

GENERAL CONDITIONS

ARTICLE 10 THE CONTRACT DOCUMENTS

10.1 The Contract Documents consist of the Agreement between Snoqualmie Valley School District No. 410 and Contractor, Conditions of the Contract including these General Conditions and other Conditions of the Contract specified in the Project manual, Drawings, Specifications, addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one is as binding as if required by all. Performance by the Contractor is required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

10.2 The Contract Documents shall not be construed to create a contractual relationship of any kind between the School District and a Subcontractor of any tier, between the A/E and Contractor, or between any persons or entities other than the School District and Contractor.

10.3 The Contractor's execution of the Agreement is a representation and acknowledgement that the Contractor has visited the site and become familiar with the local conditions under which the Work is to be performed, that the Contract Sum is reasonable compensation for all the Work, that the Contract Time is adequate for the performance of the Work, and that the Contractor is capable of performing the Work. The Contractor's execution of the Agreement is a further representation and acknowledgement that the Contractor has carefully checked and verified all pertinent figures and that it has carefully examined the Contract Documents and the Project site, including any existing structures, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished, and all other requirements of the Contract Documents, as well as the surface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof. Such surface conditions and other matters include, but are not limited to, those affecting: transportation, access, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power and utilities; availability and condition of roads; normal climatic conditions and seasons; physical conditions at the Project site and the surrounding locality; topography and ground surface conditions; and equipment and facilities needed preliminary to and at all times during the performance of the Work. THE FAILURE OF THE CONTRACTOR FULLY TO

ACQUAINT ITSELF WITH ANY FORESEEABLE CONDITION OR MATTER SHALL NOT IN ANY WAY RELIEVE IT FROM THE RESPONSIBILITY FOR PERFORMING THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS AND WITHIN THE CONTRACT TIME AND THE CONTRACT SUM.

10.4 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.

10.5 If, during the performance of the Work, the Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall report it to the A/E and the School District in writing at once. The Contractor shall not proceed with the affected Work until it receives a written interpretation or clarification from the A/E.

10.6 Any investigations of subsurface conditions have been made for design purposes. The results of these investigations are bound into or referred to in the Project Manual for the convenience of the Bidders and the contractors but are not a part of the Contract Documents. The Contractor may rely upon the accuracy of the data contained in results of the investigation, but not upon interpretations or opinions contained therein, or for the completeness thereof for the Contractor's purposes. There is no guarantee, express or implied, that the conditions indicated are representative of those conditions existing throughout the site or that unforeseen developments may not occur.

10.7 The term "A/E" means the entity listed as such on the first page of this Agreement, if any. The A/E may be an architect, engineering or similar company, or consultant, and is not necessarily a licensed architect or engineer. If "None" or "N/A" is listed for the A/E, then the School District or its designated representative will perform all of the functions of the A/E described herein.

ARTICLE 11 THE SCHOOL DISTRICT

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

11.2 Neither any representative of the School District nor the A/E is authorized to revoke, alter, enlarge, relax or release any requirements of the Contract Documents, nor to approve or accept any portion of the Work whether or not executed in accordance with, nor to issue instructions contrary to the Contract Documents. Changes in the Work, Contract Sum, or Contract Time may be executed only as provided in Article 16 of these General Conditions.

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

ARTICLE 12 **THE CONTRACTOR**

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

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

12.3 Materials. With the exception of bulk coatings, all material shall be delivered to the Site in original containers as packaged by the manufacturer with the label intact. Upon request, the Contractor shall provide a certificate of compliance for bulk materials. The Contractor warrants and guarantees that title to Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the School District no later than the time of payment free and clear of liens.

12.4 Workers. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall be responsible to the School District for the acts and omissions of

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

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

12.6 Taxes and Fees. The School District shall pay to the Contractor local and Washington State sales taxes on progress payments through the Contractor as required to be paid in accordance with the laws and regulations of the place of the Project which are applicable during the performance of the Work. The Contractor shall pay for all other types of taxes and fees for the Work or portions thereof provided by or through the Contractor, including but not limited to consumer, use, B&O, income, or other taxes that are legally enacted at the time bids are received whether or not yet effective. The Contractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for the proper

execution and completion of the Work except for permit fees paid by the School District per Article 8.

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

12.8 Submittals. The Contractor shall review, approve and submit to the School District and A/E with reasonable promptness: Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. The Work shall be in accordance with approved submittals.

12.9 Clean-Up. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. Prior to Final Completion of the Work or at the School District's request, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. If the Contractor fails to do so, the School District may do so and charge to the Contractor all costs incurred in removing and disposing of such materials.

12.10 Access. The Contractor shall provide the School District and A/E, and any consultants of the School District and A/E, access to the Work in preparation and progress wherever located.

12.11 Royalties and Patents. The Contractor shall pay all royalties and license fees, shall defend suits or claims for infringement of patent rights, regardless of whether the Contract Documents specify a design, process, material, equipment, product or process, and shall hold the School District and the A/E harmless from claims, damages, losses and expenses, direct and indirect, or consequential, including but not limited to costs and attorneys' fees incurred on such claims and in proving the right to indemnification.

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

12.12.1 The Contractor will fully indemnify the Indemnified Parties for the sole negligence of the Indemnitor.

12.12.2 The Contractor will indemnify the Indemnified Parties for the concurrent negligence of the Indemnitor to the extent of the Indemnitor's negligence.

