in no event later than seven (7) 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 costs regarding 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 in accordance with the provisions of Article 21. No claim shall be valid unless so made. Claims for additional cost resulting from a Claim for additional Contract Time shall not exceed the least cost reasonably necessary for achieving the completion date.

§ 13.5.2 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 the Contractor provides timely written Notice of the Claim and a Claim in accordance with Article 21.

§ 13.5.3 PRICING COMPONENTS

§ 13.5.3.1 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 within thirty (30) days of completion of the Change in the Work, 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 Owner, of the following components:

§ 13.5.3.2 Direct labor costs: These are the actual labor costs determined by the 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:** The hourly wage (without markup or labor burden) and fringe benefits paid by the Contractor as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foreman performing and/or directly supervising the Change in the Work. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. Costs paid or incurred by the Contractor for vacations, per diem, subsistence, housing, travel, bonuses, stock options, or discretionary payments to employees are not reimbursable. The Contractor shall provide to the Owner copies of payroll records, including certified payroll statements for itself and Subcontractors of any tier upon the Owner's request.
- .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.
- .3 Federal insurances:** Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

§ 13.5.3.3 Direct material costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and 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.

§ 13.5.3.4 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment necessary and appropriate for the Work will be used solely on the change in the Work at the Project site times the applicable rental cost as established by the lower of the local prevailing rate published in EquipmentWatch, or the actual rate paid as evidenced by rental receipts. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Project 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 (and standing by for no longer than one (1) week) on the changed Work shall be fifty percent (50%) of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright.

§ 13.5.3.5 Subcontractor costs: These are payments the Contractor makes to Subcontractors for changed Work performed by such Subcontractors. The Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section 13.5 and, among other things, shall not include consultant costs, attorneys' fees, or Claim preparation expenses.

§ 13.5.3.6 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, which shall not exceed 1% of the cost of 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, which shall not exceed 1% of the cost of the Changed Work.

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

§ 13.5.3.7 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 clerical assistants), taxes (except for sales tax), employee per diem, subsistence and travel costs, warranty, safety costs, printing and copying, layout and control, quality control/assurance, purchasing, small or hand tool (a tool that costs \$500 or less and is normally furnished by the performing contractor) or expendable charges, preparation of as-built or record drawings, impact on unchanged Work, Claim and Change preparation, acceleration, and delay and impact costs of any kind (cumulative, ripple, or otherwise), 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. No Fee shall be due, however, for direct settlements of Subcontractor claims, of any tier, by the Owner after Substantial Completion. The Fee shall be limited in all cases to the following schedule:

- .1 The Contractor shall receive ten percent (10%) of the cost of any materials supplied or Work properly performed by the Contractor's own forces.
- .2 The Contractor shall receive five percent (5%) 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 ten percent (10%) of the cost of any materials properly supplied or Work performed by its own forces.
- .4 Each Subcontractor of any tier shall receive five percent (5%) of the amount it properly incurs for materials supplied or Work performed by its suppliers or lower-tier Subcontractors.
- .5 The cost to which this Fee is to be applied shall be determined in accordance with this Section 13.5.
- .6 The total summed Fee of the Contractor and all Subcontractors of any tier shall not exceed twenty percent (20%). If the Fee would otherwise exceed twenty percent (20%), the Contractor shall equally 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 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.

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 and agreed to by the Owner 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) (3) by epidemic or pandemic; or (4)~~ 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 reschedule 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 damages to which the Contractor is entitled in the event of such a delay shall be limited to the daily rate of liquidated damages (up to Substantial Completion only) referenced in Section 3.5 for each day the critical path of the Project is so delayed. The parties understand and agree that it would be difficult to fix the damages suffered by Contractor in the event of a critical path delay, and therefore agree that the damages referenced herein represent a reasonable endeavor to estimate fair payment to Contractor for any critical path delay. 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 TIMELY COMPLETION OF THIS PROJECT IS ESSENTIAL TO THE OWNER. The Contractor shall furnish sufficient forces 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 Owner may 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. 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 the Architect.

