

**PROJECT NAME:**

FY2019-20

Burnt Bridge, Fircrest, Fisher's Landing,
Silver Star, Riverview & Sunset Security Vestibules

PROJECT NUMBER:

2020-119

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**EVERGREEN PUBLIC SCHOOLS –
MULTI-SITE (6) SECURITY VESTIBULES**

ADVERTISEMENT FOR BIDS

INVITATION TO BID
SUMMER 2020 SECURITY VESTIBULES
FOR
EVERGREEN PUBLIC SCHOOLS
AT
BURNT BRIDGE CREEK ELEMENTARY SCHOOL
FIRCREST ELEMENTARY SCHOOL
FISHER'S LANDING ELEMENTARY SCHOOL
SILVER STAR ELEMENTARY SCHOOL
RIVERVIEW ELEMENTARY SCHOOL
SUNSET ELEMENTARY SCHOOL
PROJECT #2020-119

Sealed bids will be received by Evergreen Public Schools in the Purchasing Department, Gold Complex, at the Administrative Service Center, 13501 NE 28th Street, Vancouver, WA 98682-8091 until **2:00 p.m. Thursday, March 12, 2020**;

By U.S. mail: Evergreen Public Schools
Purchasing Dept. – Bid #2020-119
PO Box 8910
Vancouver WA 98668-8910

By hand delivery: Evergreen Public Schools
13501 NE 28th Street
Vancouver WA 98682
Administrative Services Center
Gold Complex, Purchasing – Bid
#2020-119

Project Description: Provide all labor, materials, supervision, and equipment necessary to create secure entrances at six elementary schools within the district. The project consists of upgrading existing security Head-End to support additional devices and card readers. Upgrading existing lockdown push-button to EPS Standards. Upgrading existing Intercom interface to support additional messages. Adding exterior cameras around the school's based on EPS standards. New walls and doors to create security vestibules at Burnt Bridge Creek Elementary, Fircrest Elementary, Fisher's Landing Elementary, Silver Star Elementary, Riverview Elementary and Sunset Elementary. The project is estimated to cost \$1,110,000 Total (\$185,000 each site). Bids will be opened and read aloud immediately after the bid closing time for their receipt, at which time all interested persons are entitled to attend the bid opening.

Bid documents will **only** be available for viewing and/or download beginning on February 19, 2020 at **J-2 Blue Print** <https://plans.j2b.com/?site=evergreenps>. Prospective bidders will be required to sign in as an account member to have access to the project documents. Prospective bidders can call J-2 Blue Print at 360-696-1861 with any questions about setting up an account for viewing and/or downloading documents.

In addition, arrangements can be made to view printed copies of the Bid documents by calling the locations listed below:

Evergreen Public Schools
Facilities Department
13501 NE 28th Street
Vancouver WA 98682
360-604-4077

No Bids will be considered unless it is in complete accordance with the instruction to bidders and is submitted upon the official bid form provided to prospective bidders (included in the bid documents).

A non-mandatory **pre-bid conference** for Contractors interested in bidding on this project will be conducted at 3:00 p.m. Thursday, February 27, 2020. The pre-bid conference and tour will commence at

**EVERGREEN PUBLIC SCHOOLS –
MULTI-SITE (6) SECURITY VESTIBULES**

ADVERTISEMENT FOR BIDS

Burnt Bridge Creek Elementary School, 14619 NE 49th St, Vancouver, WA 98682, then move to Silver Star Elementary School, 10500 NE 86th St, Vancouver, WA 98662.

The Board of Directors of Evergreen Public Schools reserves the right to reject any or all bids or portions thereof and waive any informality or irregularities.

Bill Thackeray
Accounting and Purchasing Manager

INSTRUCTIONS TO BIDDERS

1.01 DEFINITIONS

- A. All definitions set forth in the General Conditions of the Contract for Construction or in other Contract Documents are applicable to the Bidding Documents.
- B. “**Addenda**” are written or graphic instruments issued by the Architect or the Evergreen School District prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections. The contents of Addenda are issued in no particular order and therefore should be carefully and completely reviewed. Addenda relating to administrative matters, such as, for example, the date or time of meetings or Bid receipt, may be issued in writing by fax, mail or other delivery.
- C. An “**Alternate Bid**” (or “**Alternate**”) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted by the Evergreen School District.
- D. “**Award**” means the formal decision by the Evergreen School District notifying a Bidder with the lowest Responsive Bid of the Evergreen School District’s acceptance of the Bid and intent to enter into a contract with the Bidder. A contract is only formed upon execution of the contract, and not simply by Award.
- E. The “**Award Requirements**” include the following statutory requirements as a condition precedent to Award. The lowest Responsive Bidder shall:
 - (1) have a certificate of registration in compliance with RCW 18.27;
 - (2) have a current state unified business identifier number;
 - (3) if applicable, have industrial insurance coverage for the Bidder’s employees working in Washington as required in Title 51 RCW;
 - (4) have an employment security department number as required in Title 50 RCW;
 - (5) have a state excise tax registration number as required in Title 82 RCW;
 - (6) 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);
 - (7) if bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under RCW 49.04 for the one-year period immediately preceding the date of the Bid solicitation;
 - (8) have received training on the requirements related to public works and prevailing wages under chapters 39.04 and 39.12 RCW, or be exempt from such training requirements if the Bidder has completed three or more public works projects and has had a valid business license in Washington for three or more years; and

- (9) within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.
- F. The **“Base Bid”** is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base to which work may be added or from which work may be deleted for sums stated in Alternate Bids.
- G. A **“Bid”** is a complete and properly signed proposal to do the Work or designated portion thereof, submitted in accordance with the Bidding Documents, for the sums therein stipulated and supported by any data called for by the Bidding Documents.
- H. A **“Bidder”** is a person or entity who submits a Bid for a prime contract with the Evergreen School District for the Work described in the Contract Documents.
- I. The **“Bidding Documents”** include the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid form, any other sample Bidding and contract forms, the Bid Bond, and the Contract Documents, including any Addenda issued prior to receipt of Bids.
- J. The **“Contract Documents”** for the Work consist of the Agreement Between Owner and Contractor, the General Conditions of the Contract (as well as any Supplemental, Special or other Conditions included in the Project Manual), the Drawings, the Specifications, and all Addenda issued prior to, and all modifications issued after, execution of the Contract.
- K. The **“Owner”** is the Evergreen School District No. 114.
- L. To be considered **“Responsible”** or meet **“Responsibility”** requirements, a Bidder must meet the following supplemental criteria applicable to this Project to the satisfaction of the Architect and the Evergreen School District:
- (1) The ability, capacity, and skill to perform the Contract;
 - (2) The character, integrity, reputation, judgment, experience, and efficiency of the Bidder;
 - (3) Whether the Bidder can perform the Contract within the time specified;
 - (4) The previous and existing compliance by the Bidder with laws relating to the Contract;
 - (5) The quality of performance of previous contracts, including demonstration of successful completion of similar projects in the last three (3) years;
 - (6) The designated Project Manager shall have a minimum of three (3) years of successful experience in project management and scheduling of projects of similar scope and complexity;
 - (7) The designated Superintendent shall have a minimum of five (5) years of successful supervision of projects of similar scope and complexity;
 - (8) Any other qualifications required by the Contract Documents or Bidding Documents; and
 - (9) Such other information as may be secured having a bearing on the decision to award the contract.

- M. A “**Sub-bidder**” is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.
- N. A “**Unit Price**” is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services as described in the Bidding Documents or in the Contract Documents. The Evergreen School District reserves the right to reject at any time, without impairing the balance of the proposal, any or all such predetermined unit prices.

1.02 BIDDER’S REPRESENTATIONS

By making its Bid, each Bidder represents that:

- A. BIDDING DOCUMENTS. The Bidder has read and understands the Bidding Documents, and its Bid is made in accordance with them.
- B. POSSIBLE SELF-PERFORMED WORK REQUIREMENT. The Bidder will perform *with its own forces* at least that percentage (if any) of the Work required by the Bidding Documents or the Contract Documents.
- C. PRE-BID MEETING. The Bidder has attended any pre-bid meeting(s) required by the Bidding Documents.
- D. BASIS. Its Bid is based upon the materials, systems, services, and equipment required by the Bidding Documents, without exception.
- E. EXAMINATION. The Bidder has carefully examined and understands the Bidding Documents, the Contract Documents (including, without limitation, any liquidated damages and insurance provisions), and the Project site, including any existing buildings, it has familiarized itself with the local conditions under which the Work is to be performed and has correlated its observations with the requirements of the Contract Documents and 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. The Bidder has also satisfied itself as to the conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power and utilities; availability and condition of roads; 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 Bidder fully to acquaint itself with any applicable condition or matter shall not in any way relieve the Bidder from the responsibility for performing the Work in accordance with, and for the Contract Sum and within the Contract Time provided for in, the Contract Documents.
- F. PROJECT MANUAL. The Bidder has checked its copies of the Project Manual with the Table of Contents bound therein to ensure the Project Manual is complete.
- G. SEPARATE WORK. The Bidder has examined and coordinated all Drawings, Contract Documents, and Specifications for any other contracts to be awarded separately from, but in connection with, the Work being bid upon, so that the Bidder is fully informed as to conditions affecting the Work under the contract being bid upon.
- H. LICENSE REQUIREMENTS. Bidders and their proposed Subcontractors shall be registered and shall hold such licenses as may be required by the laws of Washington, including RCW 18.27, for the performance of the Work specified in the Contract Documents.