12.12.3 The Contractor agrees to being added by the School District as a party to any mediation, arbitration or litigation with third parties in which the School District alleges indemnification or contribution from the Contractor, any of its subcontractors of any tier, any one directly or indirectly employed by any of them, or any one for whose acts any of them may be liable. The Contractor agrees that all of its Subcontractors of any tier will, in the subcontracts, similarly stipulate; in the event any does not, the Contractor shall be liable in place of such Subcontractor(s). To the extent a court or arbitrator strikes any portion of this indemnification provision for any reason, all remaining provisions shall retain their vitality and effect. In claims against any person or entity indemnified under this Section 12.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 12.12 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 under workers' compensation acts, disability benefit acts or other employee benefit acts. After mutual negotiation of the parties, the Contractor waives immunity as to the School District, the A/E and their consultants only under Title 51 RCW, "Industrial Insurance." IF THE CONTRACTOR DOES NOT AGREE WITH THIS WAIVER, IT MUST PROVIDE A WRITTEN NOTICE TO THE SCHOOL DISTRICT PRIOR TO THE DATE FOR THE RECEIPT OF BIDS, OR THE CONTRACTOR WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY. The provisions of this Section shall survive the expiration or termination of this Agreement.

12.13 Prevailing Wages.

12.13.1 Pursuant to RCW 39.12, no worker, laborer, or mechanic employed in the performance of any part of this Agreement shall be paid less than the "prevailing rate of wage" (in effect as of the date that bids are due) as determined by the Industrial Statistician of the Department of Labor and Industries, ESAC Division, PO Box 44540, Olympia WA 98504-4540, Telephone (360) 902-5335. The schedule of the prevailing wage rates for the locality or localities where this Work will be performed is attached and made a part of this Agreement by reference as though fully set forth herein. To the extent that there is any discrepancy between the attached schedule of prevailing wage rates and the published rates as are applicable under WAC 296-127-011, the latter shall apply at no increase to the Contract Sum. The Contractor shall

provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. The Industrial Statistician will answer questions relating to prevailing wage data upon request.

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

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

12.14 Hours of Labor. The Contractor shall comply with all applicable provisions of RCW 49.28.

12.15 Hazardous Chemicals. Pursuant to RCW 49.70 and WAC 296-62-054 et seq., the Contractor shall provide the School District copies of and have available at the Project Site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Contractor or any Subcontractor at the Project Site. The 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.

12.16 Contract Schedule. The Contractor shall 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.

12.16.1 The Contractor shall use the Contract Schedule to plan, coordinate, and prosecute the Work in an orderly and expeditious manner. The Contract Schedule will be used by the School District and the A/E to evaluate progress and status at the various stages of the Project, allocate funds per the cash flow information provided, determine the impact of any changes to the Contract, and establish the basis for progress payments.

12.16.2 The Schedule will be reviewed by the A/E and School District. Such review of the Contractor's schedule 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.

12.16.3 Within *ten (10) days* after execution of this Agreement, the Contractor shall submit a preliminary schedule of the Work to the School District. Failure to do so shall constitute a material breach of the Contract and a material breach of the conditions of the bid bond. Within *thirty (30) days* after execution of this Agreement, the Contractor, after consultations with its Subcontractors, shall submit a Contract Schedule to the School District. Payment to the Contractor is not due or owing until a Contract Schedule in a form satisfactory to the School District has been submitted.

12.16.4 Within *seven (7) days* after receipt of the Schedule, the School District will comment to the Contractor concerning any observed deviations from the requirements of the Contract Documents. Within *five (5) days*, the Contractor shall adjust the Schedule to fairly incorporate the School District's comments.

12.16.5 Upon receipt and acknowledgment of the revised Schedule by the School District, it shall become the Contract Schedule. Payment to the Contractor may be withheld until the Contract Schedule, satisfactory in form and substance to the School District and A/E, has been received.

12.16.6 The Schedule shall be revised at appropriate intervals as required by the conditions of the Work or by the School District or A/E. It shall be related to the entire Project to the extent required by the Agreement, shall provide for expeditious and practicable execution of the Work, and shall be utilized and conformed to by the Contractor.

12.16.7 The Contractor shall participate in progress meetings held at least once every week with the A/E, the School District, Subcontractors and other appropriate consultants. The Contractor shall fully brief the A/E and the School District on the progress of the Work.

12.17 Communication. The Contractor shall provide the School District with a direct copy of all written communications to the A/E or its consultants, including all notices, Claims, and potential changes in the Contract Sum or Time, except for Shop Drawings and submittal data.

ARTICLE 13 **ADMINISTRATION OF THE CONTRACT**

13.1 The A/E will provide administration of the Agreement.

13.2 The duties and responsibilities and the limitations of authority of A/E are set forth in the Contract Documents and shall not be extended without written consent of the School District and the A/E. The A/E is not an agent of the School District, and is not authorized to speak on behalf of or bind the School District. The School District must approve in writing all changes in the Contract Sum or Time and all Change

Orders, Construction Change Directives, and payments to the Contractor.

13.3 The A/E will make visits to the site at intervals appropriate to the stage of the Work to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the A/E will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. Approval of the Work by the A/E does not relieve the Contractor from the requirements of the Contract Documents.

13.4 The A/E and School District will not have control over or charge of and will not be responsible for means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The School District and the A/E will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

13.5 The A/E will issue such written clarifications or interpretations as to matters of design interpretation (in the form of Drawings or otherwise) as the A/E may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

13.6 The A/E may authorize minor variations in the Work from the requirements of the Contract Documents that do not involve an adjustment in the Contract Sum or the Contract Time and are consistent with the overall intent of the Contract Documents. These will be accomplished by a Minor Change in the Work instrument and will be binding on the Contractor, who shall perform the Work involved promptly. Minor changes in the Work shall not result in a change in the Contract Sum or Time.

