



**AGREEMENT**

**BETWEEN  
FEDERAL WAY PUBLIC SCHOOLS  
AND CONTRACTOR**

**PUBLIC WORKS CONTRACT**

**This AGREEMENT** is made as of September 1, 2024, by and between:

The "School District":

**Federal Way Public Schools No. 210**  
Maintenance and Operations  
1211 S. 332nd Street  
Federal Way, Washington 98003  
Attn: FWPS  
253-945-5930

and the "Contractor":

Test Contractor  
1234 ABC Road  
Federal Way, WA 98003

A general description of the Project is:

Sample Project Contract - <\$350,000

**Contract Sum for the Work:**

\$150,000.00 plus sales tax

**Retainage:**

Per RCW 60.28.011, the School District will retain 5% of the Contract Sum. Retainage will be released upon approval of the Department of Revenue, the Employment Security Department, Labor and Industries and as required by statute and this Agreement. Per RCW 39.08.010(3), the Contractor may choose to have 10% retainage withheld in lieu of providing Payment and Performance Bonds (only allowable for projects \$150,000 and less).

**Payment and Performance Bond:**

Payment and Performance Bonds are required for this project. Per RCW 39.08.010(3), the Contractor may choose to have 10% retainage withheld in lieu of providing Payment and Performance Bonds (only allowable for projects \$150,000 and less).

**Date of Final Completion of the Work:**

August 31, 2025

**Liquidated Damages, if any:**

\$1.00 per calendar day

*The School District and Contractor agree as set forth herein and below*

**ARTICLE 1 - THE WORK.** The Contractor shall fully execute and complete the entire Work described in the Contract 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 the School District's delivery of its Purchase Order to Contractor. Contractor shall not commence performance of any Work under this Agreement until Contractor's receipt of an executed Purchase Order from the School District. The School District's Purchase Order must be issued to the Contractor in order for the School District to be fully obligated to this Agreement.

2.2 The Contractor shall achieve 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 for the Contractor's performance of the Contract the Contract Sum stated above, 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.

**ARTICLE 4 - PAYMENT.** The School District will pay the Contractor within thirty days of receipt of approved monthly Applications for Payment in accordance with the Agreement. The School District will make final payment after Final Completion, within thirty 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. Contractor and each subcontractor shall electronically file a Statement of Intent to Pay Prevailing Wages with the Washington State Department of Labor and Industries complying with the requirements of RCW 39.12.040. Payments provided by authorities providing grant monies shall also be subject to those authorities' requirements.

**ARTICLE 5 - ENUMERATION OF CONTRACT DOCUMENTS.** The Contract Documents include this executed Agreement, including the attached General Conditions, any Supplementary and other Conditions of the Agreement, any Specifications, any 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. This Agreement
2. The School District's Purchase Order
3. Any Special or Supplemental Conditions
4. The attached General Conditions
5. Scope of Work
6. Specifications
7. Drawings
8. Any other documents forming part of the Contract Documents.

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

FEDERAL WAY PUBLIC SCHOOLS No. 210

Test Contractor

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

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

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

## **GENERAL CONDITIONS**

### **ARTICLE 6 - THE CONTRACT DOCUMENTS**

- 6.1 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.
- 6.2 "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 7 - ADMINISTRATION OF THE AGREEMENT**

- 7.1 The School District and/or A/E will provide administration of the Agreement. Neither any Project Manager or A/E representatives are 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. Any such changes may only be effective if in writing and by the School District's representative listed on the front page of this Agreement.
- 7.2 The School District or A/E may reject Work that, in its opinion, does not conform to the Contract Documents. The School District or A/E 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 the School District nor the A/E will be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work.
- 7.3 The A/E and School District will not have control over or charge of and will not be responsible for means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility.
- 7.4 The A/E or School District will issue such written clarifications or interpretations as to matters of design interpretation (in the form of Drawings or otherwise) as the A/E or School District may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.
- 7.5 The A/E or School District may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Sum or the Contract Time and are consistent with the overall intent of the Contract Documents. These will be accomplished by a Minor Change in the Work instrument and will be binding on the Contractor, who shall perform the Work involved promptly.
- 7.6 If the Contractor believes that a written clarification or interpretation, a Construction Change Directive or any interpretation justifies an increase in the Contract Sum or an extension of the Contract Time, and the parties are unable to agree to its amount or extent, the Contractor may make a Claim therefor as provided in this Agreement, as soon as possible and no later than fourteen days after receipt of the clarification, interpretation, or Construction Change Directive.