- I. NO EXCEPTIONS. Bids must be based upon the materials, systems and equipment described and required by the Bidding Documents, and terms and conditions in the Contract Documents, without exception.

1.03 BIDDING DOCUMENTS

A. COPIES

1. **Deposit.** Bidders may obtain complete sets of the Bidding Documents from the issuing office and other locations designated in the Advertisement or Invitation to Bid in the number and for the deposit amount, if any, stated. The deposit (if any) will be refunded to Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten (10) days after receipt of Bids. The cost of replacement of any missing or damaged documents will be deducted from the deposit. A Bidder awarded a Contract may retain the Bidding Documents, and its deposit will be refunded.
2. **Sub-bidders.** Bidding Documents will not be issued directly to Sub-bidders or others unless specifically offered in the Advertisement or Invitation to Bid.
3. **Complete sets.** Bidders shall use complete sets of Bidding Documents in preparing Bids and are solely responsible for utilizing established plan holder identification processes to obtain updated bid information; neither the Evergreen School District nor the Architect assumes any responsibility for errors or misinterpretations resulting from the use of incomplete and/or superseded sets of Bidding Documents. Printed copies of plans take precedence over any on-line images.
4. **Conditions.** The Evergreen School District and/or the Architect make copies of the Bidding Documents available on the above terms only for the purpose of obtaining Bids on the Work and do not confer a license or grant permission for any other use.
5. **Legible Documents.** To the extent any drawings, specifications, or other Bidding documents are not legible, it is the Bidder's responsibility to notify the Evergreen School District and the Architect and to obtain legible documents from the plan center.

B. INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

1. **Format.** The Contract Documents may be divided into parts, divisions, and sections for convenient organization and reference. Generally, there has been no attempt to divide the Specification sections into Work performed by the various building trades, any Work by separate contractors, or any Work required for separate facilities in or phases of the Project.
2. **Notify Owner and Architect.** Bidders and Sub-bidders shall promptly notify the Evergreen School District and the Architect in writing of any ambiguity, inconsistency, or error that they may discover upon examination of the Bidding Documents or of the site and local conditions. All Bidders and Sub-bidders shall thoroughly familiarize themselves with specified products and installation procedures and submit to the Evergreen School District and the Architect any objections (in writing) no later than ten (10) calendar days prior to the Bid Date. The submittal of the Bid constitutes acceptance of products and procedures specified as sufficient, adequate, and satisfactory for completion of the Contract.
3. **Written request.** Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Architect at least ten (10) calendar days prior to the date for receipt of Bids.
4. **Addenda.** Any interpretation, correction or change of the Bidding Documents will be made by written Addendum. Interpretations, corrections or changes of the Bidding Documents made in any other

manner will not be binding, and Bidders shall not rely upon such interpretations, corrections and changes.

5. **Singular references.** Reference in the singular to an article, device, or piece of equipment shall include as many of such articles, devices, or pieces as are indicated in the Contract Documents or as are required to complete the installation.
6. **Utilities and runs.** The Bidder should assume that the exact locations of any underground or hidden utilities, underground fuel tanks, and any plumbing and electrical runs may be somewhat different from any location indicated in the surveys or Contract Documents.
7. **Division of Contract Documents.** The Contract Documents may be divided into parts, divisions, and sections for convenient organization and reference. Generally, there has been no attempt to divide the Specification sections into Work performed by the various building trades, any Work by separate contractors, or any Work required for separate facilities in of phases of the Project.

C. SUBSTITUTIONS

1. **Standard.** The materials, products, procedures and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance, and quality that must be met by any proposed substitution.
2. **Substitution procedure.** No substitution will be considered prior to receipt of Bids unless the Architect receives a written request for approval on the Evergreen School District's Substitution Request form for the Project, with all data requested on the form completed, at least ten (10) days prior to the date for receipt of Bids. Each such request shall be submitted with a Request for Substitution form identical to or equivalent in content to the form found in the Project Manual, and shall include the name of the material or equipment proposed to be replaced and a complete description of the proposed substitute, including drawings, cuts, performance and test data, warranty information, and any other information necessary for an evaluation. A statement setting forth any changes in other materials, equipment or other Work that incorporation of the substitute would require shall be included. The proposer has the burden to prove the merit of the proposed substitute; by proposing the substitution, the Bidder represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified, that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs of any kind, has been presented, that the Contract Time will not be increased, and that it will coordinate the installation of the substitute if accepted and make all associated changes in the Work. The Architect's decision to approve or disapprove a proposed substitution shall be final. Written requests for approval shall constitute a guarantee by the Bidder that the articles or materials are in all respects, including warranty and installation, equal or superior to those specified, unless otherwise noted. To the extent the proposed substitution will require additional services by the Architect or its consultants after Bid award, the Bidder, if successful, will be required to pay the Architect or its consultants for these services at their customary hourly rates.
3. **Addendum.** If the Architect approves a proposed substitution prior to receipt of Bids, the approval will be set forth in a written Addendum. Bidders shall not rely upon approvals made in any other manner. Substitution request forms returned by the Architect are a courtesy only, and Bidders/Sub-bidders shall rely solely on substitution approvals listed in an Addenda.
4. **Post-Bid substitutions.** After the Contract has been executed, the Evergreen School District and the Architect may consider a written request for the substitution of material or products in place of those specified in the Contract Documents only under the circumstances as specified therein.

D. ADDENDA

1. **Written.** All Addenda will be written. They will be mailed, emailed, faxed delivered, and/or posted electronically with notice to those the Architect knows to have received a complete set of Bidding Documents.
2. **Copies.** Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.
3. **Verification and acknowledgment of receipt.** Prior to bidding, each Bidder shall ascertain that it has received all Addenda issued. Each Bidder shall acknowledge its receipt of all Addenda in its Bid.

1.04 BIDDING PROCEDURE

A. FORM AND STYLE OF BIDS

1. **Form.** Bids (including any required attachments) shall be submitted on forms identical to the form included with the Bidding Documents. Bids on different forms may be rejected. No oral, email, or telephonic responses or modifications will be considered to be Bids.
2. **Entries on the Bid form.** All blanks on the Bid form shall be filled in by typewriter or manually in ink.
3. **Words and figures.** Where so indicated by the makeup of the Bid form, sums shall be expressed in both words and figures; in case of discrepancy between the two and regardless of any statement to the contrary on the Bid form, *the amount written in figures shall govern and the words shall be used to determine any ambiguities in the figures.* Portions of the Bid form may require the addition of component bids to a total or the identification of component amounts within a total. In case of discrepancy between component amounts listed and their sum(s), the component amounts listed shall govern.
4. **Initial changes.** Any interlineation, alteration or erasure must be initialed by an authorized representative of the Bidder.
5. **Alternates and Unit Prices.** All requested Alternates and unit prices should be bid. The Evergreen School District reserves the right, but is not obligated, to reject any Bid on which all requested Alternates or unit prices are not bid. If no change in the Base Bid is required for an Alternate, enter “*No Change.*” If there is no entry, it will be presumed that the Bidder has made no offer to accomplish this Alternate. If it is not otherwise clear from the Bid or nature of the Alternate, it will be presumed that the amount listed for an Alternate is an add rather than a deduct.
6. **No conditions.** The Bidder shall make no conditions or stipulations on the Bid form nor qualify its Bid in any other manner.
7. **Identity of Bidder.** The Bidder shall include in the specified location on the Bid form the legal name of the Bidder and, if requested, a description of the Bidder as a sole proprietor, a partnership, a joint venture, a corporation (including the state of incorporation), or another described form of legal entity. The Bid shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent’s authority to bind the Bidder, and provide other information requested.
8. **Bid amounts do not include sales tax.** The Bid shall include in the sum stated all taxes imposed by law, EXCEPT STATE AND LOCAL SALES TAX ON THE CONTRACT SUM.

9. **Bid breakdown.** The Bid form may contain, for the Evergreen School District's accounting purposes only, a breakdown of some or all of the components included in the Base Bid.

B. POTENTIAL LISTING OF SUBCONTRACTORS

1. **Procedure.** On certain projects of the Evergreen School District, the Bid form includes a requirement that certain Subcontractors be listed, and the list must be submitted to the Evergreen School District. In these circumstances, the Bidder must name the Subcontractor with whom the Bidder, if awarded the Contract, will subcontract *directly* (i.e., not lower-tier Subcontractors) for performance of the work of:

- (a) HVAC (heating, ventilation and air conditioning),
- (b) plumbing as described in RCW 18.106,
- (c) electrical work as described in RCW 19.28, and
- (d) any other categories of Work listed on the Subcontractor listing form.

SELF-PERFORMANCE: If the Bidder intends to self-perform any of these categories of Work, it must name itself for each such category of Work.

IF NO SUBCONTRACTORS: If there is no work to be performed by a HVAC, plumbing, electrical, or other subcontractor category identified on the Bid form, the Bidder should insert "None" or "N/A" on the Bid form. If a category is left blank, that shall indicate that the Bidder believes that there is no Work to be performed by that trade.