13.7 If Contractor believes that a written clarification or interpretation, a Construction Change Directive or any interpretation justifies an increase in the Contract Sum or an extension of the Contract Time, and the parties are unable to agree as to the amount or extent thereof, the Contractor may make a Claim therefor as provided in Article 13, as soon as possible and no later than *fourteen (14) days* after receipt of Construction Change Directive.

13.8 The School District and the A/E will have authority to disapprove or reject Work which the School District or the A/E believes does not conform to the Contract Documents or is otherwise defective or substandard. The School District and the A/E each also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed or completed.

13.9 Neither the School District nor the A/E's authority to act under this Article 13 nor elsewhere in the Contract Documents, nor any decision made by the School District or the A/E in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the A/E or the School District to the Contractor, any Subcontractor of any tier, or any other person or organization performing any of the Work, or to any surety for any of them.

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

13.10.1 Notice of Claim. The Contractor shall submit notice of all Claims to the School District in writing within *fourteen (14) days* of the event giving rise to them and shall include a clear description of the event and its probable effect. Failure to comply with the requirements of this Section 13.10 shall constitute a waiver of the Claim.

13.10.2 Claim Submission. Within *thirty (30) days* of the event giving rise to the Claim, the Contractor shall provide the School District with a written Claim, including a clear description of the Claim, all changes in cost and in time (direct, indirect, impact, consequential, and otherwise) to which the Contractor and Subcontractors of any tier are entitled, and data supporting the Claim. The claim of a Subcontractor may be brought only through the Contractor and only after the Contractor notifies the School District in writing that the Contractor has reviewed the Claim. No act, omission, or knowledge, actual or constructive, of the School District shall in any way be deemed to be a waiver of the requirement for a timely written Claim unless the School District provides the Contractor with an explicit, unequivocal written waiver. Proper notice of a Claim, as provided in Section 13.10.1 is a condition precedent to submission of a Claim under this Section 13.10.2.

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

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

13.10.4 Informal Resolution. The School District will make a determination of the Claim submitted. If the Contractor disagrees with the determination and wishes to pursue the Claim further, the Contractor must, within *fourteen (14) days* of receipt of the determination, provide the School District with a written request that a representative of the Contractor, the A/E, and the School District meet, confer, and attempt to resolve the claim. This meeting will then take place at mutually convenient time and place within *fourteen (14) days*.

13.10.5 Mediation. The Contractor may not bring any litigation against School District unless the Claim is first subject to non-binding mediation before a single mediator under the Construction Industry Mediation Procedures of the American Arbitration Association. This requirement cannot be waived except by an explicit written waiver signed by the School District and the Contractor. To initiate the mediation process, the Contractor shall submit a written mediation request to the School District within *thirty (30) days* of the meeting undertaken in Subparagraph 13.10.3. If the parties are unable to agree to a mediator within *thirty (30) days* after the School District's receipt of the written request for mediation, either party may submit a request for mediation to the AAA. An officer of the Contractor and the Superintendent or designee of the School District, both having full authority to settle the Claim, must attend the mediation session. To the extent there are other parties in interest, such as Subcontractors, their representatives, with full authority to settle the Claim, shall also attend the mediation session. Unless the School District and Contractor mutually agree in writing otherwise, all unresolved Claims in the Project shall be considered at a single mediation session, which shall occur prior to Final Acceptance by the School District. The Contractor is responsible for initiating the mediation process.

13.10.6 Litigation. The Contractor may not bring any litigation on Claims unless such Claims have been properly raised and considered in the dispute resolution procedures of this Section 13.10. All unresolved Claims of the Contractor shall be waived and released unless the Contractor has strictly complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) *120 days* after the Date of Substantial Completion as designated in writing by the School District or (b) *60 days* after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by School District and the Contractor. If a mediation is properly requested pursuant to Section 13.10.5, these deadlines shall be

tolled until thirty (30) days following the mediation proceeding.

13.11 Claims for Concealed and Unknown Conditions. Provided a timely, proper Claim has been made under Section 13.10, the Contract Sum and/or Contract Time will be equitably adjusted by Change Order if concealed and unknown conditions are encountered in the performance of the Work below the surface of the ground or concealed and unknown conditions are encountered in an existing structure, and the conditions are at variance with the conditions indicated by the Contract Documents or are of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. No increase to the Contract Sum or Time shall be allowed if Contractor knew or should have known of the concealed conditions prior to its executing the Agreement.

13.12 Books and Records. The Contractor shall maintain books, ledgers, records, documents, estimates, bids, correspondence, logs, electronic data and other evidence pertaining to the costs incurred by the Contractor in connection with or related to the Agreement ("records") to such extent and in such detail as will properly reflect and fully support all costs, charges and other amounts of whatever nature for which reimbursement or payment is or may be claimed under the Contract. The Contractor shall preserve these records for a period of three (3) years following the date of final payment under the Agreement and for such longer period as may be required by any other provision of the Agreement. The Contractor agrees to make available at the office of the Contractor at all reasonable times, but no later than *seven (7) days* following the School District's request, all records for inspection, audit and reproduction (including electronic reproduction) by the School District or its representatives. These requirements shall be applicable to each Subcontractor of any tier and be included in each Subcontract and purchase order issued with respect to the Work. The Contractor agrees, on behalf of itself and its representative and Subcontractors of any tier, that any rights under RCW 42.56 will commence at Final Acceptance, and that the invocation of such rights at any time by the Contractor or its representatives or any Subcontractor of any tier and their representatives shall initiate an equivalent right to disclosure from the Contractor and Subcontractors of any tier for the benefit of the School District.

13.13 Claims for Consequential Damages. The Contractor and School District 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 School District 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, for losses on other projects, for loss of profit, and for interest or financing costs.