- 7.7 The A/E and School District will also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed or completed.
- 7.8 Neither the A/E's or School District's authority to act under this Article 8 nor elsewhere in the Contract Documents, nor any decision made by the A/E or School District in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the A/E or the School District to the Contractor, any Subcontractor of any tier, or any other person or organization performing any of the Work, or to any surety for any of them.

## **ARTICLE 8 - THE CONTRACTOR**

- 8.1 Using its best skill and attention, the Contractor shall perform, supervise and direct the Work. 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.
- 8.2 **Safety Precautions and Programs.** The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall have the right to control and shall be solely and completely responsible for conditions of the Work site, including safety of all persons and property, during performance of the Work. The Contractor shall maintain the Work site and perform the Work in a manner that meets statutory and common-law requirements for the provision of a safe place to work. This requirement shall apply continuously and not be limited to working hours.
- 8.3 **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 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.
- 8.4 **Compliance with Law.** The Contractor, its employees, Subcontractors of any tier 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.
- 8.4.1 Hours of Labor. The Contractor shall comply with all applicable provisions of RCW 49.28.
- 8.4.2 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.
- 8.5 **Nondiscrimination.**
- 8.5.1 Nondiscrimination Requirement. During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.

- 8.5.2 Obligation to Cooperate. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
- 8.5.3 Default. Notwithstanding any provision to the contrary, Agency may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Agency receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Agency may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
- 8.5.4 Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Agency shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Agency for default under this provision.
- 8.6 **Workers.** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall be responsible to the School District for the acts and omissions of the Contractor's employees, Subcontractors of any tier and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.
- 8.6.1 Background Checks. In the event Contractor or any of their agents or employees will have regularly scheduled unsupervised access to children, the District will conduct a record check through the Washington State Patrol criminal investigation system under RCW 43.43.830-43.43.834, 10.97.030 and 10.97.050, and through the Federal Bureau of Investigation before allowing the individual onto the Project site. The record check shall include a fingerprint check using a complete Washington State criminal identification fingerprint card. This record check shall be valid for two (2) years. The Contractor shall pay for the requirements set forth in this paragraph.

8.6.2 Crimes Against Children. In accordance with RCW 28A.400.330, contractor shall prohibit any employee of the Contractor from working at a public school who has or may have contact with children at a public school during the course of his or her employment and 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 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction. Any failure to comply with this section shall be grounds for the school district immediately terminating the contract for cause.

8.6.3 Subcontractor Compliance. Contractor shall require any of its Subcontractors to fully comply with the requirements of this section.

- 8.7 **Warranty.** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or explicitly permit otherwise. The Contractor further warrants that the Work will be performed in a skillful and workmanlike manner, will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or explicitly permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, is considered defective.
- 8.8 **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.
- 8.9 **Progress Schedule.** Within five days of execution of this Agreement, the Contractor shall submit a schedule of the Work to the School District.
- 8.10 **Clean-Up.** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials caused by operations under the Agreement.
- 8.11 **Indemnification.** Subject to the following conditions, the Contractor shall defend, indemnify, and hold harmless the School District, any listed A/E, 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 has no duty to indemnify the Indemnified Parties for the sole negligence of the Indemnified Parties. 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.

- 8.12 **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 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 9 - CONSTRUCTION NOT BY THE CONTRACTOR**

- 9.1 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.
- 9.2 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 10 - CHANGES IN THE WORK**

- 10.1 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.
- 10.1.1 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 itemized amount of any adjustment in the Contract Sum as defined in this Article, and the extent of any adjustment in the Contract Time.
- 10.1.2 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 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.
- 10.2 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 12% of the cost for any materials or work performed by a Contractor's or Subcontractor's own forces, and 7% on amounts due to lower-tier Subcontractors

- 10.3 **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 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 11 - TIME**

- 11.1 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.
- 11.2 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 may 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. If this Agreement does not include liquidated damages, then the School District may pursue its actual damages resulting from delay.