§ 15.1.2 ~~The allocation of the Stipulated Sum or Guaranteed Maximum Price~~ At least fourteen (14) days before submitting its first Application for Payment, the Contractor shall submit a Schedule of Values to the Owner and the Architect, allocating the entire Stipulated Sum 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 as required by the Owner or the Architect. At a minimum, the Work shall be itemized by Specification section or system; separate values for labor, materials, and equipment shall be provided; and line items on the Schedule of Values shall be tied to the Contractor's construction schedule. Quantities shall be provided for each section or system of the Work. If an example of the Schedule of Values is included in the Contract Documents, the Contractor shall itemize and prepare the Schedule of Values as indicated by the example with respect to form, content, and level of detail. This Schedule of Values, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. ~~The allocation of the Stipulated Sum 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.~~ for each individual line item in the Schedule of Values.

- .1 Mobilization shall be a maximum of one-half of one percent (0.5%) of the Contract Sum, and shall be paid only if supported by an itemized breakdown of costs acceptable to the Owner.
- .2 The Schedule of Values shall allocate at least one-half of one percent (0.5%) of the Contract Sum to the Contractor's participation in commissioning, if required by the Contract Documents, which Contractor shall allocate to those Subcontractors participating in commissioning.
- .3 The Schedule of Values shall allocate at least one-quarter of one percent (0.25%) of the Contract Sum to monthly updates to the construction schedule and one-quarter of one percent (0.25%) to monthly maintenance of as-built drawings, which will be earned on a pro rata basis only if the Contractor provides an updated construction schedule and/or updated as-built drawings with its draft Application for Payment. If the Contractor fails to provide an updated construction schedule or updated as-built drawings as required, the Contract Sum shall be reduced by the Schedule of Values allocation for each activity not completed that month.
- .4 Payment applicable to the expenses of Contractor's bond and/or builder's risk insurance will be made only upon receipt of paid invoice from surety and/or insurance carrier.
- .5 The Schedule of Values shall allocate line items for the Contractor's project manager, superintendent, and foremen, specifying at least the level of involvement required by the Contract Documents. To the extent the Contractor fails to provide project manager, superintendent, and/or foreman involvement of at least the level required by the Contract Documents, the Contract Sum shall be reduced accordingly.
- .6 The Schedule of Values shall also allocate at least four percent (4%) of the Contract Sum as a separate line item for that portion of the Work between Substantial Completion and Final Completion, which shall be allocated as follows: half shall be allocated for punch list Work; one quarter shall be allocated for the Contractor's provision of approved as-built drawings and operations and maintenance data as defined in the Contract Documents; and one quarter shall be allocated for completion of all other requirements for Final Completion and final payment. This line item shall be entitled "Final Documentation and Punch list Completion" and will be earned and paid as a part of the final payment. This percentage is not the statutory retainage or any other retainage but rather recognizes that the Contractor and its Subcontractors will expend significant costs in advancing the Work from Substantial Completion to Final Completion, and that this amount is not earned until Final Completion of the Work is accomplished. The Owner may, at its sole discretion, release portions of this amount progressively as items are completed and upon reasonable terms.

§ 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. Applications for Payment shall be in accordance with the requirements of the Contract Documents.

§ 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 (7) 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 in writing 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 and Final 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 Owner may, with or without the Architect's concurrence, withhold payment. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, or subsequent observations, 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 Section 9.2.2, because of:

- .1 defective Work not remedied;
- .2 third-party claims (except where an insurer has unconditionally accepted coverage) 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; Contractor (except where an insurer has unconditionally accepted coverage);
- .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 repeated unsatisfactory prosecution of the Work by the Contractor, including but not limited to failure to carry out the Work in accordance with the Contract Documents; with the Contract Documents;
- .8 delay by the Contractor and/or its Subcontractor(s) of any tier, or failure to comply with the Contractor's construction schedule requirements or the imposition of liquidated damages;
- .9 failure to submit lien releases and/or affidavits pertaining to wages paid as required by statute;
- .10 failure to submit a properly updated construction schedule;
- .11 failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment;
- .12 liquidated damages;
- .13 failure to properly maintain as-built information and drawings;
- .14 failure to properly submit daily construction records; or
- .15 failure to properly submit certified payroll records.