This mutual waiver is applicable to all consequential damages of any cause, including without limitation due to either party's termination in accordance with Article 23. Nothing contained in this Section 13.13 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE 14 **SUBCONTRACTORS**

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

14.2 Nothing in the Contract Documents shall create any obligation on the part of School District or A/E to pay or to see to the payment of any moneys due any Subcontractor of any tier or other person or entity, except as may otherwise be required by laws and regulations.

14.3 Within *ten (10) days* after issuance of the notice of award of the Agreement, the Contractor shall furnish in writing to the School District and A/E the names of the Subcontractors for each portion of the Work. The Contractor shall not contract with any Subcontractor to whom the School District has made timely objection or different from the one listed in conjunction with the bid. Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor to be bound to the Contractor by the terms of the Contract Documents to the extent of the Work to be performed by the Subcontractor and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the School District and A/E, and (2) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

14.4 The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors). The Contractor shall furnish to the School District such releases of claims and other documents as the School District may request from time to time to evidence such payment (and discharge). The School

District may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are so furnished. The Contractor shall defend, indemnify and hold harmless the School District from any liens, including all costs, expenses and attorneys' fees.

ARTICLE 15 **CONSTRUCTION BY SCHOOL DISTRICT OR BY SEPARATE CONTRACTORS**

15.1 The School District reserves the right to perform construction or operations related to the Project with the School District's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under contractual conditions identical or substantially similar to those of the Contract Documents. If the Contractor contends that delay or additional cost is involved because of such action by the School District, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

15.2 The Contractor shall afford the School District and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations as required by the Contract Documents.

ARTICLE 16 **CHANGES IN THE WORK**

16.1 The School District, without invalidating the Agreement, may order changes in the Work consisting of additions, deletions or modifications ("Changes"). The Contract Sum and Contract Time will be adjusted accordingly. Changes in the Work shall be authorized only by written Change Order or by written Construction Change Directive, and the Contract Sum and Contract Time shall be changed only by Change Order. Any 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. If the Contractor adds a reservation of rights to a Change Order or a Construction Change Directive, it must be initialized by the School District to be effective. If not initialed, the reservation of rights is without effect.

16.1.1 Minor Changes in the Work. A Minor Change in the Work is a written instrument signed by the A/E approving a minor variation in the Work from the requirements of the Contract Documents that does not involve an adjustment in the Contract Sum or the Contract Time and is consistent with the overall intent of the Contract Documents. The Contractor shall promptly proceed with the Minor Change in the Work.

16.1.2 Change Orders. A Change Order is a written instrument signed by the School District and Contractor stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment in the Contract Sum, if any; and
- .3 the extent of the adjustment in the Contract Time, if any.

16.1.3 Construction Change Directives. A Construction Change Directive is a written order prepared by the A/E and signed by the School District and A/E, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both.

- .1 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- .2 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
 - mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - unit prices stated in the Contract Documents or subsequently agreed upon;
 - cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.
- .3 The Contractor shall promptly proceed with the change in the Work described in the Construction Change Directive. As soon as possible, and no later than within *seven (7) days* of receipt, the Contractor shall advise the A/E in writing of the Contractor's agreement or disagreement with the cost or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

16.2 Pricing. If the parties cannot agree on the cost or credit to the School District from a Change in the Work, the Contractor shall keep and present, in such form as the School District may prescribe, an itemized accounting together with supporting data. The total cost of any Claim or an increase or decrease in the Contract Sum or any Change in the Work shall be limited to the reasonable value of the following:

16.2.1 Direct labor costs: Current Washington Department of Labor and Industries prevailing hourly wage for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Changed Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the School District. The hourly cost shall be based solely upon basic wages and mandatory fringe benefits and workers' insurances.

Payroll costs shall be based upon production rates no lower than those defined in R. S. Means Company Man-hour Standards for Building Construction.

16.2.2 Direct material costs: An itemization of the net cost on a unit basis of materials and equipment incorporated in and necessary to perform the Changed Work, including discounts, rebates, costs of transportation, required third-party storage, and suppliers' required field services, when applicable.

16.2.3 Construction equipment usage costs: An itemization of the actual length of time construction equipment appropriate for the Work will be used solely on the Change in the Work at the site times the applicable rental cost as established by the lower of the prevailing rate published in The Rental Rate Blue Book by Data Quest, San Jose, California, or the actual rate paid as evidenced by rental receipts. Actual, reasonable mobilization costs are permitted only if the equipment is brought to the Site solely for the change in the Work. If more than one rate is applicable, the lowest rate will be utilized. The rates in effect at the time of the performance of the Change work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use on the Work shall be fifty percent (50%) of the rate established above. 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 that equipment, which rate and use must be approved by the A/E or School District prior to performing the work.

16.2.4 Subcontractor costs: Payments the Contractor makes to Subcontractors for Changed Work performed by Subcontractors of any tier. The Subcontractor's cost of the Work shall be determined in the same manner as prescribed in this Section 16.2.

16.2.5 Bond and Insurance costs: Cost of change in Bond or insurance premium required because of the Change in the Work. Contractor shall provide verification of costs, and the specific reason(s) for any increase, to the School District.

