ADDENDUM NO. 1

Rochester School District

ROCHESTER MIDDLE SCHOOL & ROCHESTER PRIMARY SCHOOL ROOF REPLACEMENT

Project No. 2026-01

DATED JUNE 2, 2026

This Addendum provides a sample of the Short Form Contract and is part of the RFP dated May 18, 2026. Acknowledge receipt of this Addendum in the space provided on the Bid Form. Failure to do so may subject Bidder to disqualification.

This Addendum consists of 1 page total plus attachments

Attachments:
Short Form Owner-Contractor Agreement – RMS & RPS Roof Replacements (21 pages)

AGREEMENT BETWEEN
SCHOOL DISTRICT AND CONTRACTOR

The "Effective Date" of this Agreement is:	_____, 2026
The "Parties" to this Agreement are:	
The "School District":	**Rochester School District No. 401** 10140 Highway 12 SW Rochester, WA 98579
The "Contractor":	_____ _____ _____
The "Project":	The Project consists of full replacement of the roofing system (as further described in the Bid Documents) at the following Project sites: • Rochester Primary School (7440 James Rd. SW, Rochester, WA 98579) • Rochester Middle School (9937 Hwy. 12 SW, Rochester, WA 98579)
The "Contract Sum" for the Work:	**$**_____ *(not including sales tax to be paid based on the Contract Sum)*
The Contract Sum includes the following:	
The Alternates are:	_____
The Allowances are:	_____
The Unit Prices are:	_____
The "Architect/Engineer" or "A/E":	_____
Schedule for the Work:	
Anticipated dates of commencement:	• Rochester Primary School: Mid-June, 2026 • Rochester Middle School: Mid-June, 2026
Dates of Substantial Completion:	• Rochester Primary School: Mid-August, 2026 • Rochester Middle School: Mid-August, 2026
Dates of Final Completion:	Final Completion for each portion of Work shall be within 15 calendar days after the applicable date of Substantial Completion.
Liquidated Damages:	$500 per calendar day, per Project site, that the Contract Time for a Project site, as adjusted if applicable, extends beyond the specified date for Substantial Completion.

Minimum Required Insurance:	
Commercial General Liability:	At least $2 million per occurrence and $4 million general aggregate applied on a per-project basis
Automobile Liability:	At least $1 million per occurrence
Workers' Compensation: (industrial insurance)	At least the State statutory amount
Umbrella/Excess Liability:	At least $3 million per occurrence and aggregate
Employer's Liability:	At least $1 million
Property Insurance:	See Article 6
Additional Insureds:	The School District, the Indemnified Parties, and others identified in writing by the School District

The School District and Contractor agree as follows:

ARTICLE 1
THE WORK

1.1 The Contractor, through itself and its Subcontractors, if any, will fully execute and complete the entire Work pursuant to the Contract Documents.

1.2 As used in this Agreement, "Project site" refers to the Work to be performed at Rochester Primary School and/or Rochester Middle School, as applicable.

ARTICLE 2
DATES OF COMMENCEMENT AND SUBSTANTIAL AND FINAL COMPLETION

2.1 The date of commencement of the Work (the date from which the Contract Time is measured) will be the date identified on the cover page, or, if not specified, the date established in a notice to proceed issued by the School District. The Contract Time is measured from the date of commencement to the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

2.2 The Contractor will achieve Substantial Completion of the Project no later than the dates or within the times identified on the cover page, as adjusted as provided in the Contract Documents. Contractor will also achieve any interim milestones and phasing requirements in the Contract Documents.

2.3 If applicable, liquidated damages will be assessed at the rate stated on the cover page for each calendar day that the Contract Time extends beyond the date established for Substantial Completion. The Contractor agrees that the daily rates for liquidated damages are reasonable estimates of actual damages as of the date of this Agreement and are based on the inherent uncertainty and difficulty in determining and quantifying damages caused by delay in the construction of school district facilities and not a penalty.

ARTICLE 3
CONTRACT SUM

3.1 The School District will pay the Contractor the Contract Sum, as stated on the cover page, for the Contractor's proper performance of the Work pursuant to the Contract Documents subject to additions and deductions as provided in the Contract Documents. Sales tax on the Contract Sum is not included in the Contract Sum and will be paid by the School District with each progress payment.

3.2 The Contract Sum is based upon and includes the alternates and/or allowances, if any, listed on the cover page and described in the Contract Documents, which are hereby accepted by the School District.

3.3 This Agreement includes the unit prices, if any, listed on the cover page and described in the Contract Documents.

3.4 If the Contract Sum exceeds $1 million, the Project is subject to the apprenticeship requirements of RCW 39.04.320 and Section 10.17 in the attached General Conditions.

ARTICLE 4
PAYMENT

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

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

ARTICLE 5
PERMITS AND FEES

5.1 If a building permit is required for execution of the Work, the Contractor will secure the building permit(s). The Contractor will pay for the actual cost of the building permit(s), without markup.

