

## PROJECT COMPLETION AGREEMENT

This Project Completion Agreement ("Agreement") is entered into and effective as of July 18, 2019, by and among the Quincy School District ("School District"), a Washington municipal corporation, Barry Hayes Construction, LLC ("BHC"), an Idaho limited liability company, and The Guarantee Company of North America USA ("GCNA"). The parties are individually referred to as a "Party" and together as the "Parties."

### Recitals

*a. The School District engaged BHC as the general contractor for the Quincy Junior High School Conversion and Modernization project (the "Project"). BHC performed the construction of the Project with its own forces and through subcontractors. GCNA, as surety, and BHC, as principal, posted performance and payment bonds ("Bonds") to the School District, as obligee, for the Project.*

*b. Certain open issues and disputes have arisen with respect to the Project, including claims by and among BHC's subcontractors and suppliers, BHC, and the School District (the "Claims"). Each Party denies the Claims of the other Parties.*

*c. The Parties have discussed the Claims through continuing negotiation. The Parties, without admitting liability, have reached an agreement as expressed herein to close out the Project and resolve all Claims and other issues between the Parties related to the Project except those specifically reserved herein.*

### Agreement

1. By this Agreement, and in consideration of the respective agreements of the Parties, the Parties intend to close out the Project and achieve a full and complete settlement and compromise of all Claims, disputes and controversies between and among them with respect to the Project, except as otherwise provided in this Agreement. This Agreement is strictly contingent upon formal ratification by the School District's Board of Directors. This Agreement shall be null and void, strictly confidential, and subject to ER 408 unless the School District's Board of Directors formally ratifies this Agreement.

2. The School District and BHC agree that the final Contract Sum for the Project is \$14,612,063, which amount does not include sales tax. The School District and BHC agree that the unpaid balance of the final Contract Sum excluding retainage and sales tax is \$683,444. The School District and BHC further agree that the School District will assume responsibility for all incomplete work, including punch list and non-conforming work as of the date of this Agreement, including tasks related to Final Completion and Contract Closeout. The School District and BHC further agree that BHC will provide completed and corrected as-builts drawings. Final payment in the amount of \$683,444, together with sales tax, but exclusive of retainage, shall be paid to GCNA within fifteen (15) days of the School District receiving the completed and corrected as-builts and BHC's final payment application.

The School District will diligently work to complete all incomplete work and then seek approval of the School District's Board of Directors for Final Acceptance of the Project. Following Final Acceptance, the School District will release retainage in accordance with statutory requirements. The Parties agree that all disputes involving the School District and BHC arising out of or related to the Project have been resolved, and that the final Contract Sum is inclusive of any unpaid contract balance; retainage; unresolved change order requests change proposals, construction change directives, issues related to requests for information, punch list items, nonconformance notices, and deviations from contract requirements; and Claims, including Claims of BHC's employees, subcontractors, and suppliers of any tier. This Agreement shall be a substituted contract between the Parties with respect to any amount owing under the Parties' contract.

3. The Parties agree that any and all warranties for the Project, including the one-year correction period as defined in the contract, shall be deemed to have commenced on December 19, 2018. This Agreement does not expand or decrease BHC's obligations with respect to the contract, including BHC's warranty and correction period obligations, except as specifically stated herein. The School District represents that it is not aware of any warranty work as of the date of this Agreement. The Parties further agree that any and all warranties for the Project will not apply to incomplete work, including punch list and non-conforming work the School District is assuming responsibility for under paragraph 2, above.

4. Except for their obligations under this Agreement and as specifically reserved in the following paragraph, the Parties, for and on behalf of themselves, their Boards, officers, directors, subsidiaries, employees, assigns, consultants, agents, past and present, as well as anyone acting on their behalf, hereby fully and mutually waive, release and discharge one another from any and all debts, obligations, promises, agreements, contracts, actions, causes of action, Claims, potential liquidated damages, and demands of any and every nature whatsoever, known or unknown, asserted or unasserted, vested or contingent, which exist, have existed or may have existed, or which hereafter can, shall or may exist, arising out of or related to the Project, the Construction Contract and the Bonds, including without limitation all Claims that BHC has asserted or could have asserted on behalf of itself or its subcontractors and suppliers of any tier for additional compensation, delay, impact, additional work, defective design, retainage, and contract balance.

