

# **AGREEMENT BETWEEN SCHOOL DISTRICT AND CONTRACTOR**

<b>The "Effective Date" of this Agreement is:</b>		April 17, 2017
<b><u>The "Parties" to this Agreement are:</u></b>		
<b>The "School District":</b>	Yakima School District No. 7 104 North 4 <sup>th</sup> Avenue Yakima, Washington 98902	
<b>The "Contractor":</b>	Stephens and Sons Construction, Inc. 417 S 51 <sup>st</sup> Ave Yakima, WA 98908	
<b>The "Project":</b>	Eisenhower High School - Blue Wall and Window Remediation	
<b>The "GMP" for the Work:</b>	\$ 547,280.00 <i>(not including sales tax estimated maximum price to be paid based on the Current Summary Scope of Work )</i>	
<b><u>The Contract GMP includes the following:</u></b>		
<b>The Alternates are:</b>	N/A	
<b>The Allowances are:</b>	\$140,000.00	
<b>The Unit Prices are:</b>		
<b>The "Architect/Engineer" or "A/E":</b>		
<b><u>Schedule for the Work:</u></b>		
Anticipated date of commencement:	May 1, 2017	
Date of Substantial Completion:	June 15, 2017	
Date of Final Completion:	60 calendar days after Substantial Completion	
<b>Liquidated Damages:</b>	\$100 per calendar day that the Contract Time, as adjusted, extends beyond the specified date for Substantial Completion.	
<b><u>Minimum Required Insurance:</u></b>		
Commercial General Liability:	At least \$1 million per occurrence and general aggregate applied on a per-project basis	
Automobile Liability:	At least \$1 million per occurrence	
Workers' Compensation: (industrial insurance)	At least the State statutory amount	
Umbrella/Excess Liability:	At least \$3 million per occurrence and aggregate	
Employer's Liability:	At least \$1 million	
Property Insurance:	See Article 6	
Additional Insureds:	The School District, Trinity   ERD and others identified in writing by the School District	

*The School District and Contractor agree as follows:*

**ARTICLE 1**  
**THE WORK**

**1.1** The Contractor, through itself and its Subcontractors, if any, shall fully execute and complete the entire Work pursuant to the Contract Documents and Exhibit A.

**ARTICLE 2**  
**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) shall be the date identified on the cover page, or, if not specified, the date established in a notice to proceed issued by the School District. The Contract Time is measured from the date of commencement to the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

**2.2** The Contractor shall achieve Substantial Completion and Final Completion of the entire Work by the dates and within the timeframes identified on the cover page, as adjusted as provided in the Contract Documents. Contractor shall also achieve any interim milestones and phasing requirements in the Contract Documents.

**2.3** Liquidated damages shall be assessed at the rate stated on the cover page for each calendar day that the Contract Time extends beyond the date established for Substantial Completion. Additionally, liquidated damages shall also be cumulatively assessed at half the rate stated on the cover page for each calendar day beyond the date established for Final Completion that Final Completion is not achieved. The Contractor agrees that these daily rates for liquidated damages are reasonable estimates of actual damages as of the date of this Agreement and are based on the inherent uncertainty and difficulty in determining and quantifying damages caused by delay in the construction of school district facilities and not a penalty.

**ARTICLE 3**  
**CONTRACT SUM**

**3.1** The School District shall pay the Contractor the Contract Sum; as stated on the cover page, for the Contractor's proper performance of the Work pursuant to the Contract Documents subject to additions and deductions as provided in the Contract Documents. Sales tax on the Contract Sum is not included in the Contract Sum and shall be paid by the School District with each progress payment.

**3.2** The Contract Sum is based upon and includes the alternates and/or allowances, if any, listed on the cover page and described in the Contract Documents, which are hereby accepted by the School District.

**3.3** This Agreement includes the unit prices, if any, listed on the cover page and described in the Contract Documents.

**ARTICLE 4**  
**PAYMENT**

**4.1** The School District will make payments to the Contractor on account of the Contract Sum as provided in Article 15 and elsewhere in the Contract Documents, based upon Application(s) for Payment submitted by the Contractor. 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 Contract has been fully performed, and the School District's Board of

Directors has accepted the Work. The retainage shall be paid pursuant to Chapter 60.28 RCW and the Contract Documents. Payment and performance bonds are required as set forth in Section 17.3.

**4.2** Payments due and unpaid under the Contract shall bear interest as specified by Chapter 39.76 RCW, not to exceed the Bank of America prime rate.

## **ARTICLE 5**

### **PERMITS AND FEES**

**5.1** If a building permit is required for execution of the Work, the Contractor shall secure the building permit. Based on the Contractor's request, the School District shall pay for the building permit directly or shall reimburse the Contractor for the actual cost of the building permit, without markup.

**5.2** The Contractor shall secure and pay, as a part of the Contract Sum, for all other permits, governmental fees, licenses, and inspections or reinspections necessary for proper execution and completion of the Work.

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

## **ARTICLE 6**

### **PROPERTY INSURANCE**

**6.1** The Contractor shall purchase and maintain until Final Acceptance, in a company or companies lawfully authorized and admitted to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form to cover the course of construction (including all materials or equipment furnished or installed by the School District on the Project) in an amount equal to at least the full insurable value of the building or buildings at which the Work will occur. This insurance shall include interests of the School District, the Contractor, and Subcontractors of any tier for the Project as named insureds and as loss payees, as their respective interests appear. This insurance shall insure against the perils of fire and extended coverage and physical loss or damage, including earthquake and flood. Upon written request, the Contractor shall provide a copy of its policy to the School District. Each loss may be subject to a deductible of not more than \$10,000, except that the deductible for earthquake and flood losses shall be no greater than *five percent (5%)* of the loss or \$100,000, whichever is more. Losses up to the deductible amount or otherwise not covered by insurance shall be the responsibility of the Contractor. The policy shall be endorsed to allow complete or partial occupancy by the School District before or after Substantial Completion. All tools and equipment of the Contractor and Subcontractors of any tier not intended as part of the construction or installation of the Work shall be the sole responsibility of the Contractor. Additional insurance requirements are described in Article 17.

**6.2** Upon the occurrence of a loss insured under the property insurance, the School District shall participate in and approve the adjustment and settlement of any loss with the insurers.

## **ARTICLE 7**

### **ENUMERATION OF CONTRACT DOCUMENTS**

Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the 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, the attached General Conditions, and any other Conditions of the Contract listed below:

*See the Project Manual for additional Conditions of the Contract, if any.*

7.3 The Specifications as follows:

*See Exhibit A – Project Manual*

*Section 01 10 00 – Summary of Work – Demolition, Wall Substrate Preparation and Mock-Ups.*

7.4 The Drawings as follows:

*See Exhibit B – Schedule of Drawings*

7.5 The Addenda (if any) as follows:

*N/A*

7.6 Other documents forming part of the Contract Documents include:

*Exhibit A – Project Manual/ Scope of Work*

*Exhibit B – Schedule of Drawings – Demolition and Reference Sheets*

*Exhibit C – Department of Labor and Industries Prevailing Wage Rates*

*Current Rates can be found at:*

[www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp](http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp)

*Exhibit D – Yakima School District Small Works Terms and Conditions*

*Exhibit E – Preliminary Project Schedule*

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

**SCHOOL DISTRICT**

By: \_\_\_\_\_

*(Signature)*

*JOHN IRION*

*(Printed name)*

*Superintendent*

*(Title)*

**CONTRACTOR**

By: \_\_\_\_\_

*(Signature)*

*Benjamin Stephens*

*(Printed name)*

*President*

*(Title)*

## GENERAL CONDITIONS

### **ARTICLE 8**

#### **THE CONTRACT DOCUMENTS**

**8.1** The Contract Documents form the Contract and consist of the Agreement, these General Conditions (including any Supplemental or Special Conditions), Drawings, Specifications, Addenda, other documents listed in the Agreement and changes issued after execution of the Agreement, all of which are as fully a part of the Contract as if attached to the Agreement or repeated in it.

**8.2** 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.

**8.3** 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 person or entity other than the School District and Contractor.

