

AGREEMENT BETWEEN WOODLAND SCHOOL DISTRICT AND CONTRACTOR

This AGREEMENT is made as of the _____ of _____, between the Woodland School District (School District) and _____ (Contractor).

A general description of the Project or Work is: Water System Improvements to Yale Elementary School. See Contract Documents for further details.

The School District and Contractor agree as set forth below.

ARTICLE I THE WORK

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

ARTICLE II DATES OF COMMENCEMENT AND SUBSTANTIAL AND FINAL COMPLETION

2.1 The date of commencement of the Work (the date from which the Contract Time is measured) is the date of this Agreement written above, unless a different date is stated is here: _____.

2.2 The Contractor shall achieve Substantial Completion of the entire Work not later than _____ and Final Completion by _____, subject to adjustments of the Contract Time as provided in the Contract Documents.

2.3 Liquidated damages shall be \$ _____ per day for each calendar day after the Contract Time that Substantial Completion is not attained. The Contractor agrees that the liquidated damages amounts are a reasonable estimation of actual damages, as of the date of this Agreement, based on the inherent uncertainty and difficulty in determining and quantifying damages caused in the construction of School District facilities and improvements and are not a penalty. The School District shall be entitled to deduct the liquidated damages from any money otherwise due, or about to come due, to Contractor. The liquidated damages are not intended to preclude the Owner from pursuing claims or causes of action for consequential damages related to delay or to pursue other damages to the Owner from failures or faults of the Contractor unrelated to delay in the Work, nor do they limit or impair any other right or remedy the Owner may otherwise have under this Agreement or in law.

ARTICLE III 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 the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the School District:

Insert

3.3 Unit prices, if any, are as follows:

Insert

ARTICLE IV 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. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as provided below. 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 Section 6.3.

4.2 Payments due and unpaid under the Agreement after 30 days from the date of Application for Payment shall bear interest as specified by RCW 39.76, not to exceed the Bank of America prime rate plus 2% but under no circumstances shall exceed 12% per annum.

ARTICLE V PERMITS AND FEES

5.1 The School District will pay for the building permit, including initial plan check fees.

5.2 The Contractor shall be responsible for and pay all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the construction of the Work that are customarily secured after execution of the Contract and that are legally required when bids are received.

ARTICLE VI INSURANCE AND BONDS

6.1 Contractor's Liability Insurance.

(a) 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 VIII, and reasonably acceptable to the School District, an occurrence-based Commercial General Liability Insurance Policy with limits of liability insurance with per-project general aggregate provisions and not less than the following.

(i) \$1,000,000 Combined Single Limit protections for both bodily injury and property damage liability per occurrence and \$2,000,000 general aggregate;

(ii) \$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.

(iii) \$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.

(iv) \$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 10.13.

(v) In addition, the Contractor shall maintain a true umbrella policy that provides excess limits over the primary layer, in an amount not less than \$1,000,000.

(b) The insurance described above shall include coverage for underground, collapse and explosion exposures.

(c) 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 \$500,000.

(d) 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.

6.2 Property Insurance.

Check one of the following:

Contractor Purchases Property Insurance.

(a) The Contractor shall insure the property in an amount equal to the Contract Sum (including clearing, preparation and excavation of the site) against “all risks” of physical damage, including marring, scratching and collapse. The policies shall be written to insure the School District, the Contractor and /or Subcontractors and /or assignees as their interests may appear. The loss, if any, shall be payable to the School District, as trustee for the Contractor and its Subcontractors. The inception date of this policy shall be the date the Contractor is ordered by the School District or its agent to proceed with the Contract. The Contractor shall furnish the School District with satisfactory proof, in duplicate, of carriage of such insurance. The certificate must reflect Woodland School District as additional insured.

(b) Upon the occurrence of an insured loss, the School District as trustee shall have the power to adjust and settle any loss with the insurers. The School District shall deposit in a separate account any monies received, and shall distribute such funds as the parties in interest may agree. If no agreement is reached, any damaged Work shall first be repaired or replaced, and payment therefor made from the separate account by Change Order or by payment to a separate contractor, at School District’s option; further disbursements from the separate account will then be determined by the School District.