§ 15.4.4 When either party the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party the Contractor 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~~ 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 Chapter 39.12 RCW, "Prevailing Wages on Public Works," the Contractor will not receive any payment until the Contractor and all Subcontractors of any tier for whom payment is sought 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-Work~~, or portion or section thereof designated and approved by the Owner and the Architect, 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~~ fully occupy or utilize the Work, or the designated portion thereof, for its intended use, including FF&E and student, teacher, and staff occupancy, as applicable. All Work other than incidental corrective or punch list Work and final cleaning shall be completed, including but not limited to the following:

- .1 Obtain applicable occupancy permits, including fire/life safety systems and health department approval, pressure vessel permits, elevator permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access and use of the completed Work;
- .2 Submit the Contractor's punch list of items to be completed or corrected and written request for inspection;
- .3 Complete all major building systems including HVAC and controls, intercom, data communications, fire alarm, telephone, fire sprinkler, security, and clocks;
- .4 Submit a preliminary commissioning report, where required;
- .5 Make final changeover of locks and transmit new keys to the Owner, and advise the Owner of the changeover in security provisions;
- .6 Discontinue or change over and remove temporary facilities and services from the Project site;
- .7 Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required; and
- .8 Complete final cleaning of the entire Project site.

The Work is not Substantially Complete unless the Owner and the Architect reasonably judge that the Work can achieve Final Completion by the date established in Section 2.3 (or such other period of time as is specified in the Contract Documents); appropriate final cleaning has occurred; all designated systems and parts are usable, and all

equipment and systems are ready for commissioning (if applicable) as set forth in the Contract Documents; trend logs have been provided to the Owner (if applicable); utilities are connected and operating normally; training sessions (except those that must occur after commissioning) have occurred; all required occupancy approvals or certificates by governing authorities and franchised services have been issued, assuring the Owner's full access to the Work; O & M manuals have been submitted for review; and the Work is accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, nor does such occupation toll or change any liquidated damages due the Owner.

§ 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. The Contractor shall proceed promptly to complete and correct items on the list. 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, and upon verification by the Architect that all permits, approvals, testing, training, and other submittals and administrative actions required under the Contract Documents for obtaining Substantial Completion have been satisfied, the Architect and, at the Owner's option, the Owner, 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~~ 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. If the Owner or Architect determines that the Work or designated portion is not substantially complete, the Contractor shall expeditiously complete the Work or designated portion, and again request an inspection. The Contractor shall pay all costs associated with any further reinspections.

§ 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. Any items not included by the Architect but required or necessary for Final Completion of the Contract shall be supplied and installed by the Contractor as a part of the Contract Sum, notwithstanding their not being recorded by the Architect.~~

§ 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 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.~~

§ 15.7.1.1 The Contractor shall cause punch list items to be completed by the date established for Final Completion (or such other period of time as is specified in the Contract Documents) or within such reasonable period as may be required to correct the item (in the event that the punch list items are, because of their nature, incapable of correction during that period) provided that the Contractor commences to correct the item within that period and thereafter diligently and in good faith pursues the corrective action to completion. If, after the date of Substantial Completion, the Owner considers that the punch list items are unlikely to be completed by the date established for Final Completion (or such other period of time as is specified in the Contract Documents), the Owner may, upon seven (7) days' written notice to the Contractor, take over and perform some or all of the punch list items. Moreover, and without limiting any other available remedy, the Owner may take over and complete any portion of the Work at any time beyond the date established for Final Completion if Final Completion has not yet been achieved. If the Owner elects to take over and

perform any portion of the Work, the Owner may deduct the actual cost of performing the Work (including direct and indirect costs), and including any design costs, plus fifteen percent (15%) to account for the Owner's transaction costs from the Contract Sum.

§ 15.7.1.2 The Contractor shall notify the Owner and the Architect in writing when the Contractor considers the Work complete and ready for final inspection. Upon receipt of the Contractor's written notice, the Architect will promptly make such inspection. Within a reasonable time 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 Owner or the Architect determines that some or all of the punch list items are not yet completed, the Contractor shall be responsible to the Owner for all costs, including re-inspection fees, for any subsequent Architect's inspections to determine completion of the punch list. When the Architect finds all punch list items complete and the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly notify the Owner and the Contractor in writing.

§ 15.7.1.3 The Contractor is liable for, and the Owner may deduct from any amounts due the Contractor, all Architect, other design consultant fees, and any commissioning agent and construction management fees incurred by the Owner for services performed after the date established for Final Completion of all the Work (or such other period of time as is specified in the Contract Documents), whether or not those services would have been performed prior to that date had Final Completion been achieved in a timely manner.