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

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

ARTICLE 6
PROPERTY INSURANCE

6.1 Unless otherwise provided in the Contract Documents, the School District shall include this project in its existing property insurance coverage for loss or damage to the property in the course of construction. This may be a standard property policy and is not necessarily a builder's risk policy.

6.2 The Contractor shall be responsible for securing property insurance for its own equipment. This property insurance shall be on an "all-risk" or equivalent policy form and shall include, but not be limited to, coverage for fire and extended coverage, theft, vandalism, malicious mischief, collapse and windstorm. Any deductible shall be the sole responsibility of the Contractor.

6.3 Upon the occurrence of a loss insured under the property insurance, the School District will approve the adjustment and settlement of any loss with the insurers. The Contractor shall pay each subcontractor a just share of any insurance moneys received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each subcontractor to make payments to his sub-subcontractors in similar manner.

ARTICLE 7
ENUMERATION OF CONTRACT DOCUMENTS

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

7.1 This executed Agreement between the School District and Contractor, the attached General Conditions, and any other Conditions of the Contract listed below:

7.2 The Specifications (if any): See **Exhibit A**.

7.4 The Drawings (if any): See **Exhibit B**.

7.5 The Addenda (if any) as follows:

_____

7.6 The applicable Prevailing Wages attached as **Exhibit C**.

7.7 Other Documents forming part of the Contract Documents (and incorporated by reference) include:

Published Bid Documents

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

SCHOOL DISTRICT	**CONTRACTOR**
By: _____	By: _____
(Signature)	*(Signature)*
_____	_____
(Printed name)	*(Printed name)*
Superintendent	_____
(Title)	*(Title)*

ARTICLE 8
THE CONTRACT DOCUMENTS

8.1 The Contract Documents form the Contract and consist of the Agreement, these General Conditions, other documents listed in the Agreement, and changes issued after execution of the Agreement, all of which are as fully a part of the Contract as if attached to the Agreement or repeated in it.

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

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

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

8.5 The term "Architect/Engineer" or "A/E" means the entity identified as such on the cover page of the Agreement, if any. The A/E may be an architect, engineer, or similar consultant, and is not necessarily a licensed architect or engineer. If "None" or "N/A" is listed for the A/E, or upon written notification from the School District, the School District or its designated representative will perform all of the functions of the A/E described herein. The A/E is not an agent of the Owner, and is not authorized to speak on behalf of or bind the Owner. No representative of the A/E is authorized to revoke, alter, enlarge, relax, or release any requirements of the Contract Documents, nor to approve or accept any portion of the Work, nor to issue instructions contrary to the Contract Documents.

8.6 By executing the Agreement, the Contractor represents and acknowledges that (1) it has carefully examined the Contract Documents, (2) it has visited the Project site and become familiar with the local conditions (including existing structures) under which the Work is to be performed, (3) the Contract Sum is reasonable compensation for the Work, (4) the Contract Time is adequate for the performance of the Work, and (5) 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. FAILURE OF THE CONTRACTOR TO FULLY ACQUAINT ITSELF WILL NOT IN ANY WAY RELIEVE IT FROM THE RESPONSIBILITY FOR PERFORMING THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS AND WITHIN THE CONTRACT TIME AND FOR THE CONTRACT SUM.

8.7 Any investigations of subsurface or concealed conditions have been made for design purposes and are not a part of the Contract Documents. The Contractor may use the data contained in results of the investigation, but may not rely upon interpretations or opinions contained therein, nor rely on 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 Project site or that unforeseen developments may not occur.

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

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

ARTICLE 9
ADMINISTRATION OF THE CONTRACT

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

9.2 Authority: 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. No representative of the School District (other than the Board or its designee) nor the A/E is authorized to revoke, alter, enlarge, relax, or release any requirements of the Contract Documents, nor to approve or accept any portion of the Work, nor to issue instructions contrary to the Contract Documents.

9.3 Rejection of Work: The School District and/or the A/E may disapprove, condemn, or reject Work when, in their opinion, the Work does not conform to the Contract Documents. The School District and/or the A/E may require

special inspection or testing of any Work in accordance with the Contract Documents whether or not such Work is then fabricated, installed, or completed.

9.4 Correction of Work: 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 requirements of the Contract Documents, the School District may order the Contractor in writing 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 will not give rise to a duty on the part of the School District to exercise this right for the benefit of the Contractor or any other person or entity.

9.5 Meetings: The School District and/or the A/E may call, schedule, and conduct Project meetings, which the Contractor and, if required by the School District, representatives of its Subcontractors or suppliers of any tier will attend, to discuss such matters as procedures, progress, problems, and scheduling.