(c) The School District and Contractor waive all rights against (1) each other and any of their Subcontractors of any tier, agents and employees each of the other, and (2) any Architect, Architect’s consultants, separate contractors described in Article 12, if any, and any of their subcontractors of any tier, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Section 6.2 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the School District as fiduciary. The School District does not waive subrogation rights to the extent of its property insurance on structures or portions of structures that do not comprise the Work. The School District or Contractor, as appropriate, shall require of any Architect, Architect’s consultants, separate contractors described in Article 12, if any, and the Subcontractors of any tier, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. 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.

or

_____ **School District Purchases Property Insurance.**

(d) The School District shall insure the property in the amount of its insurable replacement cost, including additions and alterations, against “all risks” of physical loss. The policies shall inure to the benefit of the School District only. The Contractor is at risk for all material and equipment not a permanent part of any structure.

(e) Upon the occurrence of an insured loss, the School District shall have the power to adjust and settle any loss with the insurers.

(If neither box is checked, the latter box where the School District Purchases Property Insurance is operative.)

6.3 Payment and Performance Bond.

(a) The Contractor shall be secured from a surety company licensed to do business in the State of Washington, and the Contractor shall pay for a performance and a payment bond in the full amount of the Contract Sum plus sales tax, pursuant to and in form and substance fully compliant with RCW 39.08. Such bond shall be conditioned that Contractor shall faithfully perform all provisions of this Agreement (expressly including, without limitation, the Contractor's obligations under Article 18 of this Agreement) and pay all laborers, mechanics, Subcontractors and suppliers, and all persons who supply such person or persons, or Subcontractors, with provision and supplies for carrying out the Work. Within ten (10) days after the issuance of the Notice of Intent to Award Contract, the Contractor shall deliver evidence of its bondability to the School District. Within ten (10) days of entering into the Agreement, the Contractor shall deliver two copies of the bond to the School District and one copy to any Architect. THE SCHOOL DISTRICT MAY DECLINE TO ENTER INTO THE CONTRACT IF EVIDENCE OF BONDABILITY IS NOT RECEIVED, THE SCHOOL DISTRICT MAY WITHHOLD ITS "NOTICE TO PROCEED" AND/OR WITHHOLD PAYMENT TO THE CONTRACTOR UNTIL SUCH SURETY BOND IS RECEIVED.

ARTICLE VII 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:

- (a) The Addenda (if any) as follows: **Insert**
- (b) General Conditions : Attached
- (c) Any Supplementary and other Conditions of the Agreement: **Insert**
- (d) The Specifications as follows: **Insert**
- (e) The Drawings as follows: **Insert**

Any other documents forming part of the Contract Documents listed below: **Insert**

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

WOODLAND SCHOOL DISTRICT

By:

(Signature)

(Printed name and title)

Address: _____

CONTRACTOR

By: _____
(Signature)

(Printed name and title)

Address: _____

GENERAL CONDITIONS

ARTICLE VIII 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 or between any persons or entities other than the School District and Contractor.

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

ARTICLE IX ADMINISTRATION OF THE AGREEMENT

9.1 The School District will provide administration of the Agreement. If an Architect is also involved, its duties beyond those addressed in the General Conditions will be described in an attachment to this 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 any Architect 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 except as otherwise specifically authorized in this Agreement.

9.3 The School District or any Architect may disapprove, condemn or reject work when, in its opinion, the Work does not conform to the Contract Documents. The School District or any Architect may require special inspection or testing or 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 any Architect 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 any Architect may visit the site at intervals it 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 obligated to make exhaustive or

continuous on-site inspections to check quality or quantity of the Work nor liable for any condition that would be discovered through inspections.

ARTICLE X THE CONTRACTOR

10.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, for safety, and for coordinating all portions of the Work under the Agreement. The Contractor shall be an independent contractor in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. The Contractor acknowledges that it is not economically dependent on the School District for these services and is free to contract with other parties for services the Contractor provides. 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, 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 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 Contract the School District considers objectionable.