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

**8.5** The term "Architect/Engineer" or "A/E" means the entity identified as such on the cover page of the Agreement, if any. The A/E may be an architect, engineer, or similar consultant, and is not necessarily a licensed architect or engineer. If "None" or "N/A" is listed for the A/E, or upon written notification from the School District, the School District or its designated representative shall perform all of the functions of the A/E described herein.

**8.6** By executing the Agreement, the Contractor represents and acknowledges that (1) it has carefully examined the Contract Documents, (2) it has visited the Project site and become familiar with the local conditions (including existing structures) under which the Work is to be performed, (3) the Contract Sum is reasonable compensation for the Work, (4) the Contract Time is adequate for the performance of the Work, and (5) it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services, and other items to be furnished. FAILURE OF THE CONTRACTOR TO FULLY ACQUAINT ITSELF SHALL NOT IN ANY WAY RELIEVE IT FROM THE RESPONSIBILITY FOR PERFORMING THE

WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS AND WITHIN THE CONTRACT TIME AND FOR THE CONTRACT SUM.

**8.7** Any investigations of subsurface or concealed conditions have been made for design purposes and are not a part of the Contract Documents. The Contractor may rely upon the accuracy of the data contained in results of the investigation, but not upon interpretations or opinions contained therein, or for the completeness thereof for the Contractor's purposes. There is no guarantee, express or implied, that the conditions indicated are representative of those conditions existing throughout the Project site or that unforeseen developments may not occur.

**8.8** Organization of the Specifications into divisions, sections, articles, and arrangement of the Drawings are for convenience only and shall not be construed as, nor imply a division of the Work among Subcontractors nor establish the extent of the Work to be performed by any trade. The Contractor shall be responsible for the division of the Work and for coordinating the Work among its Subcontractors and suppliers of any tier.

**8.9** If there is any inconsistency between any Contract Documents or within a Contract Document, unless otherwise ordered in writing by the School District, the Contractor shall provide the better quality of, and/or the greater quantity of, the Work or materials shown. The Contractor shall immediately report any conflict, error, or discrepancy in the Contract Documents to the A/E and the School District. The Contractor shall not proceed with the affected Work until it receives a written interpretation or clarification from the A/E or the School District.

### **ARTICLE 9**

#### **ADMINISTRATION OF THE CONTRACT**

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

**9.2 Authority:** The A/E is not an agent of the School District, and is not authorized to speak on behalf of or bind the School District. No representative of the School District (other than the Board or its designee) nor the A/E is authorized to revoke, alter, enlarge, relax, or release any requirements of the Contract Documents, nor to approve or accept any portion of the Work, nor to issue instructions contrary to the Contract Documents.

**9.3 Rejection of Work:** The School District and/or the A/E may disapprove, condemn, or reject Work when, in their opinion, the Work does not conform to the Contract

Documents. The School District and/or the A/E may require special inspection or testing of any Work in accordance with the Contract Documents whether or not such Work is then fabricated, installed, or completed.

**9.4 Correction of Work:** 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 requirements of the Contract Documents, the School District may order the Contractor in writing to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the School District to stop the Work shall not give rise to a duty on the part of the School District to exercise this right for the benefit of the Contractor or any other person or entity.

**9.5 Meetings:** The School District and/or the A/E may call, schedule, and conduct Project meetings, which the Contractor and, if required by the School District, representatives of its Subcontractors or suppliers of any tier shall attend, to discuss such matters as procedures, progress, problems, and scheduling.

**9.6 Site Access:** The School District and the A/E shall have access to and may visit the Project site at intervals each considers appropriate to the stage of the Work to become generally familiar with the progress and quality of the completed Work; however, neither is required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The School District may occupy the Project site during the course of the Work.

## **ARTICLE 10**

### **THE CONTRACTOR**

**10.1** The Contractor shall perform, supervise, and direct the Work, using the Contractor's best skill and attention. The Contractor shall be and operate as an independent contractor in the performance of the Work and is solely responsible for and has control over construction means, methods, techniques, sequences, procedures, safety, personnel, entities, and for coordinating all portions of the Work under the Contract. 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** Unless specifically provided otherwise in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, 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 Materials:** With the exception of bulk materials, all materials shall be delivered to the Project site in original containers as packaged by the manufacturer with labels intact. Upon request, the Contractor shall provide a certificate of compliance for bulk materials.

**10.4 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 or entities performing portions of the Work. The School District may provide written notice requiring the Contractor to remove from the Work any employee or other person carrying out the Work that the School District considers objectionable, at no change to the Contract Sum or Contract Time. The Contractor shall not employ, or allow any entity utilized by Contractor to employ, any person at a School District property or allow any contact between school children and any such person when such person has pled guilty to or been convicted of any felony crime involving the physical injury or death of a child (Chapter 9A.32 RCW or Chapter 9A.36 RCW but not Chapter 46.61 RCW--motor vehicle violation), the physical neglect of a child (Chapter 9A.42 RCW), sexual offenses against a minor (Chapter 9A.44 RCW), sexual exploitation of a child (Chapter 9.68A RCW), the sale or purchase of a minor child (RCW 9A.64.030), promoting prostitution of a child (Chapter 9A.88 RCW), or violation of similar laws of another jurisdiction. Any failure to comply with this Section shall be grounds for the immediate termination of the Contract for cause.

**10.5 Warranty:** The Contractor warrants that materials and equipment furnished under the Contract shall be of good quality and new, that the Work shall be performed in a skilled, high quality, and workmanlike manner, that the Work shall be free from defects not inherent in the quality required or permitted, and that the Work shall conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions or deviations from the Drawings or Specifications not properly approved and authorized, is defective. The Contractor's warranty excludes remedy for damage caused by abuse, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Upon request, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the Contract Documents. Warranties shall be provided as required by the Contract Documents, and the School District's receipt of a warranty inconsistent with the terms of the Contract Documents shall not constitute acceptance of those terms.

**10.6 Taxes and Fees:** In conjunction with its progress payments, the School District will pay local and Washington State sales taxes based on the Contract Sum to the Contractor for transmittal to the taxing authority. The Contractor shall pay for all other types of taxes and fees for the Work or portions thereof provided by or through the Contractor, including but not limited to consumer, use, B&O, income, or other taxes that are legally enacted at the time bids are received whether or not yet effective or merely scheduled to go into effect. The Contractor shall secure and pay for permits and government fees, licenses, and inspections necessary for the

proper execution and completion of the Work, except as specifically provided herein.

**10.7 Legal Compliance:** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work. The Contractor shall promptly notify the School District and the A/E in writing if the Contractor observes that the Drawings and/or Specifications are at variance with them.

**10.8 Submittals:** The Contractor shall review, approve, and submit to the School District and/or A/E with reasonable promptness Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents. The Work shall be in accordance with approved submittals, but approved submittals shall not change the requirements of the Contract Documents.

**10.9 Progress Schedule:** Within *seven (7) days* of execution of the Contract, 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. Within *thirty (30) days* after execution of the Contract, and before any progress payment becomes due, the Contractor, after consultations with its Subcontractors of any tier, shall submit a Progress Schedule to the School District. Neither the School District nor the A/E shall, however, be required to review or approve the substance or sequence of the Progress Schedule, which shall be the Contractor's sole responsibility. The Contractor shall be responsible for planning, scheduling, managing, and reporting the progress of the Work in accordance with the specific methods and submittals described in the Contract Documents. The Contractor shall use the Progress Schedule, as updated, to plan, coordinate, and prosecute the Work in an orderly and expeditious manner.

**10.10 Clean-Up:** The Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Prior to completion of the Work or otherwise at the School District's request, the Contractor shall remove all waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from the Project site. If the Contractor fails to do so, the School District may do so and charge to the Contractor all costs incurred.

**10.11 Royalties and Patents:** The Contractor shall pay all royalties and license fees, shall defend all suits or claims for infringement of patent or other intellectual property rights, and shall hold the School District and the A/E harmless from claims, damages, losses, and expenses, direct and indirect, including but not limited to costs and attorneys' fees incurred on such claims and in proving the right to indemnification.