9.6 Site Access: The School District and the A/E will have access to and may visit the Project site at intervals each considers appropriate to the stage of the Work to become generally familiar with the progress and quality of the completed Work; however, neither is required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The School District may occupy the Project site during the course of the Work. In addition, the Contractor acknowledges that other persons may perform work on the Project site concurrent with the Contractor's Work, and will use its best efforts to facilitate the concurrent performance of such other work.

ARTICLE 10
THE CONTRACTOR

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

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

10.3 Materials: With the exception of bulk materials, all materials will be delivered to the Project site in original containers as packaged by the manufacturer with labels intact. Upon request, the Contractor will provide a certificate of compliance for bulk materials.

10.4 Workers: The Contractor will enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor will not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor will 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 or entities performing portions of the Work. 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, at no change to the Contract Sum or Contract Time. The Contractor will not employ, or allow any entity utilized by Contractor to employ, any person at a School District property or allow any contact between school children and any such person when such person is a registered sex offender or has pled guilty to or been convicted of any felony crime involving the physical injury or death of a child (Chapter 9A.32 RCW or Chapter 9A.36 RCW but not Chapter 46.61 RCW--motor vehicle violation), the physical neglect of a child (Chapter 9A.42 RCW), sexual offenses against a minor (Chapter 9A.44 RCW), sexual exploitation of a child (Chapter 9.68A RCW), the sale or purchase of a minor child (RCW 9A.64.030), promoting prostitution of a child (Chapter 9A.88 RCW), or violation of similar laws of another jurisdiction. Any failure to comply with this Section will be grounds for the immediate termination of the Contract for cause.

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

10.6 Taxes and Fees: In conjunction with its progress payments, the School District will pay local and Washington State sales taxes based on the Contract Sum to the Contractor for transmittal to the taxing authority. The Contractor will pay for all other types of taxes and fees for the Work or portions thereof provided by or through the Contractor, including but not limited to consumer, use, B&O, income, or other taxes that are legally enacted at the time bids are received whether or not yet effective or merely scheduled to go into effect. The Contractor will secure and pay for permits and government fees, licenses, and

inspections necessary for the proper execution and completion of the Work, except as specifically provided herein.

10.7 Legal Compliance: The Contractor will 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 will promptly notify the School District and the A/E in writing if the Contractor observes that the Drawings and/or Specifications are at variance with them.

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

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

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

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

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

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

The Contractor agrees to being added by the School District as a party to any mediation, arbitration, or litigation with third parties in which the School District alleges indemnification or contribution from the Indemnitor. The Contractor agrees that all of its Subcontractors of any tier will similarly stipulate in their subcontracts. In the event any does not, the Contractor will 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 will retain their vitality and effect.

In claims against any person or entity indemnified under this Section 10.12 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 10.12 will not be limited by the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor of any tier under workers' compensation acts, disability benefit acts or other employee benefit acts. After mutual negotiation of the parties, the Contractor waives immunity as to the School District, the A/E, and either's 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 will survive the expiration or termination of the Contract.

10.13 Prevailing Wages:

10.13.1 Pursuant to Chapter 39.12 RCW, no worker, laborer, or mechanic employed in the performance of any part of the Work will 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 the Contract by reference as though fully set forth herein; if not attached, then the applicable prevailing wages are determined as of the date bids are due for the county in which the Project is located and are also available at

https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/. A copy is available for viewing at the School District's office and a hard copy will be mailed upon request. To the extent that there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates, the applicable rates under WAC 296-127-011 will apply at no increase to the Contract Sum. The Contractor will provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. The Industrial Statistician will answer questions relating to prevailing wage data upon request.

10.13.2 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 will be referred for arbitration to the director of the Department of Labor and Industries, whose decision therein will be final and conclusive and binding on all parties involved in the dispute.

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

10.14 Hours of Labor: The Contractor will comply with all applicable provisions of Chapter 49.28 RCW.

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

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

10.17 Apprenticeship. If required by Section 3.4 of the Agreement, then this Section 10.17 and RCW 39.04.320 will apply. This Section 10.17 will not apply and will have no effect upon Projects that are not estimated to cost one million dollars or more.

10.17.1 "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.

10.17.2 Pursuant to RCW 39.04.320, no less than fifteen percent (15%) of the Labor Hours will be performed by apprentices, unless a different amount is permitted or otherwise required by law. Apprenticeship hours will be performed by participants in training programs approved by the Washington State Apprenticeship Council.

10.17.3 During the term of this Contract, the School District may adjust the apprenticeship Labor Hour requirement upon its finding or determination that includes:

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

10.17.4 The Contractor will report apprentice participation directly to the Washington Department of Labor and Industries ("L&I") using the L&I portal at least monthly, on forms provided or approved by L&I. In addition, copies of monthly certified payroll records may be requested to document the goal,

including copies with any birthdates and social security numbers (and any other sensitive personal information) redacted so as such copies may be used to respond to any public records requests. The reports will include:

.1 The name of the Project;
.2 The dollar value of the Project;
.3 The date of the Contractor's notice to proceed;
.4 The name of each apprentice and apprentice registration number;
.5 The number of apprentices and Labor Hours worked by them, categorized by trade or craft;
.6 The number of journey level workers and Labor Hours worked by them, categorized by trade or craft;
.7 The number, type, and rationale for the exceptions granted; and
.8 Such other information as L&I may require.