§ 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 concluded, the appropriate permit(s) have been issued, any commissioning process and validation process have been successfully concluded, if required, and any commissioning report, if required, has been accepted by the Owner's Board of Directors, 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.

§ 15.7.2.1 Neither final payment nor any retained percentage shall become due until after the Owner's Board of Directors has formally accepted the Project ("Final Acceptance"). The Owner is not obligated to accept the Project before the Architect issues a final Certificate for Payment, any applicable permits have been closed, Final Completion has occurred, and the Contractor has submitted the following to the Owner and the Architect:

- .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, except for any claims that are specifically identified on the affidavit (Affidavit of Payment of Debts and Claims, AIA form G706 or equivalent);
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the 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);
- .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 a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this Project, including but not limited to all city or county departments, health districts, and utility districts, provided to Owner with a copy of all closed or signed off permits;
- .10 record documents; and
- .11 all warranties, guarantees, manuals, operation instructions, certificates, spare parts, maintenance stock, specified excess material, as-built drawings, and other documents or items required by the Contract Documents.

§ 15.7.2.2 Pursuant to Chapter 60.28 RCW, "Lien for Labor, Materials, Taxes on Public Works," completion of the Contract Work shall occur upon Final Acceptance.

§ 15.7.2.3 If a Subcontractor of any tier or supplier 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 one-hundred fifty percent (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.

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

- .1 liens, ~~statutory retainage~~, claims, security ~~interests-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 audits performed by the Owner, if permitted by the Contract Documents, after final ~~payment~~.~~payment~~;
- ~~or~~
- .5 claims reserved by the Owner in writing.

§ 15.7.4 Acceptance of final payment by the Contractor, a ~~Subcontractor~~-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~~ and attached to the final Application for Payment.

§ 15.7.5 The Contractor shall maintain books, ledgers, records, documents, estimates, bids, correspondence, logs, schedules, emails, and other tangible and electronic data and 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 (3) 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 (7) 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 reproduction) 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; failure to fully comply with this requirement shall constitute a material breach of contract. The Contractor agrees, on behalf of itself and Subcontractors of any tier or their respective representatives, that any rights under Chapter 42.56 RCW 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.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be solely responsible for all aspects of safety, including initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall maintain the Project site and perform the Work in a manner that meets statutory and common-law requirements for the provision of a safe place to work. This requirement shall apply continuously and not be limited to working hours. The

Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- .1 employees on or involved with 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-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 damage, injury, or loss. The Contractor shall comply with all notices and comply with all requests from the Owner regarding the safety and protection of the Owner's students and staff. The Contractor shall comply with the safety regulations set forth in "Safety Standards for Construction" and "General Safety Standards" and any other requirements published by the Washington State Department of Labor and Industries. The Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety Act of 1973 (WISHA), including all revisions, amendments, and regulations issued thereunder by the Washington State Department of Labor and Industries. The WISHA regulations shall apply to all excavation, trenching, and ditching operations. In case of conflict between any such requirements, the more stringent regulation or requirement shall apply. The Contractor shall promptly remedy damage and loss to property caused in whole or in part 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. liable. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is directly 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.

§ 16.1.1 No action or inaction of the Owner or the Architect relating to safety or property protection or a violation thereof will: (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation; (2) impose any obligation upon the Owner or Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's compliance with the requirements of this Article 16; (3) impose any continuing obligation upon the Owner or Architect to ensure the Contractor performs the Work safely or to provide such notice to the Contractor or any other person or entity; (4) affect the Contractor's sole and complete responsibility for performing the Work safely or the Contractor's responsibility for the safety and welfare of its employees and Subcontractors of any tier; or (5) affect the Contractor's responsibility for the protection of property, students, staff and the general public.

§ 16.1.2 The Contractor shall conduct its Work so as to ensure the least possible obstruction to vehicular traffic and inconvenience to the general public and others in the vicinity of the Work and to ensure the protection of persons, property, and natural resources. No road or street shall be closed to the public except with the permission of the Owner and the proper governmental authority. Fire hydrants on or adjacent to the Work shall be accessible to firefighting equipment at all times. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks, fire lanes, private and public driveways, and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches, and natural water courses, if any, on the Project site.