16.2.6 Fee: The allowance for all combined overhead, profit and other costs, including all office, home office, extended and site overhead (including project manager, project engineer, other engineers, estimator, superintendent and general foreman time), and all delay and impact costs of any kind, shall be strictly limited to a fee, based on the

following percentage of the various portions of the above Cost of the Work:

- .1 The Contractor shall receive fifteen percent (15%) of the cost of any materials or work performed by the Contractor's own forces;
- .2 The Contractor shall receive eight percent (8%) of the amount due directly to its Subcontractor for materials or work performed by that Subcontractor;
- .3 The Contractor shall receive five percent (5%) of the amount due directly to its Subcontractor for materials or work performed by a lower-tier Subcontractor;
- .4 Each Subcontractor (including lower tier subcontractor involved) shall receive twelve percent (12%) of the cost of any materials or work performed by its own forces.
- .5 Each Subcontractor of any tier shall receive eight percent (8%) of the amount due a sub-subcontractor for materials supplied or work performed by its Subcontractors of any lower tier; and
- .6 When both additions and credits are involved in any one change, the adjustment in Contractor's Fee shall be computed on the basis of the net change in costs.

16.2.7 Credit Allowed. The amount of credit to be allowed by the Contractor to the School District for a deletion or change which results in a net decrease in the Contract Sum shall be the largest of (i) the reasonable value of the deletion or change, (ii) the line item value in the Schedule of Values, or (iii) the actual net cost as confirmed by the A/E.

ARTICLE 17 TIME

17.1 Time

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

17.1.2 Within *ten (10) days* of issuance of the notice of intent to award the contract, the Contractor shall submit an executed contract, payment and performance bond, certificates of insurance, and all other documents required by the Contract Documents. The Contractor shall provide the School District with a 24-hour notice prior to commencing Work.

17.2 Delays

17.2.1 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, by

unanticipated general labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, then the Contract Time shall be extended by Change Order for such reasonable time as the School District may determine.

17.2.2 The Contractor (on behalf of itself and its Subcontractors of any tier) shall be entitled to damages for delay, limited to the liquidated rate of this Agreement, only where the School District's own actions or inactions were the actual, substantial cause of the delay and where the Contractor could not have reasonably avoided the delay by the exercise of due diligence.

17.2.3 The Contractor (including Subcontractors of any tier) 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.

17.2.4 If the delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the Contract Sum.

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

ARTICLE 18 PAYMENTS AND COMPLETION

18.1 **Schedule of Values.** At least *fourteen (14) days* before the first Application for Payment, the Contractor shall submit to the A/E a schedule of values, allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the School District and A/E may require. This schedule, unless objected to by the School District or A/E, shall be used as a basis for reviewing the Contractor's Applications for Payment. This schedule shall not allocate more than 1% of the Contract Sum to

mobilization. This schedule shall allocate at least 3% of the Contract Sum to that portion of the Work between Substantial Completion and Final Completion, to an item entitled "Final Documentation and Punchlist Completion," which will be paid as part of the final payment. This is not a statutory retainage.

18.2 Progress Payments. Payments shall be made as provided in this Agreement. These amounts are paid in trust to the Contractor for distribution to Subcontractors to the extent and in accordance with the approved Application for Payment. If Progress payments are specified, they will be made monthly for Work duly approved and performed during the calendar month preceding the application according to the following procedure.

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

18.2.2 Payment Request. After the Contractor, the School District and the A/E have met and conferred regarding the updated draft application, and the Contractor has furnished all progress information required and all data requested by the A/E under Section 9.3.1.1 above, the Contractor has submitted current meeting minutes, as-built drawings and commissioning logs (if requested) and an updated (bar chart) construction schedule, the Contractor may submit a payment request by the 10th 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 supplied or approved by the School District, along with a lien release, if requested by the School District, on a form furnished by the School District from each Subcontractor for whose Work the School District paid the Contractor for the prior month. The Application shall also state that prevailing wages have been paid in accordance with the prefiled statements of intent to pay prevailing wages on file with the School District and that all payments due Subcontractors of any tier from the School District's payment the prior month have been made. The submission of this

Application constitutes a certification that the Work is current on the Contractor's Construction Schedule, unless otherwise noted on the application. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay. A payment request shall not be valid unless it complies with the requirements of the Contract Documents. Any payment request that includes a reservation of rights for additional payments or claims will be returned to the Contractor for resubmittal and will not be processed for payment; if the Contractor believes that it is entitled to any additional payment amounts the Contractor shall submit a separate payment request pursuant to Section 18.2.5.

18.2.3 Payments to Subcontractors. No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor for unsatisfactory performance, the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor and the School District written notice of the remedial actions that 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.

18.2.4 Interest. Payments due and unpaid under the Agreement shall bear interest from the date payment is due and unpaid under the Contract Documents as specified by RCW 39.76.

18.2.5 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, also by the 10th day of the month and after the meeting in Section 9.3.1.1, submit to the School District and the A/E along with the approved payment request a separate written payment request specifying the exact additional amount due, the category in the Schedule of Values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, for the submittal to be considered, pursuant to WAC 296-127-320, the Contractor and all Subcontractors shall file with the School District by the same date certified copies of all payroll records relating to the additional amount due.

18.3 Prevailing Wages. Pursuant to RCW 39.12, the Contractor will not receive any payment until the Contractor

and all Subcontractors have submitted a "Statement of Intent to Pay Prevailing Wage" to the School District. The statement must have the approval of the Industrial Statistician of the Department of Labor and Industries before it is submitted to the School District. The Contractor and the respective Subcontractors shall pay all fees required by the Department of Labor and Industries, including fees for the approval of the "Statement of Intent to Pay Prevailing Wages." Approved copies of the "Statement of Intent to Pay Prevailing Wages" must be posted where workers can easily read them.