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

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

ARTICLE 11
SUBCONTRACTORS

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

11.2 As soon as practicable after award of the Contract, the Contractor will confirm in writing to the School District the names of the Subcontractors for each portion of the Work. The Contractor will not contract with any Subcontractor to whom the School District has made a reasonable and timely objection or different from the one listed in conjunction with the bid, if any. Contracts between the Contractor and Subcontractors will (1) require each Subcontractor to be bound to the Contractor by the terms of the Contract Documents to the extent of the Work to be performed by the Subcontractor and to assume toward the Contractor the obligations and responsibilities that the Contractor, by the Contract Documents, assumes toward the School District, and (2) allow to the Subcontractor the benefit of all rights, remedies, and redress afforded to the Contractor by these Contract Documents.

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

ARTICLE 12
CONSTRUCTION BY THE SCHOOL DISTRICT OR BY SEPARATE CONTRACTORS

12.1 The School District may perform construction or operations related to the Project with its own forces and may award separate contracts in connection with other portions of the Project or other construction or operations at the Project site under contractual conditions consistent with those of the Contract Documents.

12.2 The Contractor will 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 will connect and coordinate the Contractor's construction and operations with such separate contractors and the School District's forces.

ARTICLE 13
CHANGES IN THE WORK

13.1 The School District, without invalidating the Contract, may order changes in the Work consisting of additions, deletions, or modifications ("Changes"), and the Contract Sum and Contract Time will be adjusted accordingly. Changes in the Work, the Contract Sum, and/or the Contract Time will be authorized only by written Change Order signed by the School District and the Contractor or by written Construction Change Directive signed by the School District and the A/E. **The School District must approve in writing in advance all changes in the Contract Sum or Contract Time and all Change Orders, Construction Change Directives, and payments to the Contractor.**

13.1.1 Minor Change in the Work: A Minor Change in the Work is a written instrument signed by the School District authorizing minor variations in the Work from the requirements of the Contract Documents 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. The Contractor will promptly proceed with the Minor Change in the Work.

13.1.2 Change Orders: A Change Order is a written instrument signed by the School District and the Contractor

stating their agreement upon a change in the Work; the amount of the adjustment in the Contract Sum, if any; and the extent of the adjustment in the Contract Time, if any.

13.1.3 Construction Change Directives: A Construction Change Directive ("CCD") is a written order prepared and signed by the School District that directs a change in the Work and states a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. It will be used in the absence of total agreement on the terms of a Change Order. The School District's use of a CCD does not mean that the School District agrees that the direction constitutes a change in the Work, the Contract Sum, or the Contract Time. The Contractor will promptly proceed with the change in the Work directed in the CCD. As soon as possible, and within *seven (7) days* of receipt, the Contractor will advise the School District in writing of the Contractor's agreement or disagreement with the cost or the method, if any, provided in the CCD for determining any adjustment in the Contract Sum or Contract Time.

13.2 Change Order Proposals: Before authorizing a change in the Work, the School District may request that the Contractor propose the amount of change in the Contract Sum, if any, and the extent of change of the Contract Time, if any, in the form of a "Change Order Proposal, arising from the proposed change in the Work. A request for Change Order Proposal is a request for information and pricing only. The Contractor will submit a Change Order Proposal containing information, pricing, and time impact, if any, to the School District and the A/E within seven *(7) days* of receipt of the School District's request. If the parties cannot agree on the cost or credit to the School District from a Change in the Work, the Contractor will keep and present, in such form as the School District may prescribe, an itemized accounting together with supporting data. The total cost of any change or Claim will be limited to the reasonable value of the following:

13.2.1 Direct Labor Costs: The prevailing hourly wage for the laborers, journeymen, and foremen performing and/or directly supervising the changed Work at the Project site. The premium portion of overtime wages may not be included unless pre-approved in writing by the School District. The hourly cost will be based upon basic wages and mandatory fringe benefits and workers' insurances.

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

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

13.2.4 Cost of Any Change in Insurance or Bond Premium: Upon request, the Contractor will provide the School District with supporting documentation.

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

13.2.6 Fee: The allowance for all combined overhead, profit, and other costs, including all office, home office, extended, and Project site overhead (including, without limitation, project manager, project engineer, superintendent, and general foreman time), small tool charges, safety program administration, and all delay and including impact costs of any kind, added to the total cost to the School District of any Change Order or any Claim for additional Work or extra payment of any kind on this Project will be strictly limited to the following schedule:

.1 For the Contractor, for any materials or Work performed by the Contractor's own forces, *twelve percent (12%)* of the cost.