§ 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 hazardous material or substance, as defined by CERCLA, including but not limited to asbestos or polychlorinated polycwhlorinated 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-condition in writing.~~ 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 may~~ be extended appropriately and the Contract Sum ~~shall may~~ be increased in the amount of the

Contractor's reasonable additional costs of shutdown, delay, and start-up. 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 such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 16.2.3 If, without fault or 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 reasonably acceptable to the Owner and lawfully authorized and admitted to issue insurance in the jurisdiction where the Project is located, ~~is located~~ and possessing a A.M. Best's policyholder's rating of A- or better and a financial rating of no less than VIII. The insurance required by Section 17.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. 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:

Coverages shall be maintained without interruption from the date of commencement of the Work until the date of Final Acceptance and termination of any coverage required to be maintained after final payment.

§ 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) general aggregate, and One Million Dollars (\$1,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .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.

The Contractor's Commercial General Liability insurance shall be sufficient to cover the Contractor's operations, including Subcontractors and suppliers of any tier; Work the Contractor may subcontract or sublet to others; and the indemnity provisions of this Contract, including but not limited to premises, products/completed operations, personal injury, blanket contractual liability, and explosion, collapse or underground (XCU).

§ 17.1.2.1 In addition to its Commercial General Liability insurance, the Contractor shall maintain a true umbrella policy that provides excess limits over the primary layer of its Commercial General Liability insurance, in an amount not less than \$5,000,000.

§ 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.

§ 17.1.3.1 The Contractor shall require that all Subcontractors of all tiers carry automobile liability insurance covering vehicles owned by the Subcontractor and non-owned vehicles used by the Subcontractor, 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—Compensation, disability benefit, and similar employee benefit coverages at statutory limits.

§ 17.1.6 Employers' Liability (Stop Gap) 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 One Million Dollars (\$1,000,000) 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, with policy limits of not less than (\$—) per claim and (\$—) One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) 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, with policy limits of not less than (\$—) per claim and (\$—) 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 (\$—) 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; Work, including presence on the Project site, and before exposure to loss can occur, and, in any event, within ten (10) days after the Owner has awarded the Contract; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. No progress payment will be due until all such certificates are furnished. 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 the Owner, the Architect, their consultants and employees, any required governmental agencies, and others designated in the Contract Documents as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy. All policies and certificates must contain a provision that coverages afforded under the policies cannot be materially altered (i.e. the coverages reduced, the limits decreased or the additional insured removed), allowed to expire, or cancelled without first giving forty-five (45) days prior written notice by certified mail to the Owner and Architect. The Contractor shall furnish to the Owner and Architect copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage limits. In addition, such policies or certificates shall contain a clause verifying that the policy contains coverage for blanket contractual liability including both oral and written

contracts, and that liability coverages include protection for underground, collapse, and explosion, and that the indemnification provisions of Section 9.15 are acknowledged.

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

§ 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 ~~Owner's consultants, the Architect, and the Architect's Consultants,~~ any required governmental agencies, and others designated in the Contract Documents as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions 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 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. In addition, the Contractor's commercial liability coverage required by this Section 17.1 will include a severability of interest (cross liability clause) for Work performed under this Contract. 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, 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

N/A

Limits

N/A

§ 17.1.15 The Owner's specification or approval of the insurance in this Contract or of its coverage or amount shall not relieve or decrease the liability of the Contractor under the Contract Documents or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the Contract, 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 sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance may be subject to standard conditions, definitions, exclusions, and endorsements. 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. The Owner's property insurance shall not cover the Contractor's tools and equipment, which shall be the Contractor's sole responsibility.

§ 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 that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.~~ its regular property insurance.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or ~~retentions.~~ retentions unless the loss was caused by the Contractor or a Subcontractor of any tier, in which case the Contractor shall be responsible for deductibles.

§ 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, 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.

§ 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, 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 a 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

N/A

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~~ As part of the Contract Sum, the Contractor shall secure, furnish, and maintain, from a surety company acceptable to the Owner, admitted and licensed in the State of Washington, and possessing an A.M. Best rating of "A minus" or better and a financial rating of no less than "VIII," 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 Documents, each in the full amount of the Contract Sum, plus sales tax, pursuant to Chapter 39.08 RCW, "Contractor's Bond." Within ten (10) days after the issuance of the award of Contract, the Contractor shall deliver evidence of its bondability to the Owner, and within ten (10) days of entering into the Contract, the Contractor shall deliver two (2) copies of the bonds to the Owner and one (1) copy 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. The Contract Time shall be reduced by one (1) day for each day after ten (10) days that the surety bonds are not received by the Owner. The Contractor shall be responsible for any delay in the Contract Time due to a failure to submit acceptable bonds.