MULTIPLE ENTRIES: The Bidder shall not list more than one (1) entity for a particular category of Work identified, unless a Subcontractor varies with an Alternate Bid, in which case the Bidder shall identify the Subcontractor to be used for the Alternate and the affected portion of the Work and otherwise make its Bid clear as to which subcontractor shall be utilized depending upon the selection of alternates.

MULTIPLE SUBMITTAL TIMES. In the event the Bidding Documents call for a second submittal time for receipt of alternate bids, and no additional Subcontractors are listed with such alternate bids, the Evergreen School District will consider that there is no change in the Subcontractors from those listed with the base Bid.

2. **Failure to Submit.** In accordance with RCW 39.30.060, failure of a Bidder to submit as part of the Bid the names of such proposed heating, ventilation and air conditioning, plumbing, and electrical Subcontractors or to name itself to perform such Work or the naming of two or more Subcontractors to perform the same Work shall render the Bidder's Bid nonresponsive and, therefore, void.
3. **Requirement to Subcontract.** The Bidder, if awarded the Contract, will subcontract with the listed Subcontractor for performance of the portion of the Work designated on the Form of Proposal, subject to the provisions of the Contract for Construction and RCW 39.30.060. The Bidder shall not substitute a listed Subcontractor in furtherance of bid shopping or bid peddling.
4. **Replacement.** If a listed Subcontractor is unable to comply with any bondability, qualification, or other requirements of the Contract or Bidding Documents (including without limitation a finding of Subcontractor non-Responsibility), the Evergreen School District may require the Bidder to replace the Subcontractor with a Subcontractor acceptable to the Evergreen School District at no change in the Contract Sum or Contract Time.

5. **Subcontractor Standards.** Subcontractors shall meet contractual and technical qualifications standards, and provide specialized certification, licensing, and/or payment and performance bonding where specified.

C. BID SECURITY

1. **Purpose and procedure.** Each Bid shall be accompanied by a bid security payable to the Evergreen School District in the form required in the Bidding Documents and equal to five percent (5%) of the Base Bid. The bid security constitutes a pledge that the Bidder will enter into the Contract with the Evergreen School District in the form provided, in a timely manner, and on the terms stated in its Bid and will furnish in a timely manner the payment and performance bonds, certificates of insurance, Contractor's Construction Schedule, and all other documents required in the Contract Documents. Should the Bidder fail or refuse to enter into the Contract or fail to furnish such documents, the amount of the bid security shall be forfeited to the Evergreen School District as liquidated damages, not as a penalty. By submitting its Bid and bid security, the Bidder agrees that any forfeiture is a reasonable prediction at the time of Bid submittal of future damages to the Evergreen School District.
2. **Form.** The bid security shall be in the form of a certified or bank cashier's check payable to the Evergreen School District or a bid bond executed by a bonding company acceptable to the Evergreen School District and licensed in the State of Washington on the form included with the Bidding Documents or on an acceptable and equivalent form. The Attorney-in-Fact who executes the bond on behalf of the surety shall be licensed to do business in the State of Washington and shall affix to the bond a certified and current copy of his or her Power of Attorney.
3. **Retaining Bid Security.** The Evergreen School District will have the right to retain the Bid Security of Bidders to whom an award is being considered until the earliest of either (a) the Contract has been executed, and payment and performance bonds have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn, or (c) all Bids have been rejected.
4. **Return of Bid Security.** Within forty-five (45) days after the Bid Date, the Evergreen School District will release or return Bid securities to Bidders whose Bids are not to be further considered in awarding the Contract. Bid securities of the three apparent low Bidders will be held until the Contract has been finally executed, after which all unforfeited Bid securities will be returned.

D. SUBMISSION OF BIDS

1. **Procedure.** The Bid, the Bid security, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party specified in the Advertisement or Invitation to Bidders and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail the sealed envelope shall be enclosed in a separate mailing envelope with the notation "*SEALED BID ENCLOSED*" on the face thereof.
2. **Deposit.** Bids shall be deposited at the designated location prior to the time and date for receipt of Bids indicated in the Advertisement or Invitation to Bid, or any extension thereof made by Addendum. Bids received after the time and date for receipt of Bids may be opened, retained unopened, or returned (open or unopened), all at the discretion of the Evergreen School District.
3. **Responsibility.** The Bidder assumes full responsibility for timely delivery at the location designated for receipt of Bids.
4. **Form.** Oral, fax, telephonic, email, electronic, or telegraphic Bids are invalid and will not be considered.

E. MODIFICATION OR WITHDRAWAL OF BID

1. **After receipt time.** A Bid may not be modified, withdrawn or canceled by the Bidder during a forty-five (45) day period following the time and date designated for the receipt of Bids, and each Bidder so agrees by virtue of submitting its Bid.
2. **Before receipt time.** Prior to the time and date designated for receipt of Bids, any Bid submitted may be modified or withdrawn only by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder or by telegram or fax; if by telegram or fax, written confirmation over the signature of the Bidder shall be mailed and postmarked on or before the date and time set for receipt of Bids. The notice shall be worded so as not to reveal the amount of the original Bid. E-Mail notice will not be considered. It shall be the Bidder's sole responsibility to verify that the notice has been received by the Evergreen School District in time to be withdrawn before the Bid opening.
3. **Resubmittal.** Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.
4. **Bid security with resubmission.** Bid security shall be in an amount sufficient for the Bid as modified or resubmitted.

F. NOTICE

1. Notice or a request from a Bidder under these Instructions to Bidders must be in writing over the signature of the Bidder and delivered in person or by mail, express delivery, telegram or fax. If the notice is by telegram or fax, written confirmation over the signature of the Bidder must be mailed and postmarked on or before the date and time set for the notice.

1.05 CONSIDERATION OF BIDS

- A. **OPENING OF BIDS:** Unless stated otherwise in the Advertisement or Invitation to Bid or any Addendum, the properly identified Bids received on time will be opened publicly and will be read aloud. An abstract of the Base Bids and Alternate Bids, if any, will be made available to Bidders and other interested parties.
- B. **REJECTION OF BIDS:** The Evergreen School District shall have the right but not the obligation to reject any or all Bids for any reason or for no reason, to reject a Bid not accompanied by required Bid security or by other material or data required by the Bidding Documents, or to reject a Bid which is in any way incomplete or irregular.
- C. **ACCEPTANCE OF BID (AWARD)**
 1. **Owner.** The Evergreen School District intends (but is not bound) to award a Contract to the lowest Responsible and Responsive Bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Evergreen School District has the right to waive any informality or irregularity in any Bid(s) received and to accept the Bid which, in its judgment, is in its own best interests.
 2. **Alternates.** The Evergreen School District shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Contract Documents or Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and the Alternates (if any) accepted. The Evergreen School District retains the right to accept Alternate Bid items at the price bid within 45 days after the Agreement is executed.

3. **Requirements for Award.** Before the Award, the lowest Responsive Bidder shall meet the Award Requirements.

D. BID PROTEST PROCEDURES

1. **Procedure.** A Bidder protesting for any reason the Bidding Documents; a bidding procedure; the Evergreen School District's objection to the Bidder or a person or entity proposed by the Bidder, including but not limited to a finding of non-Responsibility; the rejection of a Bid; the award of the Contract; or any other aspect arising from or relating in any way to the bidding and award or lack thereof, shall cause a written protest to be filed with the Evergreen School District within two (2) business days of the event giving rise to the protest and, in any event, no later than two (2) business days after the date upon which Bids are opened. (Intermediate Saturdays, Sundays, and legal holidays are not counted.) The written protest shall include the name of the protesting Bidder, a detailed description of the specific factual and legal grounds for the protest, copies of all supporting documents, and the specific relief requested. The written protest shall be delivered to:

Susan Steinbrenner, Director of Facilities
Evergreen School District No. 114
13501 NE 28th Street
Vancouver, WA 98668

2. **Consideration.** Upon receipt of the written protest, the Evergreen School District will consider the protest. The Evergreen School District may, within three (3) business days of the Evergreen School District's receipt of the protest, provide any other affected Bidder(s) the opportunity to respond in writing to the protest. If the protest is not resolved by mutual agreement of the protesting Bidder and the Evergreen School District, the Superintendent of the Evergreen School District or his or her designee will review the issues and promptly furnish a final and binding written decision to the protesting Bidder and any other affected Bidder(s) within six (6) business days of the Evergreen School District's receipt of the protest. (If more than one (1) protest is filed, the Evergreen School District's decision will be provided within six (6) business days of the Evergreen School District's receipt of the last protest.) If no reply is received from the Evergreen School District during the six (6) business-day period, the protest shall be deemed rejected.
3. **Waiver.** Failure to comply with these protest procedures will render a protest waived.
4. **Condition precedent.** Timely and proper compliance with and exhaustion of these protest procedures shall be a condition precedent to any otherwise permissible judicial consideration of a protest.

