

# AGREEMENT BETWEEN LAKE STEVENS SCHOOL DISTRICT AND CONTRACTOR PUBLIC WORKS CONTRACT

<b>Effective Agreement Date:</b>	___ day of _____, 20__
<b><u>The Parties to the Agreement are:</u></b>	
<b>The "School District"</b>	<b>Lake Stevens School District No. 4</b> 12309 22nd Street NE Lake Stevens, WA 98258 Attn: Robb Stanton
<b>The "Contractor"</b>	_____ _____ _____ Attn: _____
<b>Name and General Description of the Project:</b>	_____ _____ Lake Stevens, WA _____
<b>The Architect or Engineer, if any:</b>	_____ _____ _____ Attn: _____
<b>Contract Sum for the Work:</b>	\$ _____ plus sales tax
<b>Payment Options:</b> <i>(check one)</i>	<input type="checkbox"/> The School District will retain 10% of the Contract Sum until thirty (30) days after Final Acceptance and as described in RCW 39.08.010(3) (only allowable for projects \$150,000 and less; see RCW 39.08.010(3) for further requirements; if this is selected payment and performance bonds are not required).  <input type="checkbox"/> Progress Payments will be made per Specifications Section, Application for Payment; (for projects exceeding \$150,000 or if option above not selected; payment and performance bonds are required). Five (5) percent retained to be released upon approval of DOR, ESD, and L&I and as otherwise required by statute and this Agreement.
<b>Payment and Performance Bond</b> <i>(check one)</i>	<input type="checkbox"/> Required. <input type="checkbox"/> Not required (this box can only be checked if first box is checked under Payment Options above)
<b>Date of Substantial Completion of the Work:</b>	_____
<b>Date of Final Completion of the Work:</b>	Fifteen (15) days after reaching Substantial Completion
<b>Liquidated Damages:</b>	\$ _____ per calendar day
<b>Accepted Alternates:</b>	_____
<b>Unit Prices:</b>	_____

The School District and Contractor agree as set forth below

**ARTICLE 1: THE WORK.** The Contractor shall fully execute and complete the entire Work described in the Contract Documents, which include the \_\_\_\_\_, 20\_\_\_\_ Request for Bids, \_\_\_\_\_, \_\_\_\_\_, and the other published bidding documents.

**ARTICLE 2: 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.

**2.2** The Contractor shall achieve Substantial Completion and Final Completion of the entire Work as specified above, subject to adjustments of the Contract Time as provided in the Contract Documents.

**ARTICLE 3: THE CONTRACT SUM.** The School District shall pay the Contractor the Contract Sum on account of the Contractor’s performance of the Agreement, subject to additions and deductions as provided in the Contract Documents.

**ARTICLE 4: PAYMENT.** The School District will pay the Contractor within thirty (30) days of receipt of Applications for Payment in accordance with the Agreement. The School District will make final payment after Final Completion, within thirty (30) days of receipt of a final Application for Payment, provided that an approved “Statement of Intent to Pay Prevailing Wages,” an approved “Affidavit of Wages Paid,” and all releases have been submitted. Retention shall be paid per statute.

**ARTICLE 5: PERMITS AND FEES**

**5.1** The Contractor shall prepare documents for, secure, and pay for all necessary permits required for the Work. The School District will secure and pay for only those governmental permits, approvals, fees, licenses, inspections, governmental charges and inspection fees explicitly listed as the School District’s responsibility in the Contract Documents.

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

**ARTICLE 6: ENUMERATION OF CONTRACT DOCUMENTS.** The Contract Documents include this executed Agreement, including the attached General Conditions, any Supplementary and other Conditions of the Agreement, the Specifications, the Drawings, any Addenda, and the prevailing wage rates. In the event of a conflict or discrepancy among or in the Contract Documents, interpretation shall be governed in the following order of priority:

1. Agreement
2. General Conditions
3. Scope of Work
4. Drawings and Specifications
5. Site Conditions and Coordination
6. \_\_\_\_\_

LAKE STEVENS SCHOOL DISTRICT No. 4

CONTRACTOR

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

# GENERAL CONDITIONS

## ARTICLE 7 THE CONTRACT DOCUMENTS

**7.1** 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 Contractor's performance is required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**7.2** "Work" means the construction and services required by the Contract Documents and includes all labor, materials, equipment and services to be provided by the Contractor to fulfill the Contractor's obligations.