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

18.5 Substantial Completion.

18.5.1 When the Contractor believes that the entire Work is Substantially Complete, it shall notify the School District and A/E in writing. When the School District agrees, it will issue a Certificate of Substantial Completion. Substantial Completion is the stage in the progress of the Work when the construction is sufficiently complete, in accordance with the Contract Documents, so the School District can fully utilize the Work (or the designated portion thereof) for the use for which it is intended. All Work other than incidental corrective or punchlist work and final cleaning shall have been completed. The Work is not Substantially Complete if all systems and parts affected by the Work are not usable, an occupancy permit (temporary or final) has not been issued, or if utilities affected by the Work are not connected and operating normally. The fact that the School District may use or occupy the Work or designated portion thereof does not indicate that the Work is Substantially Complete, nor does such occupation toll or change any liquidated damages due the School District.

18.5.2 Immediately before partial or complete occupancy, the School District will schedule an inspection tour of the area to be occupied. A representative of the School

District, A/E and Contractor will jointly tour the area and record items still remaining to be finished and/or corrected. The Contractor shall supply and install any items missed by the inspection but required or necessary for Final Completion as a part of the Contract Sum, notwithstanding their not being recorded during the inspection tour.

18.6 Final Payment. Pursuant to RCW 60.28, completion of the Contract Work shall occur after the Contractor has notified the School District, and the School District concurs, that the Work has been concluded and the Contractor submits the items listed below to the School District. The School District's Board of Directors then formally accepts the Project ("Final Acceptance"). Final Payment shall not become due until after Final Acceptance. Before Final Acceptance, the Contractor must have submitted the following to the School District:

18.6.1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the School District or its property might in any way be responsible or encumbered, have been paid or otherwise satisfied,

18.6.2 consent of surety to final payment,

18.6.3 certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least *thirty (30) days'* prior written notice has been given to the School District,

18.6.4 a written statement that the Contractor knows of no substantial reason why the insurance will not be renewable to cover the period required by the Contract Documents,

18.6.5 other data establishing payment or satisfaction of or protection (satisfactory to the School District) against all obligations, such as receipts, releases and waivers of liens arising out of the Agreement satisfactorily demonstrating to the School District that the claims of subcontractors, material suppliers, and laborers who have filed claims have been paid,

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

18.6.7 a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this Project. This shall include, without limitation, city/county building departments,

health districts and utility districts. Attach a copy of each of these closed or signed-off permits.

18.6.8 pursuant to RCW 60.28.020, certificates from the Department of Revenue and the Department of Labor and Industries,

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

18.6.10 all warranties, guarantees, manuals, operation instructions, certificates, spare parts, maintenance stock, specified excess material, and other documents or items required by the Contract Documents, and

18.6.11 certification that the materials in the Work are "lead-free" and "asbestos free."

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

18.8 Waivers.

18.8.1 Final Payment by School District. The making of final payment shall constitute a waiver of claims by the School District except those arising from (1) liens, claims, security interests or encumbrances arising out of the Agreement and unsettled; (2) failure of the Work to comply with the requirements of the Contract Documents; (3) work subsequently found to be substandard and/or deficient, or (4) terms of warranties required by the Contract Documents or law.

18.8.2 Final Payment to Contractor. Acceptance of final payment by the Contractor, or a Subcontractor of any tier, shall constitute a waiver of claims by that payee except those previously made in writing and identified in writing as unsettled on the final application for payment.

18.8.3 Change Orders. The execution of a Change Order shall constitute a waiver of claims by the Contractor arising out of the Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. If the Contractor adds to a Change Order or any other document a reservation of rights that has not been initialed by the School District, all the amounts previously agreed shall be considered disputed and not yet payable unless the costs are re-negotiated or the reservation is withdrawn or

changed in a manner satisfactory to and initialed by the School District. If the School District makes payment for a Change Order or an Application for Payment that contains a reservation of rights not initialed by the School District to indicate agreement with the reservation, and if the Contractor negotiates the check for such payment, then the reservation of rights shall be deemed waived, withdrawn, and of no effect.

18.9 Statutory Retainage.

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

18.9.2 The moneys reserved may, at the option of the Contractor, be (1) retained in a fund by the School District until *forty-five (45) days* following Final Acceptance; or (2) deposited by the School District in an interest-bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until *forty-five (45) days* following Final Acceptance, with interest to the Contractor; or (3) placed in escrow with a bank or trust company until *forty-five (45) days* following the Final Acceptance, by the School District's joint check to the bank or trust company and the Contractor, to be converted into bonds and securities chosen by the Contractor, approved by the School District, and held in escrow, with interest on the bonds and securities paid to the Contractor as it accrues.

18.9.3 The Contractor may retain payment of not more than 5% from the moneys earned by any Subcontractor, provided that the Contractor pays interest to the Subcontractor at the same interest rate it receives from its reserved funds. If requested by the School District, the Contractor shall specify the amount of the retainage and interest due a Subcontractor.

18.10 Warranty. The Contractor warrants and guarantees that title to Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the School District no later than the time of payment free and clear of liens. The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors). The Contractor shall furnish to School District such releases of claims and other documents as may be requested by School District from time to time to evidence such payment (and discharge). School District may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are so furnished. The Contractor shall indemnify

and hold harmless the School District from any liens, including all expenses and attorneys' fees.

18.11 Tests and Inspections

18.11.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. The Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity selected by the School District, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals unless otherwise noted in the Contract Documents.

18.11.2 If the procedures for testing, inspection or approval under Subparagraph 18.11.1 reveal failures of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the A/E's services and expenses.

18.11.3 Required certificates of testing, inspection or approval shall be secured by the Contractor and promptly delivered to the A/E.