## **ARTICLE 12 - PAYMENTS AND COMPLETION**

- 12.1 **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 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 days following Final Acceptance, with interest to the Contractor; or (3) placed in escrow with a bank or trust company until forty-five 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. If the 10% retainage option is selected on the cover page of this Agreement, then 10% retainage instead of 5% retainage shall be withheld, and the requirements of RCW 39.08.010(3) must also be followed for the release of retainage.

- 12.2 **Prevailing Wages.** Pursuant to RCW 39.12, no worker, laborer, or mechanic employed in the performance of any part of this Agreement shall be paid less than the "prevailing rate of wage" (in effect as of the date that bids are due) as determined by the Industrial Statistician of the Department of Labor and Industries, ESAC Division, PO Box 44540, Olympia WA 98504-4540, Telephone (360) 902 5335. The schedule of the prevailing wage rates for the locality or localities where this Work will be performed is attached and made a part of this Agreement by reference as though fully set forth herein; if not attached, then the applicable prevailing wages are determined as of the Bid Date or as otherwise prescribed under WAC 296-127-011 for the county in which the Project is located and are available at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. A copy is available for viewing at the School District's office, and a hard copy will be mailed upon request. To the extent that there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates as are applicable under WAC 296-127-011, or if no schedule is attached, then the applicable published rates shall apply at no increase to the Contract Sum. The Contractor shall provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. The Industrial Statistician will answer questions relating to prevailing wage data upon request.
- 12.3 **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.
- 12.4 **Substantial Completion.**
- 12.4.1 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.
- 12.4.2 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.
- 12.5 **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.

- 12.5.1 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.
- 12.5.2 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 days' prior written notice has been given to the School District.
- 12.5.3 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.
- 12.5.4 Pursuant to RCW 39.12.040, required "Affidavits of Wages Paid."
- 12.5.5 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.
- 12.5.6 All warranties, guarantees, certificates, spare parts, specified excess material, and other documents or items required by the Contract Documents.
- 12.5.7 A legible hard copy of the as-built drawings.
- 12.5.8 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.

## 12.6 **Waivers.**

- 12.6.1 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.
- 12.6.2 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.
- 12.6.3 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.

- 12.7 **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 13 - PROTECTION OF PERSONS AND PROPERTY**

- 13.1 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.
- 13.2 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 14 - INSURANCE AND BONDS**

- 14.1 **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 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 which shall provide bodily injury and property damage liability on the Contractor's operations, including its Subcontractors of any tier; owned, non-owned and hired vehicles; and on work the Contractor may subcontract or sublet to others; and on the indemnity provisions of this Agreement. This insurance will name the School District, the A/E, and their employees as additional insureds per Additional Insured Owner's (Form B) for Work performed under this Agreement. The Contractor's policy shall be designated primary coverage for both defense and indemnity, and any School District policies excess. Such limits of liability insurance shall have per project general aggregate provisions and shall not be less than the following:

<u>Commercial General Liability</u>	
Each Occurrence .....	\$1,000,000
Damage to Rented Premises .....	\$100,000
Medical Expenditures.....	\$5,000
Personal and Advertising Injury .....	\$1,000,000
General Aggregate.....	\$2,000,000
Products-Completed Operations Aggregate .....	\$2,000,000
<u>Automobile Liability (Any Owned)</u> .....	\$1,000,000
<u>Excess/Umbrella Liability Coverage</u> – Each Occurrence .....	\$2,000,000
<u>Workers' Compensation</u> .....	Statutory
<u>Employer's Liability</u>	
Each Accident .....	\$1,000,000
Disease – Each Employee .....	\$1,000,000
Disease – Policy Limit .....	\$1,000,000

- 14.1.1 The insurance described above shall include coverage for underground, collapse and explosion exposures.