**10.12 Indemnification:** Subject to the following conditions, and to the fullest extent permitted by law, the Contractor shall defend, indemnify, reimburse, and hold harmless the School District and A/E, if any, and their respective agents, employees, consultants, successors, and assigns

(together, the "Indemnified Parties") from and against all claims, damages, losses, and expenses, direct and indirect, or consequential, including but not limited to costs, attorneys' fees, and litigation expenses 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 (together, the "Indemnitor").

The Contractor shall fully defend, indemnify, reimburse, and hold harmless the Indemnified Parties for the sole negligence of the Indemnitor. In the event of concurrent negligence, the Contractor shall indemnify, reimburse, and hold harmless the Indemnified Parties for the concurrent negligence of the Indemnitor to the extent of the Indemnitor's negligence.

The Contractor agrees to being added by the School District as a party to any mediation, arbitration, or litigation with third parties in which the School District alleges indemnification or contribution from the Indemnitor. The Contractor agrees that all of its Subcontractors of any tier shall similarly stipulate in their subcontracts. In the event any does not, the Contractor shall be liable in place of such Subcontractor(s). To the extent a court or arbitrator strikes any portion of this indemnification provision for any reason, all remaining provisions shall retain their vitality and effect.

In claims against any person or entity indemnified under this Section 10.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 10.12 shall not be limited by the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor of any tier under workers' compensation acts, disability benefit acts or other employee benefit acts. After mutual negotiation of the parties, the Contractor waives immunity as to the School District, the A/E, and either's consultants only under Title 51 RCW, "Industrial Insurance." IF THE CONTRACTOR DOES NOT AGREE WITH THIS WAIVER, IT MUST PROVIDE A WRITTEN NOTICE TO THE SCHOOL DISTRICT PRIOR TO THE DATE FOR THE RECEIPT OF BIDS, OR THE CONTRACTOR WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY. The provisions of this Section shall survive the expiration or termination of the Contract.

**10.13 Prevailing Wages:**

10.13.1 Pursuant to Chapter 39.12 RCW, no worker, laborer, or mechanic employed in the performance of any part of the Work 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 the Contract by reference as though fully set forth herein; if not attached, then the applicable prevailing wages are determined as of the date

bids are due for the county in which the Project is located and are also 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, the applicable rates under WAC 296-127-011 shall apply at no increase to the Contract Sum. The Contractor shall provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. The Industrial Statistician will answer questions relating to prevailing wage data upon request.

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

10.13.3 The Contractor shall defend, indemnify, and hold the School District harmless, including attorneys' fees, from any violation or alleged violation of Chapter 39.12 RCW ("Prevailing Wages on Public Works") or Title 51 RCW ("Industrial Insurance"), including without limitation RCW 51.12.050, by the Contractor, any Subcontractor of any tier, or any person performing Work on behalf of the Contractor or any Subcontractor of any tier.

**10.14 Hours of Labor:** The Contractor shall comply with all applicable provisions of Chapter 49.28 RCW.

**10.15 Hazardous Chemicals:** Pursuant to Chapter 49.70 RCW 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 of or used by Contractor or any Subcontractor at the Project site.

**10.16 Records:** The Contractor shall maintain and preserve for at least *three (3) years* from the date of final payment all books, ledgers, records, documents, estimates, bidding documents, correspondence, logs, schedules, electronic data and other evidence relating or pertaining to the costs incurred by the Contractor in connection with or related to the Contract and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the Contract Documents and with all costs, charges and other amounts of whatever nature for which reimbursement or payment is or may be claimed under the Contract. The Contractor agrees to make available at all reasonable times at the office of the Contractor all such records for inspection, audit, and reproduction (including electronic reproduction) by the School District and its representatives. These requirements shall be applicable to each Subcontractor of any tier and included in each Subcontract and purchase order issued with respect to the Work. The Contractor agrees, on behalf of itself, its representatives, and Subcontractors of any tier

and their representatives, that any rights under Chapter 42.56 RCW will commence at Final Acceptance, and that the invocation of such rights at any time by the Contractor or a Subcontractor of any tier or their representatives shall initiate an equivalent right to disclosures from the Contractor and Subcontractors of any tier for the benefit of the School District. Because of the importance of the access of such records to the School District in the case of a Claim, if the Contractor or any Subcontractor fails to comply fully with the requirements of this section with regard to any Claim, such Claim shall be deemed to be waived.

## **ARTICLE 11** **SUBCONTRACTORS**

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

**11.2** As soon as practicable after award of the Contract, 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 a reasonable and timely objection or different from the one listed in conjunction with the bid, if any. 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 the obligations and responsibilities that 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 or ensure payment is made to (and secure the discharge of any liens asserted by) all persons furnishing labor, equipment, materials, or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors of any tier). The Contractor shall furnish to the School District such releases of liens and claims and other documents as the School District may request from time to time to evidence such payment (and discharge). The School District may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are furnished. The Contractor shall defend, indemnify, and hold harmless the School District from any liens, including all expenses and attorneys' fees. Nothing in the Contract Documents shall create any obligation on the part of the School District or the A/E to pay or to see to the payment of any moneys due any Subcontractor of any tier or other person or entities, except as may otherwise be required by law.

## **ARTICLE 12** **CONSTRUCTION BY THE SCHOOL DISTRICT OR BY SEPARATE CONTRACTORS**

**12.1** The School District may perform construction or operations related to the Project with its own forces and may



award separate contracts in connection with other portions of the Project or other construction or operations at the Project site under contractual conditions consistent with 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 with such separate contractors and the School District's forces.

## **ARTICLE 13 CHANGES IN THE WORK**

**13.1** The School District, without invalidating the Contract, 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 and the Contractor or by written Construction Change Directive signed by the School District and the A/E. **The School District must approve in writing all changes in the Contract Sum or Contract Time and all Change Orders, Construction Change Directives, and payments to the Contractor.**

**13.1.1** **Minor Change in the Work:** A Minor Change in the Work is a written instrument signed by the School District authorizing minor variations in the Work from the requirements of the Contract Documents that do not involve an adjustment in the Contract Sum or the Contract Time and are consistent with the overall intent of the Contract Documents. The Contractor shall promptly proceed with the Minor Change in the Work.

**13.1.2** **Change Orders:** A Change Order is a written instrument signed by the School District and the Contractor stating their agreement upon a change in the Work; the amount of the adjustment in the Contract Sum, if any; and the extent of the adjustment in the Contract Time, if any.

**13.1.3** **Construction Change Directives:** A Construction Change Directive ("CCD") is a written order prepared and signed by the School District 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 School District's use of a CCD does not mean that the School District agrees that the direction constitutes a change in the Work, the Contract Sum, or the Contract Time. The Contractor shall promptly proceed with the change in the Work directed in the CCD. 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 CCD for determining any adjustment in the Contract Sum or Contract Time.

**13.2** **Change Order Proposals:** Before authorizing a change in the Work, the School District may request that the Contractor propose the amount of change in the

Contract Sum, if any, and the extent of change of the Contract Time, if any, in the form of a "Change Order Proposal, arising from the proposed change in the Work. A request for Change Order Proposal is a request for information and pricing only. The Contractor shall submit a Change Order Proposal containing information, pricing, and time impact, if any, to the School District and the A/E within seven (7) *days* of receipt of the School District's request. If the parties cannot agree on the cost or credit to the School District from a Change in the Work, the Contractor shall keep and present, in such form as the School District may prescribe, an itemized accounting together with supporting data. The total cost of any change or Claim shall be limited to the reasonable value of the following:

**13.2.1** **Direct Labor Costs:** The prevailing hourly wage for the laborers, journeymen, and foremen performing and/or directly supervising the changed Work at the Project site. The premium portion of overtime wages may not be included unless pre-approved in writing by the School District. The hourly cost shall be based upon basic wages and mandatory fringe benefits and workers' insurances.

**13.2.2** **Direct Material Costs:** An itemization of the quantity of materials necessary to perform the change in the Work and the net cost therefor.

**13.2.3** **Construction Equipment Usage Costs:** An itemization of the actual length of time construction equipment appropriate for the Work will be used solely on the change in the Work at the Project site multiplied by 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 Project site solely for the change in the Work.