18.11.4 If the School District is responsible under the Contract Documents, law or regulation to pay for an inspection of any inspector, consultant or A/E, the School District shall be required to pay only for the first actual inspection. If the Contractor arranges for an inspection and the inspector is required to wait, to leave without inspecting, to perform a partial inspection, to return to complete or reinspect, or otherwise to expend time other than for the primary inspection, the Contractor shall be responsible for all such costs. If the Contractor does not pay the charges for which it is responsible within *thirty (30) days* of billing, the School District may pay the charges directly and backcharge the Contractor on the next progress payment the amount paid plus a 10% handling fee.

ARTICLE 19

PROTECTION OF PERSONS AND PROPERTY

19.1 The Contractor shall be solely responsible for, and neither the School District nor the A/E shall have responsibility for, all aspects of safety, including initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Agreement. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein; and (3) other property at the site or adjacent thereto.

19.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by the Contractor, a Subcontractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except for damage or loss attributable to acts or omissions of the School District or A/E or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor or a Subcontractor of any tier. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 12.12.

ARTICLE 20 **BONDS AND INSURANCE**

20.1 Performance and Payment Bonds. The Contractor shall secure from a surety company licensed to do business in the State of Washington and shall pay for a surety bond pursuant to RCW 39.08 in the amount of the Contract Sum plus sales tax. The Bond shall remain in effect until the completion of the correction period, except as otherwise provided by law or regulation or by the Contract Documents. Within *ten (10) days* after the School District provides Contractor with the notice of intent to award the contract, the Contractor shall deliver the bond to the School District. **THE SCHOOL DISTRICT SHALL DECLINE TO ENTER INTO THE CONTRACT IF THE BOND IS NOT RECEIVED.**

20.2 Contractor's Liability Insurance. The Contractor shall purchase from and maintain during the life of this Agreement, at its own cost in a company or companies admitted to do business in the State of Washington possessing a Best's policy holder's rating of A- or better and a financial rating of no less than VII, and reasonably acceptable to the School District, an occurrence-based Commercial General Liability Insurance Policy and such other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor's operations under the Contract Documents, whether to be performed or furnished by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

20.2.1 Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts, including Contingent Employers Liability (Stop Gap);

20.2.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

20.2.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

20.2.4 Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (b) by any other person for any other reason.

20.2.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;

20.2.6 Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property;

20.2.7 Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle, including coverage for Owned Motor Vehicles, Non-Owned Motor Vehicles and Hired or Borrowed Motor Vehicles; and

20.2.8 The School District shall be named as an additional insured on such policies other than State Workers Compensation. The School District's specification or approval of this insurance or of its amount shall not relieve or decrease the liability of the Contractor under the Contract Documents or otherwise. Policies shall contain a provision that the School District shall be given *thirty (30) days'* written notice by certified mail before cancellation of any insurance or reduction of the amount thereof, or any alteration, modification or restriction thereto.

20.2.9 The comprehensive general liability insurance required by this Section must include contractual liability insurance applicable to Contractor's obligations under Section 12.12.

20.3 Property Insurance. Unless otherwise provided in the Contract Documents, the Contractor shall purchase and maintain, in a company authorized to do business in the State of Washington, property insurance upon the Work at the site to the full insurable value thereof (subject to such deductible amounts as may be provided in the Contract Documents). This insurance shall include the interest of School District, Contractor, Subcontractors, A/E and A/E's consultants in the Work, all of whom shall be listed as insureds or additional insured parties, shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss and damage including, without duplication of coverage, theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided in the Contract Documents, and shall include damages, losses

and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, A/Es, attorneys and other professionals). If not covered under the "all risk" insurance or otherwise provided in the Contract Documents, the Contractor shall purchase and maintain similar property insurance on portions of the Work stored on and off the Site or in transit when such portions of the Work are to be included in an Application for Payment. Each loss may be subject to a deductible of \$10,000. Losses up to the deductible amount or otherwise not covered by insurance shall be the responsibility of the Contractor. The policy shall be endorsed to allow complete or partial occupancy by the School District before or after Substantial Completion without the insurer's approval. The School District shall bear no responsibility for such portions of the Work or the consequences of their damage or loss.

20.4 The School District's specification or approval of the insurance in this Agreement or of its amount shall not relieve or decrease the liability of the Contractor under the Contract Documents or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. The Contractor may, at its expense, purchase larger coverage amounts or additional insurance.

20.5 Waiver of Rights

20.5.1 The School District and Contractor waive all rights against each other and any of their Subcontractors of any tier, the A/E, their consultants, separate contractors described in Article 12 (if any), and any of their respective agents and employees, for losses and damages caused by any of the perils covered by the policies of insurance provided in response to Sections 20.3 and 20.4 and any other property insurance applicable to the Work, and also waive such rights against the Subcontractors, A/E, A/E's consultants and other parties named as insureds in such policies for losses and damages so caused. Each subcontract between Contractor and a Subcontractor will contain similar waiver provisions by the Subcontractor in favor of School District, Contractor, A/E, A/E's consultants and all other parties named as insureds. None of the above waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by School District as Trustee or otherwise payable under any policy so issued.

20.5.2 The School District and Contractor intend that any policies provided in response to Sections 20.3 and 20.4 shall protect the parties insured and provide primary coverage for losses and damages caused by the perils covered thereby. Accordingly, such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as insureds or additional insureds, and if

the insurers require separate waiver forms to be signed by A/E or A/E's consultant, School District will obtain the same, and if such waiver forms are required of any Subcontractor, Contractor will obtain the same.

20.6 Any insured loss under the policies of insurance required by Sections 20.3 and 20.4 will be adjusted with School District and made payable to School District as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. School District shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Contract Modification or Written Amendment, or be a separate contract, at School District's option.