1.06 POST BID INFORMATION

A. INFORMATION FROM APPARENT LOW BIDDER

1. **Submittal.** Within twenty-four (24) hours of the Architect's request, the apparent low Bidder and any other Bidders so requested shall submit the following to the Architect and the Evergreen School District:
 - (a) additional information regarding the use of their own forces and the use of subcontractors and suppliers;
 - (b) a properly executed Contractor's Qualification Statement on the form provided (unless otherwise required to be submitted at the time of the Bid);
 - (c) a letter or form from the Bidder's insurance company stating that the insurance required by the Contract Documents will become effective upon execution of the Contract;

- (d) a letter or form from the Bidder's surety stating that the bond(s) required by the Contract Documents will become effective upon execution of the Contract;
- (e) if requested by the Evergreen School District, a detailed breakdown of the Bid in a form acceptable to the Evergreen School District;
- (f) the names of the persons or entities (including a designation of the Work to be performed with the Contractor's own forces, and the names of those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work;
- (g) the proprietary names and the suppliers of the principal items or systems of materials and equipment proposed for the Work;
- (h) a State Board of Education Form D-9, if requested; and
- (i) a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria of RCW 39.04.350(1)(g).

Failure to provide any of the above information in a timely manner may constitute an event of breach permitting forfeiture of the Bid security.

2. **Responsibility.** The Bidder will be required to establish to the satisfaction of the Architect and the Evergreen School District the reliability and Responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents as well as qualifications set forth in the Sections of the Project Manual pertaining to such proposed Subcontractor's respective trades. The Responsibility of the Bidder may be judged in part by the Responsibility of these proposed entities. The following will be considered:

- The ability, capacity, and skill to perform the contract;
- The character, integrity, reputation, judgment, experience, and efficiency of the Bidder;
- Whether the Bidder can perform the contract within the time specified;
- The quality of performance of previous contracts;
- The previous and existing compliance by the Bidder with laws relating to the contract; and
- Such other information as may be secured having a bearing on the decision to award the contract.

CONSIDERATION. In considering a Bidder's Responsibility, a Bidder shall be deemed to be unqualified to perform the Contract if, after review and verification of the representations included upon the Contractor's Qualification Statement submitted by the Bidder, conditions such as, but not limited to, the following appear:

- (a) The Bidder does not have sufficient prior experience (or an acceptable substitute thereof, as described below) with projects of a similar nature in technical, managerial, and financial requirements to that in the present Contract being bid. In addition to such established contractors, a newly established contractor may be considered qualified if it has shown on the Contractor's Qualification Statement that it is staffed with sufficient technical, managerial, and financial personnel with prior experience in the nature of construction for which the Bids are invited.
- (b) The Bidder does not have sufficient capability to undertake the obligations of the Contract. A determination will be made when the Evergreen School District's review of the probable cash flow needs of the Bidder for this Project (including payroll, cost of material and supplies, equipment rental costs, and any other direct or incidental costs of the Contract), concludes that the Bidder does not have sufficient financial resources to enable it to satisfy its financial obligations under the Contract.

- (c) The Bidder has submitted unrealistic unit prices as determined by other Bidders' unit prices for this Project.
 - (d) The Bidder does not have sufficient staff, equipment, or plant available to perform the Contract. The Evergreen School District's determination in this matter will be based upon that represented by Bidder in the Contractor's Qualification Statement.
 - (e) The Bidder has a history of unsatisfactory performance of contracts of this or similar nature, regardless of whether such contracts existed between the Evergreen School District and the Bidder, or other parties.
 - A determination of this nature will be made if the Evergreen School District, after review of the Bidder previous work experience, determines that the Bidder's unsatisfactory performance has resulted predominantly from the Bidder's failure rather than a failure to perform by another party. The Evergreen School District will give the Contractor an opportunity to explain such nonperformance's before any final determination is reached.
 - A determination of failure to perform will be made if the Evergreen School District is satisfied after review of the Bidder's prior experience, that the Bidder has failed to satisfy its obligations under past contracts and the Evergreen School District cannot safely assume satisfactory performance of the Contract by the Bidder.
 - In reaching its determination, the Evergreen School District may consider statements of other parties to the prior unperformed contracts, as well as the representations of the Bidder on its Contractor's Qualification Statement.
3. **Subcontractors.** The Responsibility of the Bidder may be judged in part by the Responsibility of its Subcontractors. Bidders must verify Responsibility criteria for each first-tier Subcontractor. A Subcontractor of any tier that hires other Subcontractors must verify Responsibility criteria for each of its next lower-tier Subcontractors. Verification shall include that each Subcontractor, at the time of subcontract execution, is Responsible and possesses an electrical contractor license, if required by RCW 19.28, or an elevator contractor license, if required by RCW 70.87, and can obtain any payment and performance bonds required by the Bidding or Contract Documents.
4. **Request to Modify Criteria.** No later than ten (10) days prior to the Bid Date, a potential Bidder may request in writing that the Evergreen School District modify the Responsibility criteria listed in clause (2) above or elsewhere in the Contract Documents or the Bidding Documents. The Evergreen School District will evaluate the information submitted by the potential Bidder and respond before the Bid Date. If the evaluation results in a change of the criteria, the Evergreen School District will issue an Addendum identifying the new criteria.
5. **Objection.** Prior to the Award of the Contract, the Architect will notify the Bidder in writing if either the Evergreen School District or the Architect, after due investigation, has reasonable objection to the Bidder or a person or entity proposed by the Bidder, and the Evergreen School District will provide the reasons for the determination. The Bidder may appeal the determination within two (2) business days of its receipt of the objection by presenting additional information to the Evergreen School District, and the Evergreen School District will consider the additional information before issuing its final determination. The Bidder may, after the Evergreen School District's objection or determination, and at Bidder's option, (1) withdraw the Bid, (2) submit an acceptable substitute person or entity with no change in the Contract Time and no adjustment in the Base Bid or any Alternate Bid, even if there is a cost to the Bidder occasioned by the substitution, or (3) appeal by filing a protest in accordance with paragraph 1.05(D). In the event of withdrawal, Bid security will not be forfeited.
6. **Change.** Persons and entities proposed by the Bidder and to whom the Evergreen School District or the Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Evergreen School District and the Architect.

7. **Right to Terminate.** The Bidder's representations concerning its qualifications will be construed as a covenant under the Contract. Should it appear that the Bidder has made a material misrepresentation on its Contractor's Qualification Statement, the Evergreen School District shall have the right to terminate the Contract for cause for the Contractor's breach, and the Evergreen School District may then pursue such remedies as exist elsewhere under this Contract, or as otherwise are provided at law or equity.

B. **INFORMATION FROM OTHER BIDDERS:** All other Bidders designated by the Architect as under consideration for award of a Contract shall also provide a properly executed Contractor's Qualification Statement, if so requested by the Evergreen School District.

C. **BIDDING MISTAKES:** The Evergreen School District will not be obligated to consider notice of claimed bidding mistakes received more than three (3) business days after the Bid opening. In accordance with Washington law, a low Bidder that claims error and fails to enter into the Contract is prohibited from bidding on the Project if a subsequent call for Bids is made for the Project.

1.07 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

A. **BOND REQUIREMENTS:** Within twenty-four (24) hours after the issuance of the Evergreen School District's notice of intent to award the Contract, and prior to the date of execution of the Contract, the Bidder shall furnish evidence satisfactory to the Evergreen School District of its ability to obtain statutory bonds pursuant to RCW 39.08 covering the faithful performance of the Contract and the payment of all obligations arising thereunder in the form prescribed in the Contract Documents and in the full amount of the Contract Sum plus sales tax. The cost of such bond shall be included in the Base Bid.

B. **SUBCONTRACTOR BONDS.** The Evergreen School District reserves the right to require certain Subcontractors to furnish performance and labor and material payment bonds in form as set forth herein and as set forth under the Bidding Documents or Contract Documents. The Evergreen School District shall not, however, be responsible for any costs for any Subcontractor bonds unless the Evergreen School District, prior to the execution of the Owner-Contractor Agreement, requires the Bidder, in writing, to furnish such bonds from designated Subcontractors. Should any bonds be furnished by subcontract bidders, or be required by any Bidder to be furnished by any subcontract bidder or Subcontractor, without the written request of the Evergreen School District prior to the execution of the Owner-Contractor Agreement, the costs for any such bonds shall be at the expense of the Bidder and shall not be added to the Contract Sum.

C. **TIME OF DELIVERY AND FORM OF BONDS.** The Bidder shall deliver the bonds and other documents required by the Contract Documents (including but not limited to certificates of insurance) to the Evergreen School District pursuant to the Contract Documents and in no event any later than seven (7) days after the date of execution of the Contract and prior to commencing operations at the site. The bonds shall be written in the form approved by the Evergreen School District for public work, as required by RCW 39.08. The bonds shall be written by a surety firm licensed to do business in the State of Washington, with an A.M. Best rating of at least A/VIII. The Bidder shall require the Attorney-in-Fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his/her Power of Attorney.

1.08 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

- A. **FORM TO BE USED:** The Agreement for the Work will be written on the form(s) contained in the Bidding Documents, including any General, Supplemental or Special Conditions, and the other Contract Documents included with the Project Manual. In the event no form is enclosed, an AIA Document A101-2017, "Standard Form of Agreement Between Owner and Contractor, where the basis of payment is a Stipulated Sum," along with the General Conditions (AIA Document A201-2017), as both are revised, modified and supplemented by the Evergreen School District, will be used. All references in these Instructions to Bidders to the A101 or the A201 refer to the documents as revised by the Evergreen School District.
- B. **CONFLICTS:** In case of conflict between the provisions of these Instructions and any other Bidding Document, these Instructions shall govern. In case of conflict between the provisions of the Bidding Documents and the Contract Documents, the Contract Documents shall govern.