§ 17.3.1.1 Subcontractors' Performance Bonds. Within ten (10) days after its execution of the Contract, and otherwise upon the Owner's request, any Subcontractors so required in the Bidding Documents or Contract Documents shall deliver evidence of their bondability to the Owner through the Contractor. The evidence shall include a letter from the bonding company that includes the price of the bond(s). The surety company must be acceptable to the Owner and admitted and licensed in the State of Washington. The bonds shall be conditioned that the Subcontractor shall faithfully perform all the provisions of its subcontract and correct defective Work as required by the Contract Documents and during the one (1) year correction period. If the Owner elects to require a performance bond from one or more of the Subcontractors, it will so notify the Contractor in writing within fourteen (14) days of receipt of the evidence of bondability from the respective Subcontractor, in which case the Contract Sum shall be increased by a Change Order in the amount specified in the letter, unless otherwise agreed by the parties. THE OWNER MAY DECLINE TO ENTER INTO THE CONTRACT OR MAY REQUIRE A CHANGE OF SUBCONTRACTOR AT NO INCREASE IN THE CONTRACT SUM IF THIS EVIDENCE OF BONDABILITY IS NOT 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.

§ 17.4 If the Owner is damaged by the failure of the Contractor to maintain any of the bonds or insurance in this Article 17 or to so notify the Owner, then the Contractor shall bear all costs attributable thereto.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly and at no cost to the Owner correct Work rejected by the Owner or the Architect 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 Owner's and the Architect's consultants' 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 the latter of: (1) one (1) 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, or the Contract Documents, or (2) by terms of an applicable special

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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 written notice from the Owner to do ~~so unless the Owner has previously given the Contractor a written acceptance of such condition, so~~. 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 begin 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~~ an entity providing construction financing for the Project if the ~~lender~~ entity assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 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 without regard to that jurisdiction's choice of law provisions. The Contractor shall abide by the provisions of all applicable Washington statutes and regulations. Those statutes and regulations include, but are not limited to:

- .1 Contractor Registration and Related Requirements. Pursuant to Chapter 39.06 RCW, "Registration, Licensing of Contractors," the Contractor shall be licensed, bonded, and insured as required by the laws of the State of Washington, including but not limited to Chapter 18.27 RCW, "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. The Contractor shall comply with pertinent statutory provisions relating to public works of Chapter 49.60 RCW.
- .3 Provisions for Aged and Handicapped Persons. The Contractor shall comply with pertinent statutory provisions relating to public works of Chapter 70.92 RCW.
- .4 Safety Standards. The Contractor shall 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 Chapter 50.24 RCW 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. The Board of Directors of the Owner has established a policy that tobacco use of any kind, including lighted pipe, cigar, cigarette, or any other lighted smoking equipment, tobacco material, or 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~~ rules, and regulations, or lawful orders of public authorities 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 ~~tests, inspections, and approvals.~~ The Contractor shall give the necessary tests, inspections, and approvals, except that the Contractor will be responsible for any costs of retesting and any extra costs caused by the Contractor or a Subcontractor of any tier. The Contractor shall give the Owner and the Architect timely notice of when and where tests and inspections are to be made so that the Owner and the Architect 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. ~~received.~~ 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 representative:

(Name, address, email address and other information)

Kelso School District No. 458

601 Crawford Street

Kelso, WA 98626

Office:

Cell:

All communications shall be directed to the Owner's Project Manager at the address below and copied to the Owner's Designated Representative above. Notices required by this Agreement must be directed to the Designated Representative above and copied to the Owner's Project Manager below.

Tel.

§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten (10) days' prior notice to the other party.