## ARTICLE 8 ADMINISTRATION OF THE AGREEMENT

**8.1** The School District will provide administration of the Agreement. School District representatives are not authorized to revoke, alter, relax or release any requirements of the Contract Documents, to issue instructions contrary to the Contract Documents, or to approve or accept any portion of the Work not executed in accordance with the Contract Documents.

**8.2** The School District may reject Work that, in its opinion, does not conform to the Contract Documents.

**8.3** The School District 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.

## ARTICLE 9 THE CONTRACTOR

**9.1** Using its best skill and attention, the Contractor shall perform, supervise and direct the Work. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures and personnel, for safety, and for coordinating all portions of the Work under the Agreement. The Contractor shall provide and pay for all labor, materials, equipment, tools and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

**9.2 Subcontractors.** 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 and all lower level subcontractors and suppliers. As soon as practicable and no later than *five (5) 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.

**9.3 Compliance with Law.** The Contractor, its employees, Subcontractors and representatives, shall comply with all applicable laws, ordinances, statutes, rules and regulations, federal and state, county and municipal, and particularly those relating to wages, hours, fair employment practices, non-discrimination, safety and working conditions.

**9.3.1 Prevailing Wages.** Pursuant to RCW 39.12, no worker, laborer, or mechanic shall be paid less than the "prevailing rate of wage" in effect on the Bid Date.

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

**9.3.3 Workers' Right to Know.** The Contractor shall comply with RCW 49.70 and WAC 296-62-054 regarding workplace surveys and material safety data sheets for "hazardous" chemicals at the Site.

**9.4 Workers.** The Contractor shall enforce strict discipline and good order among persons carrying out the Work and shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. A person shall be unfit and removed from the Work who has been found guilty of any felony crime as specified in RCW 28A.400.330, generally regarding crimes against children.

**9.5 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 skillful and 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.

**9.6 Submittals.** The Contractor shall review, approve and submit to the School District 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.

**9.7 Progress Schedule.** Within *five (5) days* of execution of this Agreement, the Contractor shall submit a schedule of the Work to the School District.

**9.8 Clean-Up.** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials caused by operations under the Agreement.

**9.9 Indemnification.** Subject to the following conditions, the Contractor shall defend, indemnify, and hold harmless the School District, and listed Architect or Engineer, 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 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 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). PROVIDED FURTHER that the Contractor agrees to waive its immunity under the Washington State Industrial Act (Title 51 RCW) as to the Indemnified Parties only. 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.

**9.10 Records.** The Contractor shall maintain and preserve books, ledgers, records, estimates, correspondence, logs, schedules, electronic data and other documents relating or pertaining to the costs and/or performance of the Agreement (“records”). Within *seven (7) days* of the School District’s request, the Contractor shall make available at the Contractor’s office all records for inspection, audit and reproduction (including electronic reproduction) by the School District’s representatives. These requirements apply to each Subcontractor of any tier. The Contractor agrees, on behalf of itself and Subcontractors of any tier, that the invocation of any rights under RCW 42.56 shall initiate an equivalent right to disclosures from the Contractor and Subcontractors of any tier for the benefit of the School District.

## ARTICLE 10 CONSTRUCTION NOT BY THE CONTRACTOR

**10.1** The School District may perform construction or operations related to the Project with its own forces and to award separate contracts in connection with other portions of the Project.

**10.2** 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 11 CHANGES IN THE WORK

**11.1** 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 in writing, through a Change Order or a Construction Change Directive.