1.09 CONTRACT DOCUMENTS

This paragraph contains descriptions of some but not all of the provisions of the Contract Documents.

- A. **RETAINAGE:** The Contract Documents specify the statutory retainage requirements of RCW 60.28 for this Project.
- B. **CONTRACT TIME:** The Contract Documents specify the Contract Time. Timely completion of this Project is essential to the Evergreen School District.
- C. **PREVAILING WAGES:** The Contract Documents contain requirements regarding the payment of prevailing wages pursuant to RCW 39.12.
- D. **WRITTEN CLAIMS AND NOTICE:** The Contract Documents contain a number of provisions that require the Contractor to provide notice of Claims and to make and support Claims, in writing, within a specified time in order to maintain the Claim. The Evergreen School District is under no obligation to consider Claims that fail, in any respect, to meet these requirements.
- E. **CHANGES IN CONTRACT SUM:** The Contract Documents contain provisions specifying requirements for and pricing of changes in the Contract Sum.
- F. **DISPUTE RESOLUTION:** The Contract Documents contain provisions replacing the arbitration provisions of the form General Conditions with an alternative dispute resolution procedure which, among other things, requires non-binding mediation of all disputes.
- G. **CONTRACTOR REGISTRATION:** Pursuant to RCW 39.06, the Bidder shall be registered or licensed as required by the laws of the State of Washington, including but not limited to, RCW 18.27.
- H. **COMMISSIONING OF OPERATIONAL SYSTEMS:** Certain systems may be designated in the Contract Documents as "Operational Systems." If so, prior to the Date of Substantial Completion the Operational Systems must be up and running, ready for normal operation, and subject to a pre-commissioning inspection.
- I. **TAXES.** The Contractor shall include in its Bid and pay for all applicable taxes except Washington State Sales Tax and Local Sales Tax on the Contract Sum, which shall be excluded in the preparation of its Bid. Such State and Local Sales Taxes shall be added to the Contract Sum, paid by the Evergreen School District to the Contractor, and then paid by the Contractor over the course of the Project. Refer to general, supplementary or other conditions regarding further information.

- J. OTHER PROVISIONS: The above paragraphs contain descriptions of some but not all of the provisions of the Contract Documents. Bidders should review in detail the Contract Documents themselves and not rely upon the above paragraphs in this article as complete or inclusive.

1.10 POSSIBLE TRENCH EXCAVATION SAFETY PROVISIONS

- A. To ensure that the Bidder agrees to comply with relevant trenching safety requirements of RCW 39.04.180 and RCW 49.17, the Base Bid must include the cost of any required trench safety provisions. The Bidder shall enter in the blank provided on the Bid form the dollar amount the Bidder has included in its Base Bid for any trench safety provisions for trenching that will exceed a depth of four feet. If trench excavation safety provisions do not pertain to the Project, the Bidder may enter "N.A." or "Not Applicable" in the blank on the Bid form.

END OF SECTION

SECTION 00 41 00
BID FORM
EVERGREEN PUBLIC SCHOOLS
MULTI-SITE (6) SECURITY VESTIBULES

Name of Bidder: _____

Address of Bidder: _____

Telephone Number of Bidder: _____

Bidder's Washington Contractor Registration Number: _____

The Bidder is (*check one and complete the associated blank*):

___ a corporation organized and existing under the laws of the state of _____
and licensed to do business in the State of Washington.

___ a partnership organized and existing under the laws of the state of _____
consisting of the following partners: _____

___ a joint venture organized and existing under the laws of the state of _____
consisting of the following joint Ventures: _____

___ a sole proprietor.

To: Evergreen Public Schools

By U.S. Mail:

Evergreen Public Schools

Purchasing Department

PO Box 8910

Vancouver, WA 98668-8910 Administrative Services Center

By Hand Delivery:

Evergreen Public Schools

Purchasing Department

Administrative Services Center Gold Complex

13501 NE 28th Street

Vancouver WA 98682

The undersigned Bidder acknowledges receipt of and familiarization with the Bidding Documents, the Project Manual, the Drawings, the Specifications, the Contract Documents, and the following Addenda:

Acknowledge Addenda _____ through _____

The Bidder further declares that it has carefully examined the Contract Documents for construction of the Project, that it has inspected the site and familiarized itself with local conditions that may affect the cost of the Work and/or the time for performance of the Work, that it has satisfied itself as to quantities involved, including materials and equipment, and conditions of work involved, including the fact that the description of quantities of work and materials as included in the Bid is brief and is intended only to indicate the general nature of the Work and to correlate said quantities with detailed requirements in the Contract Documents, and that this Bid is made according to provisions and under terms of the Contract Documents, which are hereby made a part of this Bid.

BURNT BRIDGE ELEMENTARY SCHOOL LUMP SUM BID

LUMP SUM BASE BID: The undersigned Bidder hereby offers to perform all the Work on the Security Vestibules in accordance with the Contract Documents for the total, combined fixed price lump sum of:

_____ Dollars (\$_____)

(Show amount in words and in figures. This amount does not include State/Local Sales Tax.)

FIRCREST ELEMENTARY SCHOOL LUMP SUM BID

LUMP SUM BASE BID: The undersigned Bidder hereby offers to perform all the Work on the Security Vestibules in accordance with the Contract Documents for the total, combined fixed price lump sum of:

_____ Dollars (\$_____)

(Show amount in words and in figures. This amount does not include State/Local Sales Tax.)

FISHER'S LANDING ELEMENTARY SCHOOL LUMP SUM BID

LUMP SUM BASE BID: The undersigned Bidder hereby offers to perform all the Work on the Security Vestibules in accordance with the Contract Documents for the total, combined fixed price lump sum of:

_____ Dollars (\$_____)

(Show amount in words and in figures. This amount does not include State/Local Sales Tax.)

SILVER STAR ELEMENTARY SCHOOL LUMP SUM BID

LUMP SUM BASE BID: The undersigned Bidder hereby offers to perform all the Work on the Security Vestibules in accordance with the Contract Documents for the total, combined fixed price lump sum of:

_____ Dollars (\$_____)

(Show amount in words and in figures. This amount does not include State/Local Sales Tax.)

RIVERVIEW ELEMENTARY SCHOOL LUMP SUM BID

LUMP SUM BASE BID: The undersigned Bidder hereby offers to perform all the Work on the Security Vestibules in accordance with the Contract Documents for the total, combined fixed price lump sum of:

_____ Dollars (\$_____)

(Show amount in words and in figures. This amount does not include State/Local Sales Tax.)

SUNSET ELEMENTARY SCHOOL LUMP SUM BID

LUMP SUM BASE BID: The undersigned Bidder hereby offers to perform all the Work on the Security Vestibules in accordance with the Contract Documents for the total, combined fixed price lump sum of:

_____ Dollars (\$_____)

(Show amount in words and in figures. This amount does not include State/Local Sales Tax.)

LUMP SUM BID TOTAL COMBINED

LUMP SUM BASE BID: The undersigned Bidder hereby offers to perform all the Work on the Security Vestibules in accordance with the Contract Documents for the total, combined fixed price lump sum of:

_____ Dollars (\$_____)
(Show amount in words and in figures. This amount does not include State/Local Sales Tax.)

RCW 39.04.350(2) VERIFICATIONS

The undersigned hereby verifies under penalty of perjury, in accordance with RCW 9A.72.085, that Bidder is in compliance with the responsible bidder criteria requirement of subsection (1)(g) of RCW 39.04.350. Specifically, within the three-year period immediately preceding the date of the bid solicitation for this Project, Bidder has not been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction that Bidder has willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW. The undersigned certifies (or declares) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signature: _____

(Date)

(Physical location (City) of person signing this form at time of signing)

SUBCONTRACTORS

RCW 39.30.060 Identification of subcontractors.

Pursuant to RCW 39.30.060, the bidder shall submit as part of the bid the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning); plumbing as described in chapter 18.106 RCW; and electrical as described in chapter 19.28 RCW, or to name itself for the work. The bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the bidder must indicate which subcontractor will be used for which alternate. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid nonresponsive and, therefore, void.

The requirement of this section to name the prime contract bidder's proposed HVAC, plumbing, and electrical subcontractors applies only to proposed HVAC, plumbing, and electrical subcontractors who will contract directly with the prime contract bidder submitting the bid to the public entity.

Type of Work	Subcontractor (Base Bid)	Subcontractor (If Alternate is Accepted)	Alternate Number
Heating, ventilation and air conditioning			
Plumbing as described in RCW 18.106			
Electrical Work as described in RCW 19.28			

By submitting this Bid, the Bidder agrees:

1. To furnish all material, labor, tools, equipment, management, supervision and utility and transportation services necessary to perform and complete, in a workmanlike manner, all of the

- Work required for construction of the Work in accordance with the Contract Documents and contained or reference in the Bidding Documents.
2. To hold the Bid open for forty-five (45) calendar days after the Bid Date set.
 3. To accept the provisions of the Instructions to Bidders, including the disposition of Bid security if stated as a requirement in the Instructions to Bidders.
 4. Within ten (10) days of award, to execute and deliver the Contract, to furnish a performance and payment bond in accordance with the requirements of the Contract Documents, to deliver the required certificates of insurance, and to perform the other obligations specified in the Contract Documents.
 5. To Substantially Complete the Work within the Contract Time and to achieve Final Completion as specified in the Contract Documents.
 6. The requirements of Washington State RCW Chapter 39.12 Prevailing Wages are included as a part of this bid and the undersigned agrees to comply with all of the provisions thereof.
 7. The undersigned Bidder has enclosed the required Bid Security if stated as a requirement in the Instructions to Bidders.
 8. The owner reserves the right to reject any or all bids and waive all informalities.