- 14.1.2 Before the School District executes the Agreement, the Contractor shall furnish the School District with Certificates of Insurance, in duplicate, as evidence of all insurance required by the Contract Documents. All policies and certificates must be signed copies. Coverages afforded under the policies shall not be materially altered, allowed to expire or canceled without the Contractor first giving 45 days written notice by certified mail to the School District. The Contractor shall furnish to the School District copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage of limits.
- 14.1.3 Coverage shall be maintained without interruption from the date of commencement of the Work until the date of Final Acceptance, except for any coverage required to be maintained after Final Acceptance. Completed operations coverage, including additional insured completed operations, shall remain in force for three years after Final Acceptance.
- 14.1.4 If the School District is damaged by the failure of the Contractor to maintain any of the above insurance or to so notify the School District, then the Contractor shall bear all costs properly attributable thereto. THE SCHOOL DISTRICT MAY WITHHOLD PAYMENT PENDING RECEIPT OF ALL CERTIFICATES OF INSURANCE. Failure to withhold payment shall not constitute a waiver.
- 14.1.5 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.
- 14.2 **Property Insurance.** The School District shall include this project in its existing property insurance coverage for loss or damage to the property in the course of construction. This may be a standard property policy and is not necessarily a builder's risk policy. The Contractor shall be responsible for securing property insurance for its own equipment. This property insurance shall be on an "all-risk" or equivalent policy form and shall include, but not be limited to, coverage for fire and extended coverage, theft, vandalism, malicious mischief, collapse and windstorm. Any deductible shall be the sole responsibility of the Contractor.
- 14.3 **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; it shall comply with RCW 39.08 in a form and with a surety approved by the School District; and it shall be submitted to the School District before the School District executes the Agreement.

## **ARTICLE 15 - CORRECTION OF WORK**

- 15.1 If, within one year after the later of the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under the Contract Documents, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it according to the requirements of this Section with no increase to the reimbursable Cost of the Work (i.e. at no cost to the Owner) promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition.
- 15.2 If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal

and correction, in which case the Contract Sum will be reduced by the greater of the (1) cost of correction or (2) diminution of value of the Work that is not in accordance with the requirements of the Contract Documents. Such adjustment shall be effected whether or not final payment has been made.

- 15.3 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 16 - MISCELLANEOUS PROVISIONS**

- 16.1 **Applicable Law and Venue.** The Agreement shall be governed by the laws of the State of Washington, without regard to its choice of law provisions. The exclusive venue for any litigation regarding this Agreement shall be in Superior Court in the county in which the Project is located.
- 16.2 The Contractor shall comply with and give notices required by applicable laws, statues, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.
- 16.3 The Contractor must submit its Wage Prevention Certification prior to the School District executing this Agreement.

## **ARTICLE 17 - TERMINATION OF THE CONTRACT**

- 17.1 **Termination for Cause by Contractor.** If the School District fails to make payment for a period of sixty days through no fault of the Contractor, the Contractor may, upon seven additional days' written notice, terminate the Agreement and recover from the School District payment for all Work executed, in accordance with the Agreement.
- 17.2 **Termination for Cause by School District.** The School District may, upon seven 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).
- 17.3 **Termination for Convenience by School District.** The School District may, at any time upon ten 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.
- 17.4 **Effects of Termination.**
- 17.4.1 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.
- 17.4.2 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.

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

## **ARTICLE 18 - DISPUTE RESOLUTION**

- 18.1 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.
- 18.2 **Notice of Claim.** The Contractor shall submit notice of all Claims to the School District in writing within seven days of the event giving rise to them.
- 18.3 **Claim Submission.** Within fifteen days of the Notice of 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.
- 18.4 **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 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.
- 18.5 **Litigation.** The Contractor may not bring litigation on a Claim unless it has been properly addressed in the above dispute resolution procedure and the Contractor must also file its lawsuit within 120 days after the Date of Substantial Completion. The pendency of mediation shall toll these filing requirements.

### **End of Section**