10.4 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract, including observances of drug testing and all smoking, tobacco, parking, safety, weapons and other rules governing the conduct of personnel at the Project site. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall ensure that all persons performing the Work comply with the Owner's tobacco use policy and will not and do not engage in inappropriate conduct or inappropriate contact with students or staff. Neither the Contractor nor any of its Subcontractors of any tier shall utilize any employee at the site who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapter 9A.32 RCW or Chapter 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child, sexual offenses under Chapter 9A.44 RCW where a minor is a victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under Chapter 9A.64.030 RCW, or violation of similar laws of another jurisdiction. The Contractor shall remove from the Work and Work site any employee or other person who has

engaged in such actions or who the Owner reasonably considers objectionable. Without limiting the generality of the foregoing, the Contractor shall ensure by appropriate provisions in each subcontract agreement that the Contractor may remove from the Work and Work site any Subcontractor or Subcontractor's employee who has engaged in such action. At no change to the Contract Sum or Contract Time, the Contractor shall remove from the Work and Work site any employee or other person pursuant to this Section 10.4. Failure to comply with these requirements is grounds for immediate termination of the Agreement for cause.

10.5 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 workmanlike manner, free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. The School District may conclude that Work not conforming to these requirements, including substitutions not properly approved and authorized, is defective. The Contractor's warranty excludes remedy for damage or defect caused by third-party abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

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

10.7 Notices. 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 or Architect (if any) if the Contractor observes the Drawings and Specifications to be at variance with them.

10.8 Submittals. The Contractor shall review, approve and submit to the School District or Architect (if any) with reasonable promptness Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents at any time, including following expiration or termination of this Agreement, and in any format, including electronic format, as may be requested by the School district. The Work shall be in accordance with approved submittals.

10.9 Progress Schedule. Within ten (10) 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 (30) 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 any Architect will, however, 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.

10.10 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.

Upon completion of 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.

10.11 **Access.** The Contractor shall provide the School District and any Architect access to the Work wherever located.

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

10.13 **Indemnification.** Subject to the following conditions, the Contractor shall defend, indemnify, and hold harmless the School District, any Architect and their respective agents, employees, consultants, successors and assigns ("Indemnified Parties") from and against all claims, damages, losses and expenses, direct and indirect, or consequential, including costs and attorneys' fees incurred on such claims and in proving the right to indemnification, arising out of or resulting from the performance of the Work or any act or omission of the Contractor, its agents, any of its Subcontractors of any tier, and anyone directly or indirectly employed by the Contractor or Subcontractors of any tier ("Indemnitor"). The Contractor will fully indemnify the Indemnified Parties for the sole negligence of the Indemnitor. The Contractor will indemnify 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 Agreement 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 Agreement 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 Architect 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.

10.14 **Prevailing Wages.**

(a) 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. 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. 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.

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

(c) 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") or RCW 51 ("Industrial Insurance"), including without limitation RCW 51.12.050, by the Contractor or any Subcontractor of any tier.

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

10.16 Pursuant to RCW 49.70 and WAC 296-62-054 et seq., the Contractor shall provide the School District copies of and have available at the Project Site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Contractor or any Subcontractor at the Project Site. Contractor shall not be entitled to any additional Contract Time or compensation arising from its failure or alleged failure to comply with this statute or regulations.

10.17 The Contractor shall maintain and preserve for at least six years from the date of final payment books, ledgers, records, documents, estimates, correspondence, logs, schedules, electronic data and other evidence relating or pertaining to the costs and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges and other amounts of whatever nature. Within seven (7) days of the School District's request, the Contractor agrees to make available at the office of the Contractor during normal business hours all records for inspection, audit and reproduction (including electronic reproduction) by the School District or its representatives. These requirements shall be applicable to each Subcontractor of any tier and included in each Subcontract and purchase order issued with respect to the Works.

10.18 If applicable, the Contractor shall comply with the apprentice utilization requirement of RCW 39.04.320, as may hereafter be amended, and as such requirement may be adjusted by the School District for this Project pursuant to RCW 39.04.320(2).

ARTICLE XI 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-contractors and suppliers.

11.2 As soon as practicable and no later than ten (10) days 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 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 all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors). The Contractor shall furnish to the School District such releases of claims and other documents as the School District may request from time to time to evidence such payment. 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 XII

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.

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 XIII

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 Architect (if any) and the Contractor or by written Construction Change Directive signed by the School District and the Architect (if any).

(a) 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.