Dated: _____

Name of Bidder

Signature of Authorized Officer

END OF BID FORM

**AGREEMENT
BETWEEN
EVERGREEN SCHOOL DISTRICT
AND
CONTRACTOR**

This AGREEMENT is made as of the _____ day of _____, 2020, between:

The “School District”:

Evergreen School District No. 114
13501 NE 28th Street
Vancouver, WA 98668
Attn: Susan Steinbrenner

and the “Contractor”:

Attn: _____

A general description of the Project is:

The project consists of upgrading existing security Head-End to support additional devices, card readers, ext. Upgrading existing lockdown push-button to EPS Standards. Upgrading existing Intercom interface to support additional messages. Adding exterior cameras around the school’s based on EPS standards. New walls and doors to create security vestibules at six elementary schools within the district.

The Architect/Engineer (“A/E”), if any, is:

LSW
610 Esther St. #200
Vancouver, WA 98660
Attn: Jason Olson

The School District and Contractor agree as set forth below.

**ARTICLE 1
THE WORK**

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

**ARTICLE 2
DATES OF COMMENCEMENT AND SUBSTANTIAL AND FINAL COMPLETION**

2.1 Contract award and notice to proceed are expected to be provided by March 14, 2020, with on-site work to begin no earlier than June 10, 2020 and no later than August 24, 2020.

2.2 The Contractor shall achieve Substantial Completion of the entire Work no later than August 24, 2020 and Final Completion no later than fifteen (15) days thereafter, subject to adjustments of the Contract Time as provided in the Contract Documents.

2.3 Liquidated damages shall be \$0 per day for each calendar day after the Contract Time that Substantial Completion is not attained.

ARTICLE 3
CONTRACT SUM

3.1 The School District shall pay the Contractor for the Contractor's performance of the Contract the Contract Sum of _____ Dollars (\$ _____), subject to additions and deductions as provided in the Contract Documents. Sales tax is not included in and shall be added to the Contract Sum.

3.2 The Contract Sum is based upon and includes the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the School District: _____

3.3 Unit prices, if any, are as follows: _____

3.4 Allowances, if any, are as follows: _____

3.5 This Project X is / ____ is not estimated to cost one million dollars or more. If "is" is selected, then this Project is subject to the apprenticeship requirements of RCW 39.04.320 and Section 10.17 in the attached General Conditions. If "is not" is selected, such apprenticeship requirements do not apply.

3.6 Other important Project information, if any: _____ n/a _____

ARTICLE 4
PAYMENT

4.1 The School District will make payments to the Contractor as provided below and elsewhere in the Contract Documents based upon Application(s) for Payment submitted by the Contractor. The School District will make progress payments on account of the Contract Sum per Article 15. The School District will make final payment, constituting the entire unpaid balance of the Contract Sum except statutory retainage, to the Contractor when the Work has achieved Final Completion, the Agreement has been fully performed, and the School District's Board of Directors has accepted the Work. The retainage shall be paid pursuant to RCW 60.28 and the Contract Documents. A performance and payment bond is required; see Article 17.

4.2 Payments due and unpaid under the Agreement shall bear interest as specified by RCW 39.76, not to exceed the Bank of America prime rate plus 2%.

ARTICLE 5
PERMITS AND FEES

5.1 The School District will secure and pay for the building permit.

5.2 The Contractor shall secure and pay for, as a part of the Contract Sum, all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the construction of the Work, including without limitation all subcontractor permits and fees and including plan check fees.

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

ARTICLE 6
PROPERTY INSURANCE

6.1 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.

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 Any loss insured under subsection 6.1 is to be adjusted with the School District and made payable to the School District as trustee for the insureds, as their interest may appear. 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.

6.4 The School District as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five (5) days after the occurrence of loss to the School District’s exercise of this power, and if such objection is made, the matter shall be decided by a court of competent jurisdiction or as the parties in interest otherwise agree. The School District as trustee shall, in that case, make settlement with the insurers in accordance with directions of the court.

ARTICLE 7
ENUMERATION OF 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, including the attached General Conditions.

7.2 Any Supplementary and other Conditions of the Agreement.

7.3 The Specifications as follows:

<u>Section</u>	<u>Title</u>	<u>Pages</u>
As listed in the Index of the Project Manual.		

7.4 The Drawings as follows:

<u>Number</u>	<u>Title</u>	<u>Date</u>
As listed in the Index of Drawings.		

7.5 The Addenda (if any) as follows:

<u>Number</u>	<u>Date</u>	<u>Pages</u>
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7.6 Any other documents forming part of the Contract Documents and listed below:
Department of Labor and Industries Prevailing Wage Rates.

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

EVERGREEN SCHOOL DISTRICT NO. 114

CONTRACTOR

By _____
(Signature)

By _____
(Signature)

(Printed name and title)

(Printed name and title)

GENERAL CONDITIONS

ARTICLE 8

THE CONTRACT DOCUMENTS

8.1 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.

8.2 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 (if any) and the Contractor, or between any persons or entities other than the School District and Contractor.

8.3 The term "Work" means the demolition, abatement, disposal, 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.

8.4 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. 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.

8.5 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, and that the Contract Time is adequate for the performance of the Work. The Contractor's execution of the Agreement is a further representation and acknowledgement that the Contractor has carefully checked and verified all pertinent figures and that it has carefully examined the Contract Documents and the Project site, including any existing structures, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished, and all other requirements of the Contract Documents, as well as the surface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof.

ARTICLE 9

ADMINISTRATION OF THE AGREEMENT

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

9.2 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.

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

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

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

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

ARTICLE 10

THE CONTRACTOR

10.1 The Contractor shall perform, supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, personnel and procedures, for safety, and for coordinating all portions of the Work under the Agreement, 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.

10.2 The Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, disposal, 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 Workers. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall be responsible to the School District for the acts and omissions of the Contractor's employees, Subcontractors of any tier and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor. At no change to the Contract Sum or Contract Time, the School District may provide written notice requiring the Contractor to remove from the Work any employee or other person carrying out the Work that the School District considers objectionable. If the Work is being performed at a site in active school use or where there is a likelihood of contact with children, a person shall be unfit and removed from the site if he or she is a registered sex offender or has pled guilty to or has been convicted of any felony crime involving the physical injury or death of a child (RCW 9A.32 or RCW 9A.36 but not RCW 46.61--motor vehicle violation), the physical neglect of a child (RCW 9A.42), sexual offenses against a minor (RCW 9A.44), sexual exploitation of a 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 for cause.

10.4 Warranty. The Contractor warrants that materials and equipment furnished under the Agreement will be of good quality and new, that the Work will be performed in a skillful and workmanlike manner, free from defects not inherent in the quality required or explicitly permitted, and that the Work will conform to the requirements of the Contract Documents. The School District may conclude that 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 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.

10.5 Taxes and Fees. The Contractor shall pay sales, consumer, use, B & O, and other similar taxes that are legally enacted when bids are received, whether or not yet effective or merely scheduled to go into effect.

10.6 Legal Compliance. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing

on performance of the Work. The Contractor shall promptly notify the School District and A/E in writing if the Contractor observes the Drawings or Specifications to be at variance with them.

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

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

10.9 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 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.

10.10 Access. The Contractor shall provide the School District and the A/E and their respective consultants access to the Work wherever located.

10.11 Royalties and Patents. The Contractor shall pay all royalties and license fees, shall defend suits or claims for infringement of patent rights and shall hold the School District and the A/E harmless from loss on account thereof, unless the Contract Documents require the particular infringing design, process or product of a particular manufacturer or manufacturers.

10.12 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 and A/E and their respective agents, employees, directors, 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"). The Contractor will fully defend, indemnify, and hold harmless the Indemnified Parties for the sole negligence of the Indemnitor. The Contractor will defend, indemnify, and hold harmless the Indemnified Parties for the concurrent negligence of the Indemnitor to the extent of the Indemnitor's negligence. The Contractor agrees to being added by the School District as a party to any mediation, arbitration, or litigation with third parties in which the School District alleges indemnification or contribution from an Indemnitor. The Contractor agrees that all of its Subcontractors of any tier will, in 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 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 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.

10.13 Prevailing Wages.

10.13.1 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; if not attached, then the applicable prevailing wages are determined as of the Bid Date for the county in which the Project is located and are available at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. A copy is available for viewing at the 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 as are applicable under WAC 296-

127-011, or if no schedule is attached, then the applicable published rates shall apply at no increase to the Contract Sum. The Contractor shall provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. The Industrial Statistician will answer questions relating to prevailing wage data upon request.

10.13.2 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.

10.13.3 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.

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

10.15 Pursuant to RCW 49.70 and WAC 296-307-560 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.

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

benefit of the School District. Because of the importance of the access of such records to the School District in the case of a Claim, if the Contractor or any Subcontractor fails to fully comply with the requirements of this section with regard to any Claim, such Claim shall be deemed to be waived.