**13.2.4** **Cost of Any Change in Insurance or Bond Premium:** Upon request, the Contractor shall provide the School District with supporting documentation.

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

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

- .1** For the Contractor, for any materials or Work performed by the Contractor's own forces, *twelve percent (12%)* of the cost.

- .2 For the Contractor, for materials or Work performed by its Subcontractor, *eight percent (8%)* of the amount due the Subcontractor.
- .3 For each Subcontractor (including Subcontractors of any tier involved), for any materials or Work performed by its own forces, *twelve percent (12%)* of the cost.
- .4 For each Subcontractor, for materials or Work performed by its Subcontractors of any tier, *eight percent (8%)* of the amount due the lower-tier subcontractor.
- .5 The cost to which the Fee is to be applied shall be determined in accordance with Sections 13.2.1–.4.

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

**13.3.1 Notice of Claim:** The Contractor shall submit notice of all Claims to the School District in writing within *fourteen (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.

**13.3.2 Claim Submission:** Within *thirty (30) days* of the Notice of Claim, the Contractor shall provide the School District with a Claim in writing, which shall include a clear description of the Claim, all changes in cost and in time (direct, indirect, impact, 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 and agrees with the Claim.

**13.3.3 Informal Resolution:** At the School District’s request, a representative of the Contractor and the School District shall meet, confer, and attempt to resolve the Claim. This meeting shall take place at a mutually convenient time and location within *thirty (30) days* of the request, unless the School District elects to proceed directly to mediation.

**13.3.4 Mediation:** The Contractor may bring no litigation against the School District unless the Claim is first subject to non-binding mediation under the Construction Industry Mediation Procedures 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. If the parties are unable to agree on

a mediator within *thirty (30) days* of 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 and insurers, 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 that shall occur prior to Final Acceptance by the School District.

**13.3.5 Litigation:** The Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered in the dispute resolution procedures of Sections 13.3.1–.4 above. All unresolved Claims of the Contractor shall be waived and released unless the Contractor has strictly complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) *one hundred twenty (120) days* after the date of Substantial Completion as designated in writing by the School District or (b) *sixty (60) days* after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by the School District and the Contractor. The pendency of a mediation (calculated as the period from the written request for mediation through the day following the mediation proceeding) shall toll these filing requirements.

**13.4 Notices and Claims:** All notices and Claims shall be made in writing as required by the Contract.

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

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

**13.4.3** The Contractor expressly acknowledges and agrees that the Contractor’s failure to timely submit required notices or timely submit Claims has a substantial impact upon and prejudices the School District, including but not limited to the inability to fully investigate or verify the Claim, mitigate damages, choose alternative options, adjust the budget, delete or modify the impacted Work, and/or monitor time, cost, and

quantities. For these and other reasons, the parties stipulate that the School District is prejudiced by the Contractor's failure to submit timely notices or Claims as required by the Contract Documents.

### **13.5 Claims for Concealed or Unknown**

**Conditions:** If conditions unknown to the Contractor are encountered at the Project site that are (a) concealed physical conditions that differ materially from those indicated in the Contract Documents or (b) 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 of the conditions. The Contractor shall make any Claim arising from such condition in accordance with the dispute resolution procedure in Section 13.3.

### **13.6 Claims for Consequential Damages:**

The Contractor and the School District waive Claims against each other for consequential damages arising out of or relating to the Contract. This mutual waiver includes without limitation:

13.6.1 damages incurred by the School District for loss of income, profit, use, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons;

13.6.2 damages incurred by the Contractor for principal and home office overhead and expenses including but not limited to the compensation of personnel stationed there, for losses of financing, business and reputation, for losses on other projects, for loss of profit, and for interest or financing costs; and

13.6.3 damages incurred by any party, including Subcontractors of any tier, arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar damages.

This mutual waiver is applicable to all consequential damages of any cause, including without limitation due to either party's termination in accordance with Article 19. However, nothing contained in this Section 13.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents or to preclude damages specified in the Contract Documents or to preclude the Contractor's obligation to indemnify the School District for damages alleged by a third party.

## **ARTICLE 14** **TIME**

**14.1** 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, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, delays caused by the School District or its separate contractors, or any causes beyond the Contractor's control, or by other causes that may justify delay, then the Contract Time shall be extended by Change Order to the extent the critical path is affected. The Contractor (including Subcontractors) shall be entitled to damages for delay, the total limited to the liquidated rate on the cover page of the Agreement, 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.

**14.2 THE TIMELY COMPLETION OF THE WORK 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. The Contractor is responsible for actual damages for delay unless a liquidated-damages rate is stated on the cover page of the Agreement, in which case the liquidated-damages rate shall apply. The School District's right to liquidated damages is not affected by partial completion, occupancy, or beneficial occupancy.

## **ARTICLE 15** **PAYMENTS AND COMPLETION**

**15.1 Progress Payments:** Payments shall be made as provided in Article 4 of the Agreement. Progress payments shall be made monthly for Work duly approved and performed during the calendar month preceding the Application for Payment according to the following procedure.

**15.1.1 Schedule of Values:** At least *fourteen (14) days* before the first Application for Payment, the Contractor shall submit to the School District a Schedule of Values, allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the School District may require. This schedule, unless objected to by the School District, shall be used as a basis for reviewing the Contractor's Applications for Payment.

**15.1.2 Draft Application:** By the *twenty-fifth (25th) day* of each month, the Contractor shall submit to the School District and the A/E a report on the current progress of the Work as compared to the Contractor's Progress Schedule, and a draft, itemized Application for Payment for Work performed during that calendar month on a form supplied or approved by the School District. This shall not constitute a payment request. The Contractor, the School District, and the A/E shall confer prior to the last working day of the month regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The School District may request that the Contractor provide data substantiating the Contractor's right to payment, such as copies of requisitions from Subcontractors of any tier, lien releases, and certified payroll records, and

reflecting retainage as provided elsewhere in the Contract Documents. The Contractor shall not be entitled to make a payment request, nor is any payment due the Contractor, until such data is furnished.

**15.1.3 Payment Request:** After the Contractor and the School District have met and conferred regarding the draft Application for Payment, and the Contractor has furnished all data requested, the Contractor may submit a payment request by the *tenth (10th) day* of the following month 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 the 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 the School District's prior payments have been made. The submission of an Application constitutes a certification that (1) all payments due Subcontractors from the School District's prior payments have been made and (2) the Work is current on the Progress Schedule, unless otherwise noted on the Application. If the Contractor believes it is entitled to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, the Contractor may submit to the School District a separate written payment request specifying the exact additional amount due, the category in the Schedule of Values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due.

**15.1.4 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 that must be taken and pay the Subcontractor within *seven (7) days* after the Subcontractor satisfactorily completes the remedial action identified in the notice.

**15.2 Prevailing Wages:** Pursuant to Chapter 39.12 RCW, the Contractor is not entitled to any payment until the Contractor and all Subcontractors of any tier have submitted a "Statement of Intent to Pay Prevailing Wage" to the School District. The statement must be approved by the Industrial Statistician of the Department of Labor and Industries before it is submitted to the School District. The Contractor and Subcontractors shall pay all fees required by the Department of Labor and Industries, including fees for the approval of the "Statement of Intent to Pay Prevailing Wages." Approved copies of the "Statement of Intent to Pay Prevailing Wages" must be posted where workers can easily read them.

**15.3 Progress Payments:** The School District shall make progress payments within *thirty (30) days* of its receipt of an approved payment request.

**15.4 Withheld Payments:** Payments may be withheld on account of (a) defective Work not remedied, (b) claims filed by third parties, (c) failure of the Contractor to make payments due to Subcontractors or for labor, materials or equipment, (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (e) damage to the School District or another contractor, (f) reasonable evidence that the Work will not be completed within the Contract Time, (g) failure to carry out the Work in accordance with the Contract Documents, or (h) 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 *seven (7) days* after the School District's receipt of the Application for Payment, written notification of the reasons that all or part of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.