(b) Construction Change Directives. A Construction Change Directive is a written order prepared and signed by the School District and any Architect 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 (7) 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:

(a) Direct labor costs: Current 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 is not included unless pre-approved in writing by the School District. The hourly cost shall be based upon basic wages and mandatory fringe benefits and worker's insurances.

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

(c) 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, Data Quest, 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.

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

(e) 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.

(f) Fee: The allowance for all combined overhead and profit, 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:

(i) For the Contractor, for any materials or work performed by the Contractor's own forces, 12% of the cost.

(ii) For the Contractor, for materials or work performed by its Subcontractor, 8% of the amount due the Subcontractor.

(iii) For each Subcontractor (including lower tier subcontractor involved), for any materials or work performed by its own forces, 12% of the cost.

(iv) For each Subcontractor, for materials or work performed by its subcontractors of any lower tier, 5% of the amount due the sub-subcontractor.

(v) The cost to which the Fee is to be applied shall be determined in accordance with Section 13.2(a)-(e).

13.3 Dispute Resolution. All claims, disputes and other matters in question by 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.

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

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

(c) Informal Resolution. The School District will make a determination of the Claim. If the Contractor disagrees with the School District's determination and wishes to pursue the Claim further, the Contractor must, within fourteen (14) days of receipt of the

determination, provide the School District with a written request that a representative of the Contractor and the School District meet, confer, and attempt to resolve the claim. This meeting will then take place at mutually convenient time within fourteen (14) days of the request.

(d) Mediation. The Contractor may bring no Claim 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"). This requirement cannot be waived except by an explicit written waiver signed by the School District and the Contractor. To initiate the mediation process, the Contractor shall submit a written mediation request to the School District within thirty (30) days of the meeting undertaken in Section 13.3(c). If the parties are unable to agree to a mediator within thirty (30) days after the School District's receipt of the written request for mediation, either party may submit a request for mediation to the AAA. An officer of the Contractor and the Superintendent or designee of the School District, both having full authority to settle the Claim, must attend the mediation session. To the extent there are other parties in interest, such as Subcontractors, their representatives, with full authority to settle the Claim, shall also attend the mediation session. Unless the School District and Contractor mutually agree in writing otherwise, all unresolved Claims in the Project shall be considered at a single mediation session which shall occur prior to Final Acceptance by School District.

(e) 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(a) through 13.3(d) 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 School District or (b) 60 days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by School District and the Contractor. The pendency of mediation shall toll these filing requirements.

(f) Notice. The parties stipulate that the Contractor's failure timely to 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 timely to submit notices or Claims as required by the Contract Documents.

13.4 Claims for Concealed or Unknown Conditions. If conditions unknown to the Contractor are encountered at the site which are (1) 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 (7) 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.

ARTICLE XIV TIME

14.1 Within ten (10) 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 the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, by unanticipated general labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the School District may determine. The Contractor (including Subcontractors) shall be entitled to damages for delay, the total limited to the liquidated rate of Section 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 special, incidental and consequential damages if Substantial Completion of the Work does not occur within the Contract Time; however, it would be difficult if not impossible to determine the amount of such damages. Consequently, the Agreement includes provisions for liquidated damages. The School District's right to liquidated damages is not affected by partial completion, Substantial Completion, occupancy, or beneficial occupancy.

ARTICLE XV PAYMENTS AND COMPLETION

15.1 **Progress Payments.** Payments shall be made as provided in Article 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.

(a) Draft Application. Within the first ten (10) days 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 Architect (if any) shall meet within the next ten (10) days 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.

(b) Payment Request. Within five (5) days 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 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 pre-filed statement(s) of intent to pay prevailing wages on file with the School District and that all payments due Subcontractors from School District's prior payments have been made. **THE SUBMISSIONS OF THIS APPLICATION CONSTITUTES A CERTIFICATION THAT THE CONTRACT 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, within the same five-day time period, 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.

(c) Payments to Subcontractors. No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor for unsatisfactory performance, the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor and the School District written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor payment, and pay the Subcontractor within eight (8) working days after the Subcontractor satisfactorily completes the remedial action identified in the notice.