**11.1.1 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 any adjustment in the Contract Sum, and the extent of any adjustment in the Contract Time.

**11.1.2 Construction Change Directives.** A Construction Change Directive is a written order prepared and signed by the School District that directs a change in the Work and states a proposed basis for any adjustment in the Contract Sum and/or Contract Time. It is 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.

**11.2** 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 an itemized accounting with supporting data. The total cost of any Change or Claim shall be limited to the reasonable value of the direct labor costs, material costs, construction equipment usage costs for

the actual time equipment appropriate for the Work is used solely on the Change in the Work, the cost of any change in insurance. Subcontractor costs, and a Fee for all combined overhead and profit, including impact costs of any ~~kind~~, limited to 15% of the cost for any materials or work performed by a Contractor's or Subcontractor's own forces, and 8% on amounts due to lower-tier Subcontractors

**11.3 Claims for Concealed or Unknown Conditions.** If conditions unknown to the Contractor are encountered at the site that are (1) concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that 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. Any Claim arising from such condition shall be made in accordance with the dispute resolution procedures of Article 19.

## ARTICLE 12 TIME

**12.1** If, through no fault of the Contractor or a Subcontractor of any tier, the Work is delayed by changes ordered in the Work, unanticipated general labor disputes, fire, unforeseeable delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any other causes beyond the Contractor's control, then the Contract Time shall be extended by Change Order to the extent the critical path is affected. The Contractor is entitled to damages for delay only if the School District's actions or inactions were the actual, substantial cause of the delay and if the Contractor could not have reasonably avoided the delay by the exercise of due diligence. The Contractor is not entitled to an increase in the Contract Time or Contract Sum if a delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them.

**12.2** 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 may include provisions for liquidated damages, which are not affected by partial completion, occupancy, or beneficial occupancy.

## ARTICLE 13 PAYMENTS AND COMPLETION

**13.1 Payments.** Payment shall be made as provided in this Agreement. If progress payments are specified, they will be made as specified in the Specifications Section, Application for Payment, and, pursuant to RCW 60.28, the School District will reserve five percent (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 that may be due from the Contractor. 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. If moneys are retained from the Contractor, it may retain payment of not more than five percent (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.

**13.2 Prevailing Wages.** The Contractor shall comply with all applicable provisions of RCW 39.12, including but not limited to submission of approved "Statements of Intent to Pay Prevailing Wage," payment of all L&I fees, submission and posting of approved "Statements of Intent to Pay Prevailing Wages" and payment of prevailing wages.

**13.3 Withheld Payment.** Payment 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 for labor, materials or equipment, (4) damage to the School District or another contractor, (5) reasonable evidence that the unpaid balance would not be adequate to cover delay damages for which the Contractor is responsible, (6) failure to carry out the Work in accordance with the Contract Documents, or (7) liquidated damages.

### **13.4 Substantial Completion.**

13.4.1 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 a designated portion) for its intended use. 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. 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.

13.4.2 Immediately before any occupancy, the School District will schedule an inspection tour of the area to be occupied. Representatives of the School District and Contractor will jointly tour the area and record items still remaining to be finished 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.

**13.5 Final Payment.** Pursuant to RCW 60.28, completion of the contract Work shall occur and final payment shall become due 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's Board of Directors formally accepts the Project.

.1 An affidavit that all payrolls, Subcontractors, bills for materials and equipment, and other indebtedness connected with the Work for which the School District might be responsible or encumbered, have been paid or otherwise satisfied.

.2 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.

.3 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.

.4 Pursuant to RCW 39.12.040, required "Affidavits of Wages Paid."

.5 Pursuant to RCW 50.24, a certificate from the

Department of Employment Security. A certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this Project.

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

.7 A legible hard copy of the as-built drawings.

.8 Original permits and permit documents.

If any Subcontractor of any tier refuses to furnish a release or waiver required by the School District, the School District may retain such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which 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 School District may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

### **13.6 Waivers.**

13.6.1 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) 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.