#### **15.5 Substantial Completion:**

**15.5.1** When the Contractor believes that the Work has achieved Substantial Completion, 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 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, if any required occupancy or use permit has not been issued, or if utilities affected by the Work are not connected and operating normally. The fact that the School District may use or occupy the Work or designated portion thereof does not indicate that the Work is Substantially Complete, nor does such occupation toll or change any liquidated damages due the School District.

**15.5.2** Immediately before partial or complete occupancy, the School District will schedule an inspection tour of the area to be occupied. A representative of the School District, A/E, and Contractor will jointly tour the area and record items still remaining to be finished and/or corrected. The Contractor shall also supply and install any items missed by the inspection but required or necessary for Final Completion, notwithstanding their not being recorded during the inspection tour.

**15.5.3** If the Contractor fails to complete all of the punch-list items within the period of time scheduled between Substantial and Final Completion then, upon *seven (7) days'* written notice to the Contractor, the School District shall have the right (but not the obligation) to take over performance of such punch-list Work and to charge the Contractor all costs thereof.

**15.6 Final Completion:** After the Contractor has notified the School District that the Work has been fully completed, and the Contractor has submitted the items listed below as may be required at the discretion of the School District,

the School District shall determine in writing that Final Completion has occurred.

15.6.1 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;

15.6.2 consent of surety to final payment;

15.6.3 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least *thirty (30) days* prior written notice has been given to the School District;

15.6.4 a written statement that the Contractor knows of no substantial reason why the insurance will not be renewable;

15.6.5 other data establishing payment or satisfaction of or protection (satisfactory to the School District) against all obligations, such as receipts, releases and waivers of liens and claims;

15.6.6 pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from the Contractor and from each Subcontractor certified by the Industrial Statistician of the Department of Labor and Industries, with the fees paid by the Contractor or Subcontractor;

15.6.7 a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to the 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);

15.6.8 pursuant to RCW 60.28.021, certificates from the Department of Revenue and the Department of Labor and Industries;

15.6.9 pursuant to Chapter 50.24 RCW, a certificate from the Department of Employment Security;

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

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

If any Subcontractor of any tier refuses to furnish a release or waiver required by the School District, the School District may retain 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 *one hundred fifty percent (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 money that the School District

may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**15.7 Final Payment:** Pursuant to Chapter 60.28 RCW, completion of the Contract Work shall occur when the School District's Board of Directors formally accepts the Project as complete ("Final Acceptance"). Final payment will not be made unless the Contractor has properly submitted certificates from the Department of Revenue, the Department of Labor and Industries, and, pursuant to Chapter 50.24 RCW, a certificate from the Department of Employment Security. The School District shall not be required to accept the Project as complete before required occupancy permits have been issued and the Contractor completes the Work and submits the items listed in Section 15.6 to the School District. Final Payment shall not become due until after Final Acceptance.

**15.8 Waivers:**

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

15.8.2 **Change Orders:** The execution of a Change Order constitutes 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.

15.8.3 **Reservation of Rights:** If the Contractor adds to a Change Order, a Construction Change Directive, or any other document a reservation of rights that has not been initialed by the School District, any 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. If the School District makes payment for a Change Order or an Application for Payment that contains a reservation of rights not initialed by the School District to indicate agreement with the reservation, and if the Contractor negotiates the check for such payment, then the reservation of rights shall be deemed waived, withdrawn, and of no effect.

**15.9 Retainage:**

15.9.1 **Single Payment:** If a single payment, rather than progress payments, is to be made to the Contractor, then no retainage will be withheld.

15.9.2 **Progress Payments:** If progress payments are to be made to the Contractor, the School District will reserve pursuant to Chapter 60.28 RCW *five percent (5%)* from the moneys earned by the Contractor during the progress of the Work as a trust fund for the protection and payment of the claims of any person arising under the Contract and the State with respect to taxes, fees, and penalties that may be due from the Contractor.

**15.10 Warranty of Title:** The Contractor warrants and guarantees that title to Work, materials, and equipment covered by an Application for Payment, whether or not

incorporated in the Project, shall pass to the School District no later than the time of payment, free and clear of liens.

## **ARTICLE 16**

### **PROTECTION OF PERSONS AND PROPERTY**

**16.1 Safety:** The Contractor shall be solely responsible for all, and neither the School District nor the A/E shall have responsibility for any, aspects of safety related to the Contract or the Work, including initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Contractor shall take reasonable precautions for the 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 Project site or adjacent thereto. The Contractor shall maintain the Project site and perform the Work in a manner that meets all statutory and common law requirements for the provision of a safe place to work. This requirement shall apply continuously and not be limited to working hours.

**16.2 Compliance:** 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 Project 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. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 10.12.

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

## **ARTICLE 17**

### **INSURANCE AND BONDS**

#### **17.1 Contractor's Liability Insurance:**

**17.1.1** The Contractor shall purchase from and maintain in a company or companies having a certificate of authority and lawfully authorized to do business in the State of Washington possessing a Best's policyholder's rating of "A minus" or better and a financial rating of no less than "VII" and reasonably acceptable to the School District, an occurrence-based Commercial General Liability Insurance Policy, which shall provide personal injury and bodily injury (including death) and property damage liability on the Contractor's operations, including Subcontractors and suppliers of any tier; owned, non-owned and hired vehicles; on Work the Contractor may subcontract or sublet to others; and on the indemnity provisions of the Contract, including but not limited to premises, products/completed operations, personal injury (including death), blanket contractual liability, explosion, collapse, or

underground (XCU), and stopgap employer's liability. This insurance shall name the School District, its employees, and any other person or entity identified on the cover page of the Agreement as additional insureds for Work performed under the Contract under CG 2010 or its equivalent and shall include a severability of interest (cross liability clause) for Work performed under the Contract. The Contractor's policy shall be designated primary coverage for both defense and indemnity, and any School District policies as excess and non-contributory. The policy shall be endorsed to have the General Aggregate apply to this Project only. Such limits of liability insurance shall have per project general aggregate provisions and shall not be less than those stated on the cover page of the Agreement.

**17.1.2** The insurance described above shall include all major divisions of coverage and be on a comprehensive basis including Premises operations, Explosion, Collapse, and Underground (XCU) as applicable, Independent Contractor's protective, Products and completed operations, Personal injury liability with employment exclusion deleted, Blanket Contractual, including specific provision for Contractor's obligation under the Indemnity provisions of the Contract, Owned, non-owned and hired motor vehicles; and Broad form property damage.

**17.1.3** In addition, the Contractor shall purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit, and other similar employee benefit acts in the State statutory amount and Employer's Liability with a limit not less than that stated on the cover page of the Agreement.

**17.1.4** Before any presence on the Project site or commencing the Work, and, in any event, within *seven (7) days* after the School District has issued its notice of intent to award a contract, the Contractor shall furnish the School District with Certificates of Insurance and endorsements as evidence of all insurance required by the Contract Documents as well as a copy of L&I Statements for State Workers' Compensation coverage. No progress payment will be due until all such items are furnished. 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 *thirty (30) 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. Upon written request, the Contractor shall provide a copy of its policies to the School District. Losses up to the deductible amount shall be the responsibility of the Contractor.

**17.1.5** Coverage shall be maintained without interruption from the date of commencement of the Work until the date of Final Acceptance, except for any coverage required to be maintained after Final Acceptance. Completed operations coverage shall remain in force for *six (6) years* after Final Acceptance.

17.1.6 If the School District is damaged by the failure of the Contractor to maintain any of the above insurance or to so notify the School District, 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.

17.1.7 The School District's specification or approval of any insurance coverage or 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, the indemnification provisions, or applicable law. The Contractor may, at its expense, purchase different or additional coverage.

17.1.8 The Contractor shall ensure and require that Subcontractors of any tier have insurance coverage to cover bodily injury and property damage on all operations and all vehicles owned or operated by Subcontractors of all tiers. Also, the Subcontractors shall name the Contractor and the School District as additional insureds giving at least *thirty (30) days'* notice of cancellation.

**17.2 Waiver of Subrogation:** The School District and Contractor waive all rights against (1) each other and any of their Subcontractors of any tier, and agents and employees each of the other, and (2) any A/E, A/E's consultants, if any, separate contractors described in Article 12, if any, and any of their subcontractors of any tier, and agents and employees each of the other, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Article 6 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 policies shall provide such waivers of subrogation by endorsement or otherwise.