.2 For the Contractor, for materials or Work performed by its Subcontractor, *eight percent (8%)* of the amount due the Subcontractor.

.3 For each Subcontractor (including Subcontractors of any tier involved), for any materials or Work performed by its own forces, *twelve percent (12%)* of the cost.

.4 For each Subcontractor, for materials or Work performed by its Subcontractors of any tier, *eight percent (8%)* of the amount due the lower-tier subcontractor.

.5 The cost to which the Fee is to be applied will be determined in accordance with Sections 13.2.1–.4.

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

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

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

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

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

13.3.5 Litigation: The Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered in the dispute resolution procedures of Sections 13.3.1–.4 above. All unresolved Claims of the Contractor will 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) *one hundred twenty (120) days* after the date of Substantial Completion as designated in writing by the School District or (b) *sixty (60) days* after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by the School District and the Contractor. The exclusive venue for any litigation arising out of this Contract will be the Superior Court of the County in which the Project is located.

13.3.6 Maintenance of Responsibilities: The parties will diligently carry on their respective obligations and responsibilities under the Contract during any dispute resolution proceedings, unless otherwise agreed by both parties in writing.

13.4 Notices and Claims: All notices and Claims will be made in writing as required by the Contract.

13.4.1 Any notice of a Claim of the Contractor against the School District and any Claim of the Contractor, whether under the Contract or otherwise, must be made pursuant to and in strict accordance with the applicable provisions of the Contract Documents. No act, omission, or knowledge, actual or constructive, of the School District or the A/E will in any way be deemed to be a waiver of the requirement for timely written notice and a timely written Claim.

13.4.2 Failure to comply with these requirements will constitute a waiver of the Claim. 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 will 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 Directions.

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

13.5 Claims for Concealed or Unknown Conditions: If conditions unknown to the Contractor are encountered at the Project site that are (a) concealed physical conditions that differ materially from those indicated in the Contract Documents or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found and generally recognized as inherent in activities of the character provided for in the Contract Documents, then the Contractor will give written notice to the School District promptly before conditions are disturbed and in no event later than *seven (7) days* after the first observance of the conditions. The Contractor will make any Claim arising from such condition in accordance with the dispute resolution procedure in Section 13.3.

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

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

13.6.2 damages incurred by the Contractor for principal and home office overhead and expenses including but not limited to 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; and

13.6.3 damages incurred by any party, including Subcontractors of any tier, arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar damages.

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

ARTICLE 14
TIME

14.1 If, through no fault of the Contractor or a Subcontractor of any tier, the Work is delayed by changes ordered in the Work, unanticipated general labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, epidemic or pandemic, delays caused by the School District or its separate contractors, or any causes beyond the Contractor's control, or by other causes that may justify delay, then the Contract Time will be extended by Change Order to the extent the critical path is affected. The Contractor (including Subcontractors) will be entitled to damages for delay, the total limited to the liquidated rate on the cover page of the 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. If a delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the Contract Sum.

14.2 To the extent that the Contractor or any Subcontractor or Sub-subcontractor is responsible for a delay or falling behind schedule, the Contractor will take all necessary action to bring the Project back in to compliance with the construction schedule, including without limitation increasing the number of personnel on the Project and implementing overtime and double shifts. The cost required to bring the Project back on schedule when the Project is delayed or behind schedule will not increase the Contract Sum to the extent the Contractor or any Subcontractor or Sub-subcontractor is responsible for the delay or falling behind.

14.3 THE TIMELY COMPLETION OF THE WORK 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. If no amount liquidated damages rate is stated on the cover page of the Agreement, or if $0 or an amount less than $100 per day has been inserted, the Contractor will be responsible for actual damages for delay. The School District's right to liquidated damages is not affected by partial completion, occupancy, or beneficial occupancy.

ARTICLE 15
PAYMENTS AND COMPLETION

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

15.1.1 Schedule of Values: At least *fourteen (14) days* before the first Application for Payment, the Contractor will submit to the School District a Schedule of Values, allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the School District may require. This schedule, unless objected to by the School District, will be used as a basis for reviewing the Contractor's Applications for Payment.

15.1.2 Draft Application: By the *twenty-fifth (25th) day* of each month, the Contractor will submit to the School District and the A/E a report on the current progress of the Work as compared to the Contractor's Progress Schedule, and a draft, itemized Application for Payment for Work performed during that calendar month on a form supplied or approved by the School District. This will not constitute a payment request. The Contractor, the School District, and the A/E will 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 School District may request that the Contractor provide data substantiating the Contractor's right to payment, 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 will not be entitled to make a payment request, nor is any payment due the Contractor, until such data is furnished.