13.6.2 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.

13.6.3 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 a reservation of rights that has not been initialed by the School District, any amounts previously agreed to shall be considered disputed and not payable.

**13.7 Warranty of Title.** The Contractor warrants and guarantees that title to Work, materials and equipment covered by 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 14**  
**PROTECTION OF PERSONS AND PROPERTY**

**14.1** The Contractor shall have the right to control and shall be solely responsible, and the School District shall not have responsibility, for all aspects of safety. The Contractor shall take reasonable precautions for safety on site, and shall provide reasonable protection to prevent damage, injury or loss.

**14.2** The Contractor shall not be required to perform Work relating to asbestos or polychlorinated biphenyl ("PCB"), unless identified as the Contractor's responsibility in the Contract Documents.

**ARTICLE 15**  
**INSURANCE AND BONDS**

**15.1 Contractor's Liability Insurance.** The Contractor shall purchase from and maintain during the life of this Agreement, at its own cost in a company or companies admitted to do business in the State of Washington possessing a Best's policyholder'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 and such other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor's operations under the Contract Documents, whether to be performed or furnished by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

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

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

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

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

**15.1.5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible

property wherever located, including loss of use resulting therefrom;

**15.1.6** Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property. This coverage will include claims by third parties, including School District for bodily injury, sickness or disease, property damage and/or clean-up caused by the abatement of materials deemed to be hazardous materials by State and Federal authorities. The scope of insurance coverage shall encompass the abatement of lead paint and asbestos as well as any other hazardous materials;

**15.1.7** Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle, including coverage for Owned Motor Vehicles, Non-Owned Motor Vehicles and Hired or Borrowed Motor Vehicles. Coverage shall also cover the clean-up of pollutants caused by the up-set or over turn of vehicles carrying hazardous materials; and

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

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

**15.2 Insurance Amounts.** The insurance required by these General Conditions shall be written on an occurrence basis, for not less than the following (or greater if required by law):

- .1. Worker's Compensation
  - (a) State: Statutory
  - (b) Employer's Liability: \$1,000,000
  - (c) Washington Stop Gap
- .2. Comprehensive General Liability (including Premises-Operations; Independent Contractor's Protective; Products and Completed Operations; Broad-Form Property Damage):
  - (a) Bodily Injury; Property Damage; Combined Single Limit: \$1,000,000 each Occurrence and \$1,000,000 general aggregate
  - (b) Products and Completed Operations of \$1,000,000 to be maintained for two years

after final payment.

(c) The coverages required above shall have a deductible or self-insured retention of no greater than \$10,000.

**15.3 Property Insurance.** 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. Upon the occurrence of an insured loss, the School District shall have the power to adjust and settle any loss with the insurers. The Contractor shall bear the risk of any loss, damage or destruction to its own property to the extent that it will not be incorporated in the Work, including but not limited to loss from theft or vandalism. Any insurance provided by the School District will not cover any such loss, damage or destruction.

**15.4 Payment and Performance Bond.** If the Contractor is required to secure a payment and performance bond (see cover page), it shall be in the amount of the Contract Sum plus sales tax and shall comply with RCW 39.08 in a form and with a surety approved by the School District.

#### **ARTICLE 16** **CORRECTION OF WORK**

**16.1** The Contractor shall promptly correct Work rejected or failing to conform to the requirements of the Contract Documents at any time through a period of one (1) year from the date of Substantial Completion of the Agreement or by terms of a longer manufacturer’s warranty or an applicable special warranty required by the Contract Documents.

**16.2** 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.

**16.3** Nothing in this Article shall establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents.

#### **ARTICLE 17** **MISCELLANEOUS PROVISIONS**

**17.1** The Agreement shall be governed by the internal law of Washington, without regard to its choice-of-law provisions.