**17.3 Payment and Performance Bonds:** The Contractor shall secure from a surety company acceptable to the School District, admitted and licensed in the State of Washington, possessing an A.M. Best rating of "A minus" or better and a financial rating of no less than "VII," and shall pay for bonds covering the faithful performance of the Contract and payment of obligations arising under the Contract Documents, each in the full amount of the Contract Sum plus sales tax, pursuant to Chapter 39.08 RCW, "Contractor's Bond." Within *seven (7) days* after its execution of the Contract, the Contractor shall deliver copies of the bonds to the School District. THE CONTRACTOR SHALL NOT PROCEED WITH THE WORK UNTIL SUCH SURETY BONDS ARE RECEIVED AND SUBMITTED. The bond(s) shall be in a form acceptable to the School District.

## **ARTICLE 18**

### **CORRECTION OF WORK**

**18.1** The Contractor shall promptly and within no more than *fourteen (14) days* of notice from the School District or A/E correct Work rejected or failing to conform to the requirements of the Contract Documents at any time through a period of *one (1) year* from the date of Substantial Completion of the Contract 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 carry out or correct Work that is not in accordance with the requirements of the Contract Documents, the School District and/or A/E, 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, and the School District may take over and correct some or all of the non-conforming Work at the Contractor's cost.

**18.3** Nothing in this Article shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents. Establishment of the time period of *one (1) year* as described above relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

## **ARTICLE 19**

### **TERMINATION OF THE CONTRACT**

**19.1 Termination for Cause by the Contractor:** If the School District fails to make payment of undisputed amounts 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, terminate the Contract and recover from the School District payment for all Work executed in accordance with the Contract Documents.

**19.2 Termination for Cause by the 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 but not limited to the following:

19.2.1 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;

19.2.2 the Contractor is in material default of or materially breached any provisions of the Contract;

19.2.3 the Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency;

19.2.4 the Contractor's failure to supply a sufficient number of properly skilled workers or proper materials;



19.2.5 the Contractor's failure to make prompt payment to Subcontractors or for materials or labor;

19.2.6 the Contractor materially disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or

19.2.7 the Contractor fails to comply with the provisions of RCW 28A.400.330 by permitting a worker on the Project who has been convicted of or pled guilty to a felony crime involving children as described in Section 10.4.

**19.3 Termination for Convenience by the School District:** The School District may, at any time 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 Contract for the convenience of the School District. The School District shall be liable to Contractor only for the amount reasonably incurred to date and due under Section 13.2 of the Contract for the performance of the Work terminated and other pre-approved costs, consistent with Section 13.2, necessary and reasonably incurred in connection with the termination of the Contract. The total sum to be paid to the Contractor under this Section 19.3 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made.

**19.4 Effects of Termination:**

19.4.1 After receipt of a notice of termination from the School District, the Contractor shall promptly stop Work as specified in the notice of termination (and continue performance to the extent not terminated) and take such action as directed by the School District to effectuate an orderly and businesslike termination of the Work.

19.4.2 The Contractor shall refund to the School District any amounts the School District paid to the Contractor in excess of costs reimbursable under Section 19.3.

19.4.3 The damages and relief from termination specifically provided for in this Article 19 shall be the Contractor's sole entitlement in the event of termination. In the event that the School District improperly terminates the Contractor for cause, the termination shall automatically convert to a termination for convenience under Section 19.3.

**19.5 Suspension:** The School District may, at its option and at any time, suspend the Contractor's performance of some or all of the Work. The School District shall give the Contractor notice of any such suspension, including the scope of the suspension and the School District's estimate of the duration of such suspension. During the period of suspension, the Contractor shall use its best efforts to minimize costs associated with such suspension and to protect and maintain the Work. As full compensation for the suspension, the Contractor will be eligible for an equitable adjustment, as permitted in the Contract, in the Contract Time and/or Contract Sum, which shall not include consequential or indirect damages. Upon receipt of the School District's notice to resume the suspended performance, the Contractor shall immediately resume performance to the extent required in the notice.

**ARTICLE 20**  
**MISCELLANEOUS PROVISIONS**

**20.1 Applicable Law:** The Contract shall be governed by the laws of the State of Washington, without regard to its choice of law provisions.

**20.2 Compliance with Law:** The Contractor shall give notices and comply with applicable laws, rules, regulations, and orders of public authorities, including but not limited to Chapter 39.06 RCW and Chapter 18.27 RCW (Registration), Chapter 49.60 RCW (Discrimination), Chapter 70.92 RCW (Aged and Handicapped Persons), Chapter 296-155 WAC (Safety Standards), Chapter 50.24 RCW (Unemployment Compensation), Title 51 RCW (Industrial Insurance); Title 82 RCW (State Excise Tax Registration), RCW 39.12.065(3) (prevailing wage violations), Drug-Free Workplace Act of 1988 (Drug-Free Workplace), RCW 9.41.280 (Weapons), and Chapter 49.26 RCW (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. The statutes referenced in the Contract Documents are not meant to be a complete list and should not be relied upon as such.

**20.3 School District's Site Rules:** The Contractor shall comply with the School District's site and conduct rules.

**20.4 Assignment:** The Contractor shall not let, assign, or transfer the Contract, or any interest in it or part of it including Claims hereunder, without the written consent of the School District.

**20.5 Complete Agreement:** This Contract is the complete, integrated, and exclusive statement of the contract between the Contractor and the School District with respect to the Work and any related services to be furnished pursuant to this Contract. It supersedes and merges with any prior or contemporaneous agreements, commitments, representations, and negotiations, whether oral or written, including but not limited to proposals, invoices, and terms and conditions of the Contractor, whether or not attached to this Contract. The Contractor acknowledges that it has not been induced to enter into this Contract by any representations or promises not specifically stated in this Contract.

**20.6 Writing Required:** No addition to or modification of the Contract shall be binding on either party unless explicitly made in writing and executed by the Contractor and the School District. Similarly, any waiver by the School District of any right or remedy under the Contract must be in writing and shall apply only to the right or remedy specified.

**20.7 Survival of Provisions:** The warranty, dispute resolution, and indemnification provisions of the Contract shall survive the termination, cancellation, or expiration of the Contract.

End of Section



## **SECTION 011000 – SUMMARY OF WORK**

### **- DEMOLITION, WALL SUBSTRATE PREPARATION and MOCK-UP -**

#### **PART I - GENERAL**

##### **I.1 RELATED DOCUMENTS**

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions apply to this Section.

##### **I.2 WORK COVERED BY CONTRACT DOCUMENTS**

- A. Project Identification:
  - 1. Project Name: Eisenhower High School
  - 2. Project Location: 611 South 44<sup>th</sup> Avenue, Yakima, WA 98908
- B. Designer of Record for This Remediation: Trinity | ERD, 80 Yesler Way, Suite 200, Seattle, WA 98104.
- C. The Work generally consists of the following:
  - I. The Work includes:
    - a. Review and approve staging system to carry out the work
    - b. Protect interiors from potential damage with temporary sheathing walls.
    - c. Review exterior protection for adequacy.
    - d. Tear off existing stainless steel tile at Exterior and Interior locations.
    - e. Remove existing ceramic tile.
    - f. Prepare substrate for new materials.
    - g. Prepare window opening for window mock up installation.
    - h. Remove venting board from self-adhered membrane surface.
    - i. Store shingles for recycle by others.
    - j. Clean up site of any debris not desired for recycle.

##### **I.3 TYPE OF CONTRACT**

- A. Project will be constructed under a single prime contract.

##### **I.4 WORK UNDER OTHER CONTRACTS**

- A. General: Cooperate fully with separate contractors so work on those contracts may be carried out smoothly, without interfering with or delaying work under this Contract. Coordinate the Work of this Contract with work performed under separate contracts.