15.1.3 Payment Request: After the Contractor and the School District have met and conferred regarding the draft Application for Payment, and the Contractor has furnished all data requested, the Contractor may submit a payment request by the *tenth (10th) day* of the following month in the agreed upon amount, in the form of a notarized, itemized Application for Payment for Work performed during the prior calendar month on a form supplied or approved by the School District. Among other things, the Application will state that prevailing wages have been paid in accordance with the pre-filed statement(s) of intent to pay prevailing wages on file with the School District and that all payments due Subcontractors from the School District's prior payments have been made. The submission of an Application constitutes a certification that (1) all payments due Subcontractors from the School District's prior payments have been made and (2) the Work is current on the Progress Schedule, unless otherwise noted on the Application. If the Contractor believes it is entitled to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, the Contractor may submit to the School District a separate written payment request specifying the exact additional amount due, the category in the Schedule of Values in which the payment is due, the specific

Work for which the additional amount is due, and why the additional payment is due.

15.1.4 Payments to Subcontractors: No payment request will 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 will give the Subcontractor and the School District written notice of the remedial actions that that must be taken and pay the Subcontractor within *seven (7) days* after the Subcontractor satisfactorily completes the remedial action identified in the notice.

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

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

15.4 Withheld Payments: Payments may be withheld on account of (a) defective Work not remedied, (b) claims filed by third parties, (c) failure of the Contractor to make payments due to Subcontractors or for labor, materials or equipment, (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (e) damage to the School District or another contractor, (f) reasonable evidence that the Work will not be completed within the Contract Time, (g) failure to carry out the Work in accordance with the Contract Documents, or (h) liquidated damages (if applicable).

15.5 Substantial Completion:

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

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

15.5.3 If the Contractor fails to complete all of the punch-list items within the period of time scheduled between Substantial and Final Completion then, upon *seven (7) days'* written notice to the Contractor, the School District will have the right (but not the obligation) to take over performance of such punch-list Work and to charge the Contractor all costs thereof.

15.6 Final Completion: After the Contractor has notified the School District that the Work has been fully completed, and the Contractor has submitted the items listed below as may be required at the discretion of the School District, the School District will determine in writing that Final Completion has occurred.

15.6.1 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;

15.6.2 consent of surety to final payment;

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

15.6.4 a written statement that the Contractor knows of no substantial reason why the insurance will not be renewable;

15.6.5 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 and claims;

15.6.6 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;

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

15.6.8 pursuant to RCW 60.28.021, certificates from the Department of Revenue and the Department of Labor and Industries;

15.6.9 pursuant to Chapter 50.24 RCW, a certificate from the Department of Employment Security;

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

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

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

15.7 Final Payment: Pursuant to Chapter 60.28 RCW, completion of the Contract Work will occur when the School District's Board of Directors formally accepts the Project as complete ("Final Acceptance"). Final payment will not be made unless the Contractor has properly submitted certificates from the Department of Revenue, the Department of Labor and Industries, and, pursuant to Chapter 50.24 RCW, a certificate from the Department of Employment Security. The School District will not be required to accept the Project as complete before required occupancy permits have been issued and the Contractor completes the Work and submits the items listed in Section 15.6 to the School District. Final Payment will not become due until after Final Acceptance.

15.8 Waivers:

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

15.8.2 Change Orders: The execution of a Change Order constitutes 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.

15.8.3 Reservation of Rights: If the Contractor adds to a Change Order, a Construction Change Directive, or any other document a reservation of rights that has not been initialed by the School District, any amounts previously agreed will 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 will be deemed waived, withdrawn, and of no effect.

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

15.9 Retainage:

15.9.1 The School District must comply with the statutory retainage requirements of Chapter 60.28. In lieu of the School District withholding retainage pursuant to RCW 60.28, the Contractor may submit a retainage bond in a form acceptable to the School District and from an authorized surety insurer. The authorized surety will have a minimum A.M. Best financial strength rating of at least A-. The bond will be in an amount equal to *five percent (5%)* of the Contract Sum, as adjusted by the Contract Documents, for the protection and payment of the claims of any person arising under the Contract and the State with respect to taxes, fees, and penalties that may be due from the Contractor. The Contractor will comply with all requirements of RCW 60.28 in accepting any like bonds from its subcontractor(s) or supplier(s).

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

ARTICLE 16
PROTECTION OF PERSONS AND PROPERTY

16.1 Safety: The Contractor will be solely responsible for all, and neither the School District nor the A/E will have responsibility for any, aspects of safety related to the Contract or the Work, including initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Contractor will take reasonable precautions for the safety of, and will 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 Project site or adjacent thereto. The Contractor will maintain the Project site and perform the Work in a manner that meets all statutory and common law requirements for the provision of a safe place to work. This requirement will apply continuously and not be limited to working hours.

16.2 Compliance: The Contractor will 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 will promptly remedy damage and loss to property at the Project site caused in whole or in part by the Contractor, a Subcontractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable. The foregoing obligations of the Contractor

are in addition to the Contractor's obligations under Section 10.12.