10.17 Apprenticeship. If this project is estimated to cost one million dollars or more (see Section 3.5 of the Agreement), then this Section 10.17 and RCW 39.04.320 shall apply. This Section 10.17 shall not apply and shall have no effect upon Projects that are not estimated to cost one million dollars or more.

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

10.17.2 “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.

10.17.3 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.

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

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

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

- .1 This Section 3.4.10 specifies that the 39.04.320 apprenticeship goals should be met;
- .2 The Owner shall provide a monetary incentive of Five Hundred Dollars for meeting these goals;
- .3 The Contractor shall pay a monetary penalty of Five Hundred Dollars for not meeting these goals;
- .4 The Owner is not in a position within existing resources to identify an expected cost value to be included in the bid associated with meeting these goals; and
- .5 Contractor and its Subcontractors are not required to exceed these apprenticeship utilization requirements.

ARTICLE 11 **SUBCONTRACTORS**

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

11.2 As soon as practicable after award of the Agreement, the Contractor shall confirm in writing to the School

District the names of the Subcontractors for each portion of the Work. The Contractor shall not contract with any Subcontractor to whom the School District has made reasonable and timely objection or which is 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 (2) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

11.3 The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons 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 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 so furnished. The Contractor shall defend, indemnify, and hold harmless the School District from any liens, including all expenses and attorneys' fees. Nothing in the Contract Documents shall create any obligation on the part of School District or A/E to pay or to see to the payment of any moneys due any Subcontractor of any tier or other person or entity, except as may otherwise be required by laws and regulations.

ARTICLE 12

CONSTRUCTION BY SCHOOL DISTRICT OR BY SEPARATE CONTRACTORS

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

12.2 The Contractor shall afford the School District and separate contractors reasonable opportunity for the introduction and storage of 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 13

CHANGES IN THE WORK

13.1 The School District, without invalidating the Agreement, may order changes in the Work consisting of additions, deletions or modifications ("Changes"), and the

Contract Sum and Contract Time will be adjusted accordingly. Changes in the Work, the Contract Sum and/or the Contract Time shall be authorized only by written Change Order signed by the School District, the A/E and the Contractor or by written Construction Change Directive signed by the School District and the A/E.

13.1.1 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.

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

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

13.2.1 Direct labor costs: The effective W.D.O.L. & I. prevailing hourly wage for the laborers, journeymen, and foremen performing and/or directly supervising the Changed Work on the site. The premium portion of overtime wages may not be included unless pre-approved in writing by the School District. The hourly cost shall be based upon basic wages and mandatory fringe benefits and workers' insurances.

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

13.2.3 Construction equipment usage costs: An itemization of the actual length of time construction equipment appropriate for the Work will be used solely on the Change in the Work at the Site times the lower of the actual rental receipt or applicable current state, NECA, EquipmentWatch, or MCA rental cost. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Site solely for the Change in the Work. The rate for equipment necessarily standing by for future use on the Work shall be 50% of the rate established above.

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

13.2.5 Subcontractor costs: Payments the Contractor makes to Subcontractors for Changed Work performed by Subcontractors of any tier. The cost of Work for Subcontractors of any tier shall be determined in the same manner as prescribed in this Section 13.2.

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

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

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

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

13.3.2 Claim Submission. Within *30 days* of the Notice of Claim, the Contractor shall provide the School District in writing with a Claim, which shall include a clear description

of the Claim, any and all changes in cost and in time to which the Contractor and its Subcontractors of any tier may be entitled under this Agreement for the Claim, 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. 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.

13.3.3 Informal Resolution. The School District will make a determination of the Claim. If no determination is made within two weeks of submission of the Claim, the Claim shall be deemed rejected. If the Contractor disagrees with the School District's determination and wishes to pursue the Claim further, the Contractor must, within *fourteen days* of receipt of the determination, provide the School District with a written request that a representative of the Contractor and the School District meet, confer, and attempt to resolve the Claim. This meeting will then take place at a mutually convenient time within *thirty 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 Mediation Rules of the American Arbitration Association ("AAA"). The Contractor is responsible for initiating the mediation process. 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 days* of the meeting undertaken in Section 13.3.3. If the parties are unable to agree to a mediator within *thirty 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 (subject only to ratification by the School District's Board of Directors), 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.

13.3.5 Litigation. The Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered in the dispute resolution procedures of Sections 13.3.1 through 13.3.4 above. All unresolved Claims of the Contractor shall be waived and released unless the Contractor has strictly complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) *120 days* after the Date of Substantial Completion 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 the School District and the Contractor. The pendency of a mediation (calculated as the period from the written request for mediation through the day following the mediation proceeding) shall toll these filing requirements.

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

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

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

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

13.5 Claims for Concealed or Unknown Conditions. If conditions unknown to the Contractor are encountered at the site which are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found and generally recognized as inherent in activities of the character provided for in the Contract Documents, then the Contractor shall give written notice to the School District promptly before conditions are disturbed and in no event later than *seven days* after the first observance on the conditions. The Contractor shall make any Claim arising from such condition in accordance with the dispute resolution procedure in Section 13.3.

13.6 Claims for Consequential Damages. The Contractor and School District waive Claims against each other for consequential damages arising out of or relating to this Agreement. 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 20. Nothing contained in this Section 13.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

13.7 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; or similar damages.

ARTICLE 14 **TIME**

14.1 Within *seven days* of executing the Agreement, the Contractor shall deliver any required bond to the School District; no Progress Payments shall be due until the bond is delivered.

14.2 If, through no fault of the Contractor or a Subcontractor of any tier, the Work 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, delays caused by the School District or its separate contractors, or any causes beyond the Contractor's control and for which it and its subcontractors of any tier are not responsible, or by other causes which may justify delay, then the Contract Time shall be extended by Change Order to the extent the critical path is affected. The Contractor (including Subcontractors) shall be entitled to damages for delay, the total limited to the liquidated rate of Subsection 2.3, only where the School District's own actions or inactions were the actual, substantial cause of the delay and where the Contractor could not have reasonably avoided the

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

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

ARTICLE 15

PAYMENTS AND COMPLETION

15.1 Progress Payments. Payments shall be made as provided in Articles 3 and 4 of this Agreement. 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.

15.1.1 Draft Application. At the last scheduled weekly meeting of each month (or, if there are no such meetings, no later than the 25th of each month), the Contractor shall submit to the School District a report on the current status of the Work as compared to the Progress Schedule and a draft itemized application for payment for Work performed during the prior calendar month. This shall not constitute a payment request. The Contractor, the School District and the A/E shall meet prior to the last working day of the month and confer regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The School District may request the Contractor to provide data substantiating the Contractor's right to payment, such as copies of requisitions or invoices from Subcontractors. The Contractor shall not be entitled to make a payment request, nor is any payment due the Contractor, until such data is furnished.

15.1.2 Payment Request. After the Contractor and the School District have met and conferred regarding the draft application, and the Contractor has furnished all data requested, the Contractor may submit by the 10th of the following month a payment request in the agreed-upon amount, in the form of a notarized, itemized Application for Payment for Work performed during the prior calendar month on a form supplied or approved by School District. Among other things, the Application shall state that prevailing wages have been paid in accordance with the prefiled 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 this Application constitutes a certification that 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, also by the 10th of the

following month, 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.

15.1.3 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 or other reasons, 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 working days* after the Subcontractor satisfactorily completes the remedial action identified in the notice.

15.2 Prevailing Wages. Pursuant to RCW 39.12, the Contractor 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.

15.3 Progress payments. The School District shall make progress payments within 30 days of its receipt of the approved payment request.

15.4 Withheld Payments. Payments may be withheld on account of (1) defective Work not remedied, (2) claims filed by third parties, (3) failure of the Contractor to make payments 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 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.

15.5 Substantial Completion.

15.5.1 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, if 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.

15.5.2 Immediately before partial or complete occupancy, the School District will schedule an inspection tour of the area to be occupied. A representative of the School District, A/E and Contractor will jointly tour the area and record items still remaining to be finished and/or corrected. The Contractor shall 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.

15.6 Final Payment. Pursuant to RCW 60.28, completion of the Contract Work shall occur after the Contractor has notified the School District and the A/E that the Work has been concluded and the Contractor submits the items listed below to the School District, any required final occupancy permit has been issued, and the School District Board 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:

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

renewable to cover the period required by the Contract Documents,

.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,

.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 fees paid by the Contractor or Subcontractor,

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

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

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

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

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

15.7 Waivers.

15.7.1 Final Payment 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; or (3) terms of warranties required by the Contract Documents or law.

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

15.7.3 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 renegotiated 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 or otherwise accepts the payment, then the reservation of rights shall be deemed waived, withdrawn, and of no effect.

15.8 Retainage.

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

.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 person arising under the Agreement and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from the Contractor.

.2 The moneys reserved may, at the option of the Contractor, be (1) retained in a fund by the School District until *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 *45 days* following Final Acceptance, with interest to the Contractor; or (3) placed in escrow with a bank or trust company until *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.

.3 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.

15.9 Warranty of Title. The Contractor warrants and guarantees that title to Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the School District no later than the time of payment free and clear of liens. 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 may be requested by the School District 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 indemnify and hold harmless the School District from any liens, including all expenses and attorneys' fees.