1. A separate contract for repairs will be issued and the work may commence prior to completion of this Scope.

#### **1.5 USE OF PREMISES**

- A. General: Contractor shall have limited use of Project site for construction operations as indicated on Drawings by the Contract limits and as indicated by requirements of this Section.
- B. Use of Site: Limit use of premises to work in areas indicated. Do not disturb portions of Project site beyond areas in which the Work is indicated.
  1. Owner Occupancy: Allow for Owner occupancy during exterior repairs.
  2. Driveways and Entrances: Keep driveways and entrances serving premises clear and available to Owner, Owner's employees, Students, and emergency vehicles at all times. Limit use of these areas for parking or storage of materials to designated locations.
    - a. Schedule deliveries to minimize use of driveways and entrances.
    - b. Schedule deliveries to minimize space and time requirements for storage of materials and equipment on-site.
- C. Use of Existing Building: Maintain existing building in a weathertight condition throughout construction period. Repair damage caused by construction operations. Protect building and its occupants during construction period.

#### **1.6 OWNER'S OCCUPANCY REQUIREMENTS**

- A. Full Owner Occupancy: Owner will occupy site and buildings during entire construction period. Cooperate with Owner during construction operations to minimize conflicts and facilitate Owner usage. Perform the Work so as not to interfere with Owner's day-to-day operations. Maintain existing exits, unless otherwise indicated.
  1. Maintain access to existing walkways, corridors, and other adjacent occupied or used facilities. Do not close or obstruct walkways, corridors, or other occupied or used facilities without written permission from Owner and authorities having jurisdiction.
  2. Provide not less than 72 hours' notice to Owner of activities that will affect Owner's operations.

#### **1.7 WORK RESTRICTIONS**

- A. On-Site Work Hours: Work shall be generally performed during normal business working hours of 8 a.m. to 5 p.m., Monday through Friday, except otherwise indicated. Alternate work hours as to not affect teaching and learning shall generally be performed 3 p.m. to 11:30 p.m. See Owner's General Conditions for specific information related to Work Restrictions.

- B. Existing Utility Interruptions: Do not interrupt utilities serving facilities occupied by Owner or others unless permitted under the following conditions and then only after arranging to provide temporary utility services according to requirements indicated:
  - 1. Notify Owner not less than two 2 days in advance of proposed utility interruptions.
  - 2. Do not proceed with utility interruptions without Owner's written permission.
- C. TOBACCO/DRUG/WEAPON PROHIBITION: Yakima School District property is a tobacco free, drug free, and weapon free environment. Contractor personnel shall conform to this policy at all times while on Yakima School District premises.
- D. Nonsmoking Building: Smoking or non-smoking tobacco use is not permitted within the building or on school property.
- E. EMPLOYMENT PROHIBITION: In accordance with Title 28A RCW: The Contractor shall prohibit any employee of Contractor from working at a public school who has contact with children at the school during the course of his or her employment 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 by Contractor to comply with this section shall be grounds for Yakima School District to terminate the contract.
- F. Proper conduct on the project site shall be maintained at all times. No loud sound systems, no loud music, no loud shouting, or other disruptive noise shall be allowed or generated at any place on the Project site. Contractor shall be responsible to maintain a quality Work environment that is not disruptive to workers, employees, students, staff, and others.
- G. Loud and/or abusive language will not be tolerated by any person on the Project site. In the event that any person generates such language and fails to conduct themselves in a proper manner or practices loud and/or abusive language, that person shall be informed by the Contractor of these provisions and if repeated, shall be dismissed from the site by the Contractor at no cost to the Owner. Contractor shall have the responsibility to see that such behavior is not tolerated or allowed on site and be responsible for removal of those not in compliance with the above requirements.
- H. Uphold the Owner's policy and laws mandating total prohibition on the use of all tobacco products on Owner-owned property. Smoking is not permitted on the Owner's property, including the Project site.
- I. Uphold the Owner's policy of no firearms allowed, in any form, on Owner-owned property.
- J. The School District is very concerned with the safety and security of students and staff during construction. As such, the contractor will be responsible for initiating and managing a site security plan. A written summary of this plan shall be submitted for approval by the District and will include at a minimum the following:

1. Badging Program – A program whereby each individual onsite will be furnished with a positive form of identification displaying their name and the company that they are employed with. This badge will serve as proof that the individual has received a jobsite orientation by the General Contractor and is approved to work onsite.
2. Documented training regarding students and staff – As a pre-requisite to obtaining a security badge, each individual will receive training regarding proper conduct in regards to students and staff at Eisenhower High School. This training shall be documented and kept on file at the jobsite. There shall be no co-mingling or interaction with students and staff for any reason, except for what is reasonable and necessary to carry out the completion of the project.

## **1.8 SPECIFICATION FORMATS AND CONVENTIONS**

- A. Specification Format: The Specifications are organized into Divisions and Sections using the 50-division format and CSI/CSC's "MasterFormat" numbering system.
  1. Section Identification: The Specifications use Section numbers and titles to help cross-referencing in the Contract Documents. Sections in the Project Manual are in numeric sequence; however, the sequence is incomplete because all available Section numbers are not used. Consult the table of contents at the beginning of the Project Manual to determine numbers and names of Sections in the Contract Documents.
  2. Division 01: Sections in Division 01 govern the execution of the Work of all Sections in the Specifications.
- B. Specification Content: The Specifications use certain conventions for the style of language and the intended meaning of certain terms, words, and phrases when used in particular situations. These conventions are as follows:
  1. Abbreviated Language: Language used in the Specifications and other Contract Documents is abbreviated. Words and meanings shall be interpreted as appropriate. Words implied, but not stated, shall be inferred as the sense requires. Singular words shall be interpreted as plural, and plural words shall be interpreted as singular where applicable as the context of the Contract Documents indicates.
  2. Imperative mood and streamlined language are generally used in the Specifications. Requirements expressed in the imperative mood are to be performed by Contractor. Occasionally, the indicative or subjunctive mood may be used in the Section Text for clarity to describe responsibilities that must be fulfilled indirectly by Contractor or by others when so noted.
    - a. The words "shall," "shall be," or "shall comply with," depending on the context, are implied where a colon (:) is used within a sentence or phrase.

## **PART 2 - PRODUCTS (Not Used)**

## **PART 3 - EXECUTION**

### **3.1 Safety**

- A. Owner has provided access. Contractor shall inspect and confirm scaffolding is appropriate for use and weather protection is adequate.
- B. Attend any required safety training for using available access.
- C. All site personnel shall wear personal protective equipment (PPE).

### **3.2 Staging**

- A. Dumpsters and Recycling canisters must be located in designated areas, secured and routinely inspected/maintained.
- B. Recycling/Disposal
  - 1. Stainless materials must be separated from carbon steel and put into different containers for disposal. The school facilities manager will control all recycle dumpsters and will be responsible for coordination of disposal and return of dumpsters.
  - 2. Please insert Article 10 Protection of Persons and Property AIA Doc. A201 - 2007

### **3.3 Demolition**

- A. Stainless Steel Tiles
  - 1. Remove existing stainless steel tiles and top cap and corrugated venting material.
  - 2. Inspection by Contract Administrator must be coordinated for determination of underlayment and sheathing condition for removal and replacement.
  - 3. Contractor shall provide a square foot price for removal and replacement of the self adhered membrane.
  - 4. Contractor shall provide a unit price for removal and replacement of 4.x8 1/2" CDX plywood sheathing for replacement of identified damaged sheathing identified by the contract administrator.
  - 5. The contractor shall make air tight all transitions at windows and wall penetrations due to removal of shingles. Contractor shall provide a unit price for a taped transition joint for temporary protection.
  - 6. Alternate pricing for removal and temporary rough opening protection shall be provided for consideration during the Demolition Project.

### **3.4 Prepare Substrate**

- A. Existing membrane and sheathing board.

1. Score existing membrane, every 18" and the length of the sheathing board, across the face of the wall.
2. Install new self-adhered breathable membrane where designated by the Contract Administrator.

### **3.5 Install Window Mock Up**

- A. At locations designated by the contract administrator
  1. A mock up detail shall be provided. Contractor shall provide an hourly rate for mock-up work. Mock up shall include a window subcontractor for the installation of a new window into an existing opening. A tile subcontractor must be engaged to complete the tile component of the mock up.