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

16.4 Hazardous Materials:

16.4.1. The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the Project site by the Contractor, the Contractor will, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the School District in writing. When the material or substance has been rendered harmless, Work in the affected area will resume upon written agreement of the School District and Contractor. By Change Order, the Contract Time will be extended appropriately and the Contract Sum will be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. The Contractor will proceed with the Work in areas not affected.

16.4.2. The Contractor will indemnify the School District for the cost and expense the School District incurs (a) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (b) where the Contractor fails to perform its obligations under Section 16.4.1, except to the extent that the cost and expense are due to the School District's fault or negligence.

ARTICLE 17
INSURANCE AND BONDS

17.1 Contractor's Liability Insurance:

17.1.1 The Contractor will purchase from and maintain in a company or companies having a certificate of authority and lawfully authorized to do business in the State of Washington possessing a Best's policyholder's rating of "A minus" or better and a financial rating of no less than "VII" and reasonably acceptable to the School District, an occurrence-based Commercial General Liability Insurance Policy, which will provide personal injury and bodily injury (including death) and property damage liability on the Contractor's operations, including Subcontractors and suppliers of any tier; owned, non-owned and hired vehicles; on Work the Contractor may subcontract or sublet to others; and on the indemnity provisions of the Contract, including but not limited to premises, products/completed operations, personal injury (including death), blanket contractual liability, explosion, collapse, or underground (XCU), and stopgap employer's liability. This insurance will name the School District, its employees, and any other person or entity identified on the cover page of the Agreement as additional insureds for Work performed under the Contract under CG 2010 or its equivalent and will include a severability of interest (cross liability clause) for Work performed under the Contract. The Contractor's policy will be designated primary coverage for both defense and indemnity, and any School District policies as excess and non-contributory. The policy will be endorsed to have the General Aggregate apply to this Project only. Such limits of liability insurance will have per project general aggregate provisions and will not be less than those stated on the cover page of the Agreement.

17.1.2 The insurance described above will include all major divisions of coverage and be on a comprehensive basis including Premises operations, Explosion, Collapse, and Underground (XCU) as applicable, Independent Contractor's protective, Products and completed operations, Personal injury liability with employment exclusion deleted, Blanket Contractual, including specific provision for Contractor's obligation under the Indemnity provisions of the Contract, Owned, non-owned and hired motor vehicles; and Broad form property damage.

17.1.3 In addition, the Contractor will purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit, and other similar employee benefit acts in the State statutory amount and Employer's Liability with a limit not less than that stated on the cover page of the Agreement.

17.1.4 Before any presence on the Project site or commencing the Work, and, in any event, within *seven (7) days* after the School District has issued its notice of intent to award a contract, the Contractor will furnish the School District with Certificates of Insurance and endorsements as evidence of all insurance required by the Contract Documents as well as a copy of L&I Statements for State Workers' Compensation coverage. No progress payment will be due until all such items are furnished. All policies and certificates must be signed copies and will contain provision that coverages afforded under the policies cannot be materially altered, allowed to expire, or canceled without first giving *thirty (30) days* written notice by certified mail to the School District. The Contractor will furnish to the School District copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage of limits. Upon written request, the Contractor will provide a copy of its policies to the School District. Losses up to the deductible amount will be the responsibility of the Contractor.

17.1.5 Coverage will be maintained without interruption from the date of commencement of the Work until the date of Final Acceptance, except for any coverage required to be maintained after Final Acceptance. Completed operations coverage will remain in force for *six (6) years* after Final Acceptance.

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

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

17.1.8 The Contractor will ensure and require that Subcontractors of any tier have insurance coverage to cover bodily injury and property damage on all operations and all vehicles owned or operated by Subcontractors of all tiers. Also, the Subcontractors will name the Contractor and the School District as additional insureds giving at least *thirty (30) days'* notice of cancellation.

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

17.3 Payment and Performance Bonds: The Contractor will secure from a surety company acceptable to the School District, admitted and licensed in the State of Washington, possessing an A.M. Best rating of "A minus" or better and a financial rating of no less than "VII," and will pay for bonds covering the faithful performance of the Contract and payment of obligations arising under 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 *seven (7) days* after its execution of the Contract, the Contractor will deliver copies of the bonds to the School District. THE CONTRACTOR WILL NOT PROCEED WITH THE WORK UNTIL SUCH SURETY BONDS ARE RECEIVED AND SUBMITTED. The bond(s) will be in a form acceptable to the School District.

ARTICLE 18
CORRECTION OF WORK

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

18.2 If the Contractor defaults or fails or neglects to carry out or correct Work that is not in accordance with the requirements of the Contract Documents, the School District and/or A/E, 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. If the Contractor fails within a *ten- (10-) day* period after receipt of the written order to commence and continue correction of the cause of such order, the School District may without prejudice to any other remedies the School District may have, take over and correct some or all of the non-conforming Work at the Contractor's cost. The right of the School District to correct or carry out the Work pursuant to this Section will not give rise to any duty on the part of the School District to exercise this right for the benefit of itself or others.