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 Withheld Payments. Payments may be withheld on account of (1) defective Work not remedied, (2) claims filed by third parties, (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment, (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (5)

damage to the School District or another contractor, (6) reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, (7) failure to carry out the Work in accordance with the Contract Documents, or (8) liquidated damages. When the School District intends to withhold all or part of a payment for unsatisfactory performance, the School District will provide the Contractor, within eight (8) working days after the School District's receipt of the Application for Payment, written notification of the reasons that all or part of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.

15.4 **Substantial Completion.**

(a) When the Contractor believes that the Work is Substantially Complete, it shall notify the School District in writing. When the School District agrees, it will issue a Certificate of Substantial Completion. Substantial Completion is the stage in the progress of the Work when the construction is sufficiently complete, in accordance with the Contract Documents, so the School District can fully utilize the Work (or the designated portion thereof) for the use for which it is intended. All Work other than incidental corrective or punch list 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 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.

(b) 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, Architect (if any) 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.

15.5 **Final Payment.** Pursuant to RCW 60.28, completion of the Contract Work shall occur after the Contractor has been notified that the Work has been concluded and submits the items listed below to the School District, any required 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 and the following has been completed:

- (a) An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the School District or its property might in any way be responsible or encumbered, have been paid or otherwise satisfied,
- (b) consent of surety to final payment,
- (c) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or

allowed to expire until at least thirty (30) days' prior written notice has been given to the School District,

(d) 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,

(e) 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 and laborers who have filed claims have been paid,

(f) 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,

(g) 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),

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

(i) a hard copy of the "record" drawings and specifications, delivered in a clear, clean and legible condition,

(j) certification from the Washington State Department of Revenue that all taxes, increases and penalties due from the Contractor, and all taxes due and to become due with respect to the Work, have been paid in full or are readily collectible without recourse to the state's lien on the contract retainage, and

(k) evidence that the Contractor and all Subcontractors of any tier have fully satisfied any obligation to make industrial insurance premiums related to the Work and required under RCW 51.12.050 and/or RCW 51.12.070.

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.

Final payment shall be made pursuant to RCW 60.28 after the Contractor has completed the steps in this Section 15.5 and 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.

15.6 Waivers.

(a) 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) claims 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.

(b) 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.

(c) 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 a reservation of rights that has not been initialed by the School District, all the amounts previously agreed shall be considered disputed and not yet payable unless the costs are re-negotiated or the reservation is withdrawn or changed in a manner satisfactory to and initialed by the School District.

15.7 Retainage.

(a) Single Payment. If a single payment, rather than progress payments, is to be made to the Contractor, there will be no retainage withheld except as set forth in Section 15.5.

(b) Progress Payments. If progress payments are to be made to the Contractor:

(i) Pursuant to RCW 60.28, the School District will reserve 5% 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. Retained moneys will be released to the Contractor only upon satisfaction of Section 15.5.

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

in escrow, with interest on the bonds and securities paid to the Contractor as it accrues.

(iii) If moneys are retained from the Contractor, it 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.

15.8 **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.

ARTICLE XVI PROTECTION OF PERSONS AND PROPERTY

16.1 The Contractor shall be solely responsible for, and neither the School District nor any Architect 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.

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 by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 10.13.

16.3 The Contractor shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl ("PCB").

16.4 The Contractor shall bear the risk of any loss, damage or destruction of its own property, including without limitation 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.

ARTICLE XVII INSURANCE AND BONDS

17.1 **Contractor's Liability Insurance.**

(a) As also set forth in Article 6 of the Agreement, the Contractor shall purchase from and maintain during the life of this Agreement, at its own cost an occurrence-based Commercial General Liability Insurance Policy which shall provide bodily injury and property damage liability on Contractor's operations, including Subcontractors of any tier; owned, non-owned and hired vehicles; on work sublet to others; and on the indemnity provisions of this Agreement. This insurance will name the School District and its employees as additional insureds per Additional Insured Owner's (Form B) for Work performed under this Agreement; the Contractor's policy shall be primary, and any School District policies excess. The limits of liability insurance shall have per-project general aggregate provisions and not be less than the amounts specified in Article 6 above.

(b) Before commencing the Work or exposure to loss can occur, and, in any event, within seven (7) 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 and shall contain provision that coverages afforded under the policies cannot be materially altered, allowed to expire or canceled without first giving forty-five (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.

(c) Coverage shall be maintain 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 shall remain in force for three years after Final Acceptance.