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~~ thirty (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, the Contractor may, upon seven additional days' for a period of thirty (30) days, and except as provided by RCW 60.28.080, the Contractor may, upon seven (7) additional days' written notice to the Owner and the Architect, during which period the Owner shall have an opportunity 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.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor Upon five (5) days' written notice to the Contractor, the Owner may (without prejudice to any right or remedy of the Owner) terminate the whole or any portion of the Work for cause, if the Contractor:

- .1 ~~persistently 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 ~~repeatedly persistently or materially~~ disregards applicable laws, statutes, ordinances, codes, ~~rules~~ rules, and regulations, or lawful orders of a public authority; ~~or authority having jurisdiction;~~
- .4 otherwise is guilty of ~~substantial breach of a provision of the Contract Documents~~ a material or substantial breach or default under a provision of the Contract Documents;
- .5 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion or Final Completion of the Work within the Contract Time;
- .6 is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency; or
- .7 fails to comply with the provisions of RCW 26A.400.330 by permitting a worker on the Project having contact with children who has been convicted of or pled guilty to a felony crime involving children.

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 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, exist,~~ the Owner may, without prejudice to any other remedy the Owner may have and after giving the Contractor ~~seven~~ five (5) days' notice, terminate the Contract and take possession of the Project 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 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: § 20.3.1 The Owner may, at any time, upon five (5) days' written notice to the Contractor, terminate (without prejudice to any right or remedy of the Owner), the whole or any portion of the Work for the Owner's convenience and without cause.

§ 20.3.2 The Owner shall be liable to Contractor only for those costs incurred as of the date of termination and costs incurred a direct result of the termination, including any applicable Subcontractor cancellation fees. The Contractor shall not be entitled to recover anticipated profit on Work not performed.

§ 20.3.3 The total sum to be paid to the Contractor under this Section 20.3 shall not exceed the unpaid balance of the Contract Sum.

§ 20.4 Effects of Termination by Owner

§ 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;
(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-)..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") shall be decided exclusively by the following dispute resolution procedure. Such matters, except those waived as provided for in Section 21.11 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, be subject to mediation as a condition precedent to binding dispute resolution. The Contract Documents, shall be subject to mediation as a condition precedent to litigation by either party. This requirement cannot be waived except by an explicit written waiver. The Contractor shall submit a written notice to the Owner of all Claims within seven (7) 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 (30) 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 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. 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 or modification of the requirement for timely, written notice and a timely, written Claim unless the Owner and the Contractor sign an explicit, unequivocal written waiver or modification 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.

§ 21.2.2 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 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. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3. this Agreement and by applicable Washington State law. Notwithstanding the above, any applicable statute of repose or statute of limitations shall commence to run, and any alleged cause of action shall be deemed to have accrued, no earlier than the date of Substantial Completion.

§ 21.4 If a claim, dispute-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 or by litigation.

§ 21.5 Mediation and Litigation 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 otherwise agreed. A request for mediation shall be made in writing, writing and 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, mediation shall proceed in advance of binding dispute resolution Agreement. The parties shall then endeavor to agree on a mediator. If the parties cannot agree on a mediator within thirty (30) days of receipt of the request, either party may file the request with the American Arbitration Association. Mediation shall proceed in advance of legal 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. mediation. 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.

§ 21.5.1 Claims, disputes, and other matters in question arising out of or relating to the Contract that are not resolved by mediation, except those waived as provided for in the Contract Documents, 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 litigation is served and filed within the earlier of (a) ninety (90) 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 shall toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or thirty (30) days following the mediation session.

§ 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~~, claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and maintain the construction schedule, unless otherwise agreed by it and the Owner in writing, 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 loss of profit, and for interest or financial costs.

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.

KELSO SCHOOL DISTRICT NO. 458

OWNER *(Signature)*

(Printed name and title)

CONTRACTOR *(Signature)*

(Printed name and title)

EXHIBIT A
Project Manual, Including Drawings and Specifications



Init.

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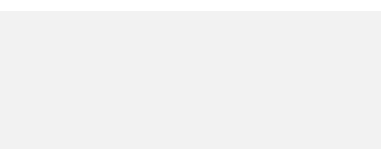
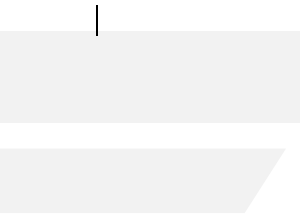


EXHIBIT B
Department of Labor and Industries Prevailing Wage Rates

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 13:49:08 PT on 01/10/2025 under Order No. 3104238397 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, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)