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

ARTICLE 19
TERMINATION OF THE CONTRACT

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

19.2 Termination for Cause by the 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 but not limited to the following:

19.2.1 the Contractor's failure to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time;

19.2.2 the Contractor is in material default of or materially breached any provisions of the Contract;

19.2.3 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;

19.2.4 the Contractor's failure to supply a sufficient number of properly skilled workers or proper materials;

19.2.5 the Contractor's failure to make prompt payment to Subcontractors or for materials or labor;

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

19.2.7 the Contractor fails to comply with the provisions of RCW 28A.400.330 by permitting a worker on the Project who has been convicted of or pled guilty to a felony crime involving children as described in Section 10.4.

19.3 Termination for Convenience by the School District: The School District may, at any time 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 Contract for the convenience of the School District. The School District will be liable to Contractor only for the amount reasonably incurred to date and due under Section 13.2 of the Contract for the performance of the Work terminated and other pre-approved costs, consistent with Section 13.2, necessary and reasonably incurred in connection with the termination of the Contract. The total sum to be paid to the Contractor under this Section 19.3 will not exceed the Contract Sum as reduced by the amount of payments otherwise made.

19.4 Effects of Termination:

19.4.1 After receipt of a notice of termination from the School District, the Contractor will promptly stop Work as specified in the notice of termination (and continue performance to the extent not terminated) and take such action as directed by the School District to effectuate an orderly and businesslike termination of the Work.

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

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

19.5 Suspension: The School District may, at its option and at any time, suspend the Contractor's performance of some or all of the Work. The School District will give the Contractor notice of any such suspension, including the scope of the suspension and the School District's estimate of the duration of such suspension. During the period of suspension, the Contractor will use its best efforts to minimize costs associated with such suspension and to protect and maintain the Work. As full compensation for the suspension, the Contractor will be eligible for an equitable adjustment, as permitted in the Contract, in the Contract Time and/or Contract Sum, which will not include consequential or indirect damages. Upon receipt of the School District's notice to resume the suspended performance, the Contractor will immediately resume performance to the extent required in the notice.

ARTICLE 20
MISCELLANEOUS PROVISIONS

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

20.2 Compliance with Law: The Contractor will give notices and comply with applicable laws, rules, regulations, and orders of public authorities, including but not limited to Chapter 39.06 RCW and Chapter 18.27 RCW (Registration), Chapter 49.60 RCW (Discrimination), Chapter 70.92 RCW (Aged and Handicapped Persons), Chapter 296-155 WAC (Safety Standards), Chapter 50.24 RCW (Unemployment Compensation), Title 51 RCW (Industrial Insurance); Title 82 RCW (State Excise Tax Registration), RCW 39.12.065(3) (prevailing wage violations), Drug-Free Workplace Act of 1988 (Drug-Free Workplace), RCW 9.41.280 (Weapons), and Chapter 49.26 RCW (any asbestos removal). Smoking or use of any kind of lighted smoking equipment, material or smokeless tobacco products is prohibited on all School District property. The statutes referenced in the Contract Documents are not meant to be a complete list and should not be relied upon as such.

20.3 School District's Site Rules: The Contractor will comply with the School District's site and conduct rules.

20.4 Assignment: The Contractor will not let, assign, or transfer the Contract, or any interest in it or part of it including Claims hereunder, without the written consent of the School District.

20.5 Complete Agreement: This Contract is the complete, integrated, and exclusive statement of the contract between the Contractor and the School District with respect to the Work and any related services to be furnished pursuant to this Contract. It supersedes and merges with any prior or contemporaneous agreements, commitments, representations, and negotiations, whether oral or written, including but not limited to proposals, invoices, and terms and conditions of the Contractor, whether or not attached to this Contract. The Contractor acknowledges that it has not been induced to enter into this Contract by any representations or promises not specifically stated in this Contract.

20.6 Writing Required: No addition to or modification of the Contract will be binding on either party unless explicitly made in writing and executed by the Contractor and the School District. Similarly, any waiver by the School District of any right or remedy under the Contract must be in writing and will apply only to the right or remedy specified.

20.7 Survival of Provisions: The warranty, dispute resolution, and indemnification provisions of the Contract will survive the termination, cancellation, or expiration of the Contract.

End of Section

(ATTACHMENTS)

Exhibit A
Specifications

To the extent applicable, see the Specifications set forth in the Published Bid Documents for the Project, which are incorporated by reference as if fully set forth herein

Exhibit B
Drawings

To the extent applicable, see the Drawings set forth in the Published Bid Documents for the Project, which are incorporated by reference as if fully set forth herein

Exhibit C
Prevailing Wage Rates

Located at: https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/