**END OF SECTION 011000**

**YAKIMA PUBLIC SCHOOL DISTRICT #7  
STANDARD TERMS and CONDITIONS FOR  
FOR SMALL WORKS**

**By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.**

**ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES:** The district reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the district. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

**ACCESS AND RETENTION OF RECORDS:** The contractor agrees to provide the district, state auditor, or their authorized agents, access to any records necessary to determine contract compliance. The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the Yakima School District or third party.

**ALTERATION OF SOLICITATION DOCUMENT:** In the event of inconsistencies or contradictions between language contained in the district's solicitation document and a vendor's response, the language contained in the district's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the district.

**AUTHORITY:** The following bid, request for proposal, limited solicitation, or contract is issued under authority of the Yakima School District Board of Directors.

**COMPLIANCE WITH LAWS:** The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, codes, industry standards, rules and regulations, including the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. The contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

**CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the district procurement agent. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

**DAMAGE TO EXISTING WORK:** The Contractor shall be liable for any damage to existing property. Contractor shall be responsible for locating underground utilities prior to beginning excavations. Any and all damages incurred by the Contractor to existing structure, utilities, equipment, or landscape shall be replaced to the satisfaction of the Owner at the Contractor's expense.

**DEBARMENT:** The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency.

**DISABILITY ACCOMMODATIONS:** The Yakima School District does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**EMPLOYMENT PROHIBITION:** In accordance with Title 28A RCW: The Contractor shall prohibit any employee of Contractor from working at a public school who has contact with children at the school during the course of his or her employment 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 by Contractor to comply with this section shall be grounds for Yakima School District to terminate the contract

**FACSIMILE RESPONSES:** Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations ONLY if they are completely received by the district procurement office prior to the time set for receipt. Bids or portions thereof, received after the due time will not be considered.

**FAILURE TO HONOR BID/PROPOSAL:** If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the district may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the Yakima School District.

**FINAL INSPECTION:** When ready for completion inspection, the Contractor shall notify the Owner in writing. The Owner's representative will make an inspection and compile a punch list of items, which are not satisfactory or are incomplete. When the Contractor has completed the items on the punch list, he shall notify the Owner in writing and request final payment.

**HOLD HARMLESS/INDEMNIFICATION:** The contractor agrees to protect, defend, and save the district, its appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the district, under this agreement.

**INSURANCE:** Contractor shall maintain the following insurance through a company authorized to do business in the State of Washington, and shall provide Yakima School District (ATTN: PURCHASING DEPT.) with proof of such insurance prior to the commencement of work:

- A. Liability insurance for bodily injury and property damage, with coverage of not less than one million dollars for any one occurrence.
- B. The Owner shall be named as an additional insured on all certificates of insurance with the additional insured endorsement attached.

**LATE BIDS AND PROPOSALS:** Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

**PAYMENT TERMS:** All progress or partial payments will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the district is allowed 30 days to pay such invoices.

**PERMITS:** The Contractor shall obtain and pay for the building permit or other permits, inspection fees, licenses, utility locates, royalties, bonds, social security and unemployment compensation.

**PERFORMANCE BOND, RETAINAGE:** If the price to be paid for the work by District exceeds \$35,000, Contractor shall, pursuant to RCW 39.08.010, post a performance/payment bond.

If the price to be paid for the work by District is less than \$35,000, Contractor shall, pursuant to RCW 39.08.010, either post a performance/payment bond or the contractor may request in writing that the Owner retain 50% of the contract amount for a period of 45 days from date of acceptance or until necessary releases and settlement from liens, if any, whichever is later. Letter must have signature and company name and be forwarded to:



PURCHASING COORDINATOR  
YAKIMA PUBLIC SCHOOL DISTRICT #7  
104 North 4th Avenue  
Yakima, WA 98902-2698

All work under this Contract shall be subject to the requirements of RCW 60.28.011 regarding the retention of a percentage of the amount to be paid Contractor or the provision of other security, pending the completion of the work and the release of any and all liens by subcontractors and suppliers.

**PREVAILING WAGE REQUIREMENTS:** Contractor shall comply with the requirements of RCW 39.12 regarding the payment of prevailing wages, including the requirements to deliver a Statement of Intent to Pay Prevailing Wages and post notice of such intent prior to commencement of work, and to file an Affidavit of Wages Paid after completion of the work.

**PROTECTION OF MATERIALS AND EQUIPMENT:** The Contractor shall be held responsible for any and all materials and equipment to be installed under this Contract and will be required to make good at his own cost any injury or damage which said materials or equipment may sustain from any source or cause whatsoever before final acceptance thereof.

**REFERENCE TO CONTRACT:** The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

**REGISTRATION WITH THE SECRETARY OF STATE:** Any business intending to transact business in Washington must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Washington, must determine whether they are transacting business in Washington in accordance with Washington State Law. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Washington, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Washington.

**SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

**SHIPPING:** Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

**SITE SAFETY:** Contractor shall protect all school occupants caused by the work, and to the extent possible, Contractor shall minimize any disruption of normal functions and activities of the school during the work. Contractor shall clean up and remove all refuse and unused materials from areas open to school use at the end of each work day, and from all areas prior to final completion of the work. Contractor shall repair, at contractor's expense, any damage caused by contractor while working pursuant to this Contract.

**SOLICITATION DOCUMENT EXAMINATION:** Vendors shall promptly notify the district of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

**TAX EXEMPTION:** The Yakima School District is exempt from Federal Excise Taxes.

**TERMINATION OF CONTRACT:** Unless otherwise stated, the district may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract

**THE OWNER:** Wherever the term "Owner" is used in the documents, it refers to Yakima School District, Yakima, Washington.

**TIME OF ESSENCE; EXTENSION OF TIME; LIQUIDATED DAMAGES:**

A. All times stated in this agreement or in the contract documents are of the essence.

B. The times stated in this agreement or in the contract documents may be extended by a change order from owner's representative for such reasonable time as he may determine, when in his opinion contractor is delayed in work progress by changes ordered, labor disputes, fire, prolonged transportation delays, injuries, or other causes beyond contractor's control or which justify the delay.

C. Liquidated Damages. Owner will suffer loss if the work is not completed within the times specified herein, plus any extensions allowed in accordance herewith. The parties also recognize the delays, expense and difficulties in proving the actual loss suffered by owner if the work is not completed on time. Accordingly, instead of requiring any such proof, owner and contractor agree that as liquidated damages for delay (but not as a penalty), contractor shall pay owner as specified in the Contract Documents for each day that expires after the time specified herein for completion until the work is finally complete. This amount represents an estimate of owner's damages for loss of use and administrative costs associated with delay.

**TOBACCO/DRUG/WEAPON PROHIBITION:** Yakima School District property is a tobacco free, drug free, and weapon free environment. Contractor personnel shall conform to this policy at all times while on Yakima School District premises.

**UNAVAILABILITY OF FUNDING:** The district, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason.

**U.S. FUNDS:** All prices and payments must be in U.S. dollars.

**USE OF OWNER'S PROPERTY:** No use of the Owner's present school building facilities may be made by this Contractor without prior approval of the Owner, specifically all utilities such as water, toilets, telephones, etc. The Contractor is to recognize that causing any unwarranted nuisance whatsoever will not be tolerated. All work is to take place in such a way and time as to cause the minimum of nuisance; and such work is to be correlated with the operations of the Owner. The entire premises shall be kept reasonably clean and free from unnecessary debris at all times. The Contractor shall remove all debris prior to final acceptance by the Owner.

**VENUE:** This solicitation is governed by the laws of Washington. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the Yakima County District Court in and for the County of Yakima, State of Washington, and the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney's fees.

**WARRANTIES:** The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the district. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

The Contractor shall guarantee the satisfactory operation of all material and equipment installed and shall repair or replace to the satisfaction of the Owner any defective material, equipment, or workmanship which may show itself within one (1) year from the date of final acceptance or according to manufacturer's listed warranty or technical specification, whichever is longest, and shall be held responsible for any damage to other work or excessive costs to Yakima Schools District resulting therefrom. In the absence of a manufacturer's warranty or a guarantee period specified in the Technical Specification, the guarantee shall be for one (1) year, or for any longer period of time required by law.