ARTICLE 16 **PROTECTION OF PERSONS AND PROPERTY**

16.1 The Contractor shall have the right to control and 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. The Contractor shall maintain the Work site and perform the Work in a manner that meets statutory and common-law requirements for the provision of a safe place to work. This requirement shall apply continuously and not be limited to working hours.

16.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by the Contractor, a Subcontractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable 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 10.12.

16.3 The Contractor shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl ("PCB") unless specifically required by the Contract Documents.

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

16.5 If the scope of the Work requires the Contractor to perform Work relating to hazardous materials, the Contractor shall be responsible to take all reasonable precautions to prevent foreseeable bodily injury or death resulting from such materials or substances, and to dispose of such materials as required by the Contract Documents and all applicable state and federal laws and regulations. The Contractor shall defend, indemnify, and hold harmless the School District, its consultants, the A/E, and their respective agents, employees, consultants, successors and assigns from and against any and all claims to the extent of the Contractor's failure to abide by such Contract Documents and all applicable state and federal laws and regulations.

ARTICLE 17 **INSURANCE AND BONDS**

17.1 Contractor's Liability Insurance.

17.1.1 The Contractor shall purchase from and maintain during the life of this Agreement, at its own cost in a company or companies admitted to do business in the State of Washington, possessing a Best's policy holder's rating of A- or better and a financial rating of no less than VII, and reasonably acceptable to the School District, an occurrence-based Commercial General Liability Insurance Policy which shall provide bodily injury and property damage liability on the Contractor's operations, including its Subcontractors of any tier; owned, non-owned and hired vehicles; and on work the Contractor may subcontract or sublet to others; and on the indemnity provisions of this Agreement. This insurance will name the School District and its employees, officers, directors, agents, and consultants as additional insureds per Additional Insured Owner's (Form B) for Work performed under this Agreement and for claims arising out of or caused in whole or in part by the Contractor's negligent acts or omissions. The Contractor's policy shall be designated primary coverage (non-contributory) for both defense and indemnity, and any School District policies excess. Such limits of liability insurance shall have per project general aggregate provisions and shall not be less than the following:

- .1 \$1,000,000 Combined Single Limit protection for both bodily injury and property damage liability per occurrence and \$2,000,000 general aggregate.
- .2 \$1,000,000 per accident for bodily injury liability including sickness, disease or death and property damage liability because of damage to or destruction of property of others, including loss of use thereof arising out of the operation of automobiles.

.3 \$1,000,000 for personal injury liability coverage included and defined in the Commercial General Liability insurance policy for damages which are sustained by (1) a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person.

.4 \$1,000,000 for claims involving blanket contractual liability insurance (included and defined in the Commercial General Liability Insurance Policy) applicable to the Contractor's obligations under Section 10.12.

.5 \$1,000,000 per occurrence and \$2,000,000 general aggregate for products / completed operations;

.6 In addition, the Contractor shall maintain an umbrella policy following form that provides excess limits over the primary layer, in an amount not less than \$2,000,000.

17.1.2 The insurance described above shall include coverage for underground, collapse and explosion exposures. If existing policy(s) provide higher limits than those specified herein, the higher limits shall be applicable and the certificates shall reflect those higher limits.

17.1.3 In addition, the Contractor shall purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit and other similar employee benefit acts in the State statutory amount and Employer's Liability with coverage of at least \$250,000/\$500,000.

17.1.4 Before commencing the Work or exposure to loss can occur, and, in any event, within *seven days* after the School District has issued its notice of intent to award contract, the Contractor shall furnish the School District with Certificates of Insurance, in duplicate, as evidence of all insurance required by the Contract Documents. All policies and certificates must be signed copies. Coverages afforded under the policies shall not be materially altered, allowed to expire or canceled without the Contractor first giving *45 days* written notice by certified mail to the School District. The Contractor shall furnish to the School District copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage of limits.

17.1.5 Coverage shall be maintained without interruption from the date of commencement of the Work until the date of Final Acceptance, except for any coverage required to be maintained after Final Acceptance. Completed operations coverage, including additional insured completed operations, shall remain in force for three 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 shall bear all costs properly attributable thereto. THE SCHOOL DISTRICT MAY WITHHOLD PAYMENT PENDING RECEIPT OF ALL

CERTIFICATES OF INSURANCE. Failure to withhold payment shall not constitute a waiver.

17.1.7 The School District's specification or approval of 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.

17.2 Property Insurance.

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

17.3 Waivers of Subrogation.

17.3.1 The School District and the 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 damages caused by fire or other causes of loss to the extent covered by the property insurance obtained pursuant to Articles 6 and 17.2, except such rights as they have to proceeds of such insurance held by the School District as fiduciary. The School District does not waive any subrogation rights to the extent of its property insurance on structures or portions of structures that do not comprise the Work. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

17.4 Payment and Performance Bond.

17.4.1 Pursuant to RCW 39.08, the Contractor is required to submit payment and performance bonds secured from a surety company licensed to do business in the State of Washington. The Contractor shall pay for the bonds in the full amount of the Contract Sum plus sales tax. The Contractor shall deliver evidence of its bondability to the School District within five days of bid opening. Within *seven days* of entering into the Agreement, the Contractor shall deliver two copies of the bond (including the original bond) to the School District and one copy to the A/E. THE SCHOOL DISTRICT MAY DECLINE TO ENTER INTO THE CONTRACT IF EVIDENCE OF BONDABILITY IS NOT RECEIVED, AND THE SCHOOL DISTRICT MAY WITHHOLD ITS NOTICE TO PROCEED AND/OR WITHHOLD PAYMENT TO THE CONTRACTOR UNTIL SUCH SURETY BOND IS RECEIVED.

ARTICLE 18 **CORRECTION OF WORK**

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

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

18.3 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 19 **MISCELLANEOUS PROVISIONS**

19.1 Applicable Law and Venue. The Agreement shall be governed by the laws of the State of Washington, without regard to its choice of law provisions. The exclusive venue for any litigation regarding this Agreement shall be in the county in which the Project is located.

19.2 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.

19.3 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).

19.4 Law Against Discrimination. Contractor shall comply with pertinent statutory provisions relating to public works of RCW 49.60.

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

19.6 Safety Standards. Contractor shall comply with pertinent provisions of Chapter 296-155 WAC, "Safety Standards for Construction Work."

19.7 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.

19.8 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.

19.9 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.

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

19.11 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.

19.12 Weapons. The Contractor and its employees, agents, and Subcontractors of any tier shall not bring onto the Project site or onto any School District property any firearm or any other type of weapon described in either RCW 9.41.280(1) or RCW 9.41.250. Any person violating this Section shall immediately be removed from the Work, and such a violation shall be grounds for a termination of this Agreement for cause at the School District's discretion.

19.13 Contaminated Properties. To the extent this Project involves the remediation of contaminated property, the Contractor shall comply with RCW 64.44 and 70.105D and any provisions of the Washington Administrative Code promulgated thereunder, including the use of authorized contractors as provided in RCW 64.44.060.

19.14 Disposal of Materials. To the extent this Project involves the remediation of contaminated property, the Contractor shall comply with all applicable requirements of RCW 70.95 and any provisions of the Washington Administrative Code promulgated thereunder.

ARTICLE 20

TERMINATION OF THE CONTRACT

20.1 Termination for Cause by Contractor. If the School District fails to make payment for a period of *60 days* through no fault of the Contractor, the Contractor may, upon *seven additional days'* written notice to the School District, terminate the Agreement and recover from the School District payment for all Work properly executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including Fees applicable thereto.

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

- .1 the Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Completion of the Work within the Contract Time;
- .2 the Contractor is in material default of or materially breaches any provisions of this Agreement;
- .3 the Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency;
- .4 the Contractor fails to supply a sufficient number of properly skilled workers or proper materials;
- .5 the Contractor fails to make prompt payment to Subcontractors or for materials or labor;
- .6 the Contractor materially disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or
- .7 the Contractor fails to comply with the provisions of RCW 28A.400.330 by permitting a worker on the Project having contact with children who has been convicted of or pled guilty to a felony crime involving children as described in Section 10.3.

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

.1 The amount due under Articles 4 and 15 of this Agreement for the performance of the Work terminated;

.2 Other pre-approved costs, consistent with Section 13.2, necessary and reasonably incurred in connection with the termination of Work.

The total sum to be paid to the Contractor under this Section 20.3 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made.

20.4 Effects of Termination.

20.4.1 Unless the School District directs otherwise, after receipt of a Notice of Termination from the School District pursuant to Sections 20.2 or 20.3, 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 Subsection 20.4.1.6. The Contractor may acquire any such property under the conditions prescribed by and at a price or prices approved by the

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.

20.4.2 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 Subsection 20.4.1.7, and not otherwise recovered by or credited to the School District.

20.4.3 If (and only if) the termination pursuant to Section 20.3 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 subsection within *twenty-one days* from the effective date of the Termination.

20.4.4 The Contractor shall refund to the School District any amounts the School District paid to the Contractor in excess of costs reimbursable under Section 20.3.

20.4.5 The damages and relief from termination by the School District specifically provided in Article 20 shall be the Contractor's sole entitlement in the event of termination.

End of Section