5. The Parties specifically reserve and do not release the following claims, which shall be excluded from the scope of the mutual release provided in the preceding paragraph:

- a. Claims for latent defects in the work that are unknown to the School District as of the date of this Agreement.
- b. Claims for contribution or indemnity relating to or arising out of claims for personal injury or property damage to third parties.
- c. Claims for breach of this Agreement.

- d. Claims based on any unexpired warranty obligations set forth in the contract, which, subject to Paragraph 3 above, shall neither be diminished nor enlarged by this Agreement.

As of the date of this Agreement, none of the Parties are aware of any such claims.

6. BHC and GCNA shall have the full and complete responsibility to resolve any Claims or liens asserted or pursued by BHC's employees, subcontractors or suppliers of any tier arising out of or related to the Project per the terms of the Construction Contract and the Bonds, and shall defend, indemnify, and hold the School District harmless from such Claims and liens, whether asserted in the future or now pending, including costs and attorneys' fees. By way of example and not limitation, BHC specifically agrees to defend, indemnify, and hold the School District harmless from any Claims or liens that may be asserted by Trisagion & Associates, Inc.; American Ironworks and Erectors, Inc.; and Sturm Heating, Inc.

7. All costs and attorneys' fees incurred by the Parties through the date of this Agreement shall be borne by the Party incurring them. Should a dispute arise with respect to this Agreement that is resolved by litigation or arbitration, however, the substantially prevailing Party in such proceeding shall be entitled to any and all costs and expenses, including attorneys' fees, incurred in enforcing this Agreement.

8. This Agreement contains all of the promises and covenants made by the Parties, and supersedes all prior discussions relating to the subject matter of this Agreement. In executing this Agreement, each Party warrants that it is relying solely on its own judgment and knowledge, and that it is not relying on any statement or representation made by the other Parties or their representatives or agents. It is not the intent of the Parties to modify or waive the requirements of the contract or other enforceable agreements of the Parties except as specifically provided in this Agreement.

9. The provisions of this Agreement are severable, and, if any part of it is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable. This Agreement has been mutually drafted by the Parties. In the event of an ambiguity in its interpretation, the Agreement shall be construed without regard to the drafter. This Agreement shall survive the termination of any arrangements contained herein.

10. This Agreement shall bind the heirs, successors, representatives and assigns of each Party. The Parties each warrant that they have not assigned their Claims to any other person or entity.


11. All questions with respect to construction of this Agreement and the rights and liabilities incurred hereto shall be governed by the internal laws of the State of Washington, without regard to its choice-of-law provisions.

12. This Agreement may be executed in one or more counterparts and by PDF copy or facsimile, each of which shall constitute an original binding agreement.

13. The individuals executing this Agreement below have authority to bind their principals and do bind them by executing this document. The terms and conditions set forth in this Agreement are agreed upon and effective as of the last signature entered below.

14. The undersigned signators represent that they will recommend and use their best efforts to obtain prompt ratification of this Agreement from the School District's Board of Directors.

**Barry Hayes Construction, LLC**

By   
Barry Hayes  
its President  
Date: 7/16/2019

**Quincy School District**

By \_\_\_\_\_  
John Boyd  
its Superintendent  
Date: \_\_\_\_\_

**The Guarantee Company of North  
America USA**

By \_\_\_\_\_  
Jeffrey Jubera  
its VP-Claims  
Date: \_\_\_\_\_

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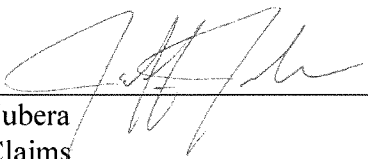
**Barry Hayes Construction, LLC**

**Quincy School District**

By \_\_\_\_\_  
Barry Hayes  
its President  
Date: \_\_\_\_\_

By \_\_\_\_\_  
John Boyd  
its Superintendent  
Date: \_\_\_\_\_

**The Guarantee Company of North  
America USA**

By  \_\_\_\_\_  
Jeffrey Jubera  
its VP-Claims  
Date: July 17, 2019