(d) 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, than 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 of the Contractor's obligation to have insurance.

(e) 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.

(a) The requirements for property insurance are addressed in Article 6 above.

17.3 Payment and Performance Bond.

(a) The requirements, if any, for payment and performance bonding are addressed in Article 6 above.

ARTICLE XVIII CORRECTION OF WORK

18.1 The Contractor shall promptly and within at least fourteen (14) days of notice from the School District 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 XIX MISCELLANEOUS PROVISIONS

19.1 **Applicable Law; Disputes.** The Agreement shall be governed by the internal law of the State of Washington without regard to its choice-of-law provisions. Venue for any lawsuit seeking enforcement of or arising out of this Agreement shall be in the Superior Court for the county where the School District property for the Project is located. The prevailing party in any such action shall be entitled to an award of reasonable attorney's fees and costs.

19.2 **Statutes.** The Contractor shall abide by the provisions of all applicable Washington statutes whether or not listed in this Agreement; 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.** 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.

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

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

19.6 **Safety Standards.** Contractor should comply with pertinent provisions of RCW 49.17 and Chapter 296-155 WAC, "Safety Standards for Construction Work." The Contractor shall be responsible for labor peace on the Project and shall at all times use its best efforts and exercise its best judgment as an experienced contractor to adopt and implement policies and practices designed to avoid Work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances and shall at all times maintain Project-wide labor harmony. Firearms are not allowed on any school property.

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 pursuant to RCW 28A.210.310.

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 **Record Check.** Any employees of the Contractor and Subcontractors who will have regularly scheduled unsupervised access to children shall be subject to a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 834, RCW 10.97.030, and RCW 10.97.050 and through the Federal Bureau of Investigation before the Contractor permits them to have such access to children. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous two years, the School District or the Contractor may waive the requirement. The School District, pursuant to RCW 41.59 and RCW 41.56, shall pay costs associated with the record check as part of the Contract Sum.

ARTICLE XX TERMINATION OF THE CONTRACT

20.1 **Termination for Cause by Contractor.** If the School District fails to make payment for a period of sixty (60) days through no fault of the Contractor, the Contractor may, upon seven (7) additional days' written notice to the School District ("Cure Period"), terminate the Agreement, if the School District has not cured within the Cure Period, and upon

said termination recover from the School District payment for all Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including Fees applicable thereto.

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

- (a) the Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time;
- (b) the Contractor is in material default of or materially breaches any provisions of this Agreement;
- (c) 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;
- (d) the Contractor fails to supply a sufficient number of properly skilled workers or proper materials;
- (e) the Contractor fails to make prompt payment to Subcontractors or for materials or labor;
- (f) the Contractor materially disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or
- (g) 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 10.4.

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

- (a) The amount due under Articles 4 and 14 of this Agreement for the performance of the Work terminated;
- (b) Other pre-approved costs, consistent with Section 13.2, necessary and reasonable 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.

(a) Unless the School District directs otherwise, after receipt of a Notice of Termination from the School District pursuant to Section 20.2 or 20.3, the Contractor shall promptly:

(i) stop Work under the Agreement on the date and as specified in the Notice of Termination;

(ii) 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;

(iii) 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;

(iv) 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;

(v) 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;

(vi) 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;

(vii) use its best efforts to sell any property of the types referred to in Section 20.4(a)(vi). 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;

(viii) 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

(ix) continue performance only to the extent not terminated.

Upon expiration or termination of this Agreement for any reason, the School District is

entitled to receive all plans, specifications, reports, and other materials related to the Work in the Contractor's possession or control, in electronic format or hard copies, as specified by the School District, all of which shall be the exclusive property of the School District to use at its discretion solely for the completion, alteration, modification, maintenance, or any other use related to the Project, or any other project.

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

(i) all unliquidated advance or other prior payments on account made to the Contractor applicable to the terminated portion of the Agreement;

(ii) any claim which the School District may have against the Contractor;

(iii) an amount necessary to protect the School District against outstanding or potential liens or claims; and

(iv) 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 Section 20.4(a)(vii), and not otherwise recovered by or credited to the School District.

(c) 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 Section within sixty (60) days from the effective date of the Termination.

(d) 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.

(e) 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.