ARTICLE 21 **CORRECTION OF WORK**

21.1 The Contractor shall promptly, and within at least *fifteen (15) days*, correct Work rejected or failing to conform to the requirements of the Contract Documents at any time through a period of one year from the date of Substantial Completion of the Agreement or by terms of a longer manufacturer's warranty or an applicable special warranty required by the Contract Documents. The provisions of this Article apply to Work done by Subcontractors of any tier as well as to Work done by direct employees of the Contractor.

21.2 If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents or fails to carry out the Work in accordance with the Contract Documents, the School District, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

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

ARTICLE 22 **MISCELLANEOUS PROVISIONS**

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

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

22.3 Contractor Registration and Related Requirements. Pursuant to RCW 39.06, the Contractor shall be registered or licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27. 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).

22.4 Law against Discrimination. The Contractor shall comply with pertinent statutory provisions relating to public works of RCW 49.60.

22.5 Provisions for Aged and Handicapped Persons. The Contractor shall comply with pertinent statutory provisions relating to public works of RCW 70.92.

22.6 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.

22.7 Unemployment Compensation. Pursuant to RCW 50.24 in general and RCW 50.24.130 in particular, the Contractor shall pay contributions for wages for personal services performed under this Agreement or arrange for a bond acceptable to the commissioner.

22.8 Drug-Free Workplace. The Contractor and all Subcontractors shall fully comply with all applicable federal, state, and local laws and regulations regarding drug-free workplace, 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.

22.9 Smoke and Tobacco-Free Environment. Smoking or use of any kind of lighted pipe, cigar, cigarette or any other lighted smoking equipment, material or smokeless tobacco products is prohibited on all school district property.

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

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

ARTICLE 23

TERMINATION OF THE AGREEMENT

23.1 Termination for Cause by Contractor. If the School District fails to make payment for a period of *thirty (30) days* through no fault of the Contractor, the Contractor may, upon *seven (7) additional days'* written notice to the School District, terminate the Agreement and recover from the School District payment for all Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including Fees applicable thereto.

23.2 Termination for Cause by School District. The School District may, upon *seven (7) days'* written notice to the Contractor, terminate (without prejudice to any right or remedy of the School District) the whole or any portion of the Work for cause, including the following circumstances:

23.2.1 the Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time;

23.2.2 the Contractor is in material default of or materially breaches any provisions of this Agreement;

23.2.3 the Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency;

23.2.4 the Contractor fails to supply a sufficient number of properly skilled workers or proper materials;

23.2.5 the Contractor fails to make prompt payment to Subcontractors or for materials or labor;

23.2.6 the Contractor materially disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or

23.2.7 the Contractor fails to comply with the provisions of RCW 28A.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 as described in Section 12.4.

23.3 Termination for Convenience by School District. The School District may, at any time upon *ten (10) days'* written notice to the Contractor, terminate (without prejudice to any right or remedy of the School District) the whole or any portion of the Work for the convenience of the School District. The School District shall be liable to Contractor only for those costs reimbursable to Contractor in accordance with the following plus ten percent of the actual costs recovered under this Section.

23.3.1 The amount due under Article 13 of this Agreement for the performance of the Work terminated; and

23.3.2 Other pre-approved costs, consistent with Section 11.2, necessary and reasonably incurred in connection with the termination of Work under this subparagraph.

The total sum to be paid to the Contractor under this Section 23.3 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made, the price of Work not terminated, and as otherwise permitted by this Agreement.

23.4 Effects of Termination.

23.4.1 Unless the School District directs otherwise, after receipt of a Notice of Termination from the School District pursuant to Section 23.2 or 23.3, the Contractor shall promptly:

.1 stop Work under the Agreement on the date and as specified in the Notice of Termination;

.2 place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of any portion of the Work that is not terminated;

.3 procure cancellation of all orders and subcontracts, upon terms acceptable to the School District, to the extent that they relate to the performance of Work terminated;

.4 assign to the School District all of the right, title and interest of the Contractor under all orders and subcontracts, in which case the School District shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

.5 with the School District's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the School District;

.6 transfer title and deliver to the entity or entities designated by the School District the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the

completed or partially completed plans, drawings, information and other property related to the Work;

.7 use its best efforts to sell any property of the types referred to in subparagraph 23.4.1.6. The Contractor shall not be required to extend credit to any buyer, and may acquire any such property under the conditions prescribed by and at a price or prices approved by the School District, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the School District to the Contractor;

.8 take such action as may be necessary or as directed by the School District to preserve and protect the Work and property related to this Project in the possession of the Contractor in which the School District has an interest; and

.9 continue performance only to the extent not terminated.

23.4.2 In arriving at any amount due the Contractor after termination, the following deductions shall be made:

.1 all unliquidated advance or other prior payments on account made to the Contractor applicable to the terminated portion of the Agreement;

.2 any claim which the School District may have against the Contractor;

.3 an amount necessary to protect the School District against outstanding or potential liens or claims; and

.4 the agreed price for or the proceeds of sale of any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of subparagraph 23.4.1.7, and not otherwise recovered by or credited to the School District.

23.4.3 If (and only if) the termination pursuant to Section 23.3 is partial, the Contractor may file a Claim for an equitable adjustment of the price or prices specified in the Agreement relating to the continued portion of the Agreement. The Contractor must assert any Claim for an equitable adjustment under this subparagraph within *sixty (60) days* from the effective date of the Termination.

23.4.4 The Contractor shall refund to the School District any amounts the School District paid to the Contractor in excess of costs reimbursable under Section 23.3.

23.4.5 The damages and relief from termination by the School District specifically provided in Article 23 shall be the Contractor's sole entitlement in the event of termination.

End of Section