**17.2** The Contractor shall give notices and comply

with applicable laws, rules, regulations and orders of public authorities, including but not limited to RCW 39.06 and RCW 18.27 (Registration), RCW 49.60 (Discrimination), RCW 70.92 (Aged and Handicapped Persons), WAC 296-155 (Safety Standards), RCW 50.24 (Unemployment Compensation), Drug-Free Workplace Act of 1988 (Drug-Free Workplace), RCW 9.41.280 (Weapons), and RCW 49.26 (any asbestos removal). Smoking or use of any kind of lighted smoking equipment, material or smokeless tobacco products is prohibited on all School District property.

#### **ARTICLE 18** **TERMINATION OF THE CONTRACT**

**18.1 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, terminate the Agreement and recover from the School District payment for all Work executed, in accordance with the Agreement.

**18.2 Termination for Cause by School District.** The School District may, upon *seven (7) days’* written notice to the Contractor, terminate without prejudice the whole or any portion of the Work for cause, including but not limited to the Contractor’s material breach of this Agreement; the Contractor’s failure to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time; the Contractor’s material disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; the Contractor’s being adjudged bankrupt, making a general assignment for the benefit of its creditors, a receiver being appointed on account of the Contractor’s insolvency; or the Contractor’s failure to comply with RCW 28A.400.330 (generally, a worker having contact with children who has been found guilty of a felony crime involving children).

**18.3 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 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 (1) the amount due under this Agreement for the Work properly performed prior to the termination and (2) other pre-approved costs, consistent with Paragraph 11.2, necessary and reasonably incurred in connection with the termination.

**18.4 Effects of Termination.**



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

18.4.2 Unless the School District directs otherwise, after receipt of a Notice of Termination by the School District, the Contractor shall: promptly stop Work as specified in the Notice of Termination; place no further orders or subcontracts, except as necessary for completion of non-terminated Work; procure cancellation of all orders and subcontracts to the extent related to the performance of terminated Work; assign to the School District all of its right, title and interest under all orders and subcontracts; with the School District's approval, settle outstanding liabilities and claims arising out of the termination of orders and subcontracts not assigned to the School District; transfer title and deliver to the entity or entities designated by the School District the fabricated or un-fabricated parts, Work in process or completed, partially completed supplies and equipment, materials, tools, dies, jigs and other fixtures, 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; take such action as may be necessary or 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 continue performance only to the extent not terminated.

18.4.3 The damages and relief from termination under this Paragraph 18.4 shall be the Contractor's sole entitlement in the event of termination.

## **ARTICLE 19** **DISPUTE RESOLUTION**

**19.1** All claims, disputes and other matters in question of the Contractor arising out of, or relating to, the Contract Documents or the breach thereof ("Claims") 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, unless the parties mutually agree in writing otherwise.

**19.2 Notice of Claim.** The Contractor shall submit notice of all Claims to the School District in writing within *seven (7) days* of the event giving rise to them.

**19.3 Claim Submission.** Within *fourteen (14) days* of the event giving rise to the Claim, the Contractor shall provide the School District with a written Claim that includes a clear description of the Claim, all changes sought in cost and in time, and data supporting the Claim. Failure to timely file either the Notice of Claim to the

Claim itself shall constitute a waiver of the Contractor's right to pursue the Claim.

**19.4 Mediation.** The Contractor may bring no Claim against the School District unless the Claim is first subject to mediation under the Construction Mediation Rules of the American Arbitration Association ("AAA"). To initiate the mediation process, the Contractor shall submit a written mediation request to the School District. If the parties are unable to agree upon 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. Other parties in interest, such as Subcontractors, shall also attend the mediation session. All unresolved Claims in the Project shall be considered at a single mediation session that shall occur prior to Final Acceptance by the School District.

**19.5 Litigation.** The Contractor may not bring litigation on a Claim unless it has been properly addressed in the above dispute resolution procedure. Litigation must be filed within *120 days* after the Date of Substantial Completion. The pendency of mediation shall toll these filing requirements.