

# FORM OF AGREEMENT

**THIS AGREEMENT** is made and effective as of the 24 th day of April, 2013 between **CAMPBELL COUNTY SCHOOL DISTRICT** ("Owner") and **Powder River Heating & Air Conditioning, Inc.** ("Contractor") for contract work described generally as the **ROZET ELEMENTARY SCHOOL HVAC UPGRADE PHASE 2 Project** and described in detail as stated below.

**OWNER AND CONTRACTOR**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

## **ARTICLE 1. WORK**

- 1.1 **CONTRACTOR** shall complete all work as specified or indicated in the Contract Documents. The **CONTRACTOR** shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the **WORK** as described in the bid documents.
- 1.2 In connection with the work to be performed, **CONTRACTOR**, at his expense, shall procure all necessary permits and licenses and agrees to comply with all laws, ordinances, codes, and regulations applicable to the performance of the work hereunder.

## **ARTICLE 2. CONTRACT TIME**

- 2.1 **CONTRACTOR** agrees to begin work on or after June 1, 2013, and complete the contract on or before August 18, 2014, time being of the essence.

## **ARTICLE 3. CONTRACT PRICE**

- 3.1 For full and complete performance, **OWNER** agrees to pay **CONTRACTOR** the sum of \$ 2,659,352.00 payable in accordance with the terms hereof and to the satisfaction of the **OWNER**.

## **ARTICLE 4. PAYMENT PROCEDURES**

- 4.1 **CONTRACTOR** shall submit Draw Requests to Campbell County School District, Attn: Meldene Goehring, P.O. Box 3033, Gillette, Wyoming, 82717-3033.
- 4.2 **PROGRESS PAYMENTS.** **OWNER** can make progress payments on account of the Contract Price. All progress payments will be on the basis of the progress of the work as approved by the **OWNER'S** Consultant and **OWNER'S** representative.
- 4.3 **RETAINAGE.** **OWNER** shall have the right to withhold from each payment of the contract price a sum ("retainage") equal to ten (10) percent of the invoice.
- 4.4 **FINAL PAYMENT.** Upon final completion and acceptance of the work by the **OWNER** a final payment to contractor notice will be advertised in The News-Record for a period of forty (40) days. Final payment will be processed after such period.

## **ARTICLE 5. CONTRACTOR'S REPRESENTATIONS**

- 5.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, Site, Locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 5.2 CONTRACTOR agrees to perform all the Work described in the Contract Documents.
- 5.3 CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Work as described in the Contract Documents.

**ARTICLE 6. CHANGES IN WORK**

- 6.1 The OWNER may order changes in the work, the Contract sum being adjusted accordingly. All such orders and adjustments shall be in writing and subject to the terms and conditions of this Contract. Claims by the CONTRACTOR for extra cost must be made in writing to the OWNER'S representative and approved by OWNER before executing the work involved.

**ARTICLE 7. CONTRACT DOCUMENTS**

- 7.1 The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following.
1. Invitation for Bids
  2. Instructions to Bidders
  3. General Conditions
  4. Technical Specifications
  5. Addenda, and Bid Form
  6. Form of Agreement
  7. Notice of Award
  8. Performance and Payment Bond
  9. Certificate of Insurance
  10. Wyoming Unemployment Certificate of Good Standing
  11. Wyoming Workers Compensation Certificate of Good Standing
  12. Change Orders
  13. Blueprints
  14. Notice to Proceed
  15. Form of Bid

**ARTICLE 8. CLEANING**

- 8.1 CONTRACTOR shall, at his own expenses, at all times keep the premises free from accumulation of debris, waste materials, and rubbish, and at the completion of the work, he shall remove his tools and equipment and all surplus materials, debris, waste material, and rubbish and shall leave the premises in a neat and clean condition. If CONTRACTOR does not attend to such cleaning immediately upon request, OWNER shall have the right to have this work done by others and deduct the cost therefore from the payment due CONTRACTOR hereunder.

**ARTICLE 9. CONTRACTOR'S FAILURE TO PROSECUTE WORK.**

- 9.1 Should CONTRACTOR neglect to prosecute the work properly, or fail to perform any provision of the Contract, the OWNER after seven days written notice to the CONTRACTOR, may, without prejudice to any other remedy it may have, make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due CONTRACTOR or, at its option, may

terminate the Contract. If the unpaid balance of the contract price exceeds the expense of finishing the work, such excess shall be to CONTRACTOR, but if such expense exceeds such unpaid balance, CONTRACTOR shall pay the difference to the OWNER.

#### **ARTICLE 10. DEFECTIVE WORK**

10.1 No payment, in whole or in part, shall be deemed a waiver of any defect in materials or workmanship, and the OWNER reserves the right to withhold payment pending inspection of the work performed by CONTRACTOR. Notwithstanding payment by OWNER of the sums due hereunder or failure of the OWNER to discover or reject defective material and workmanship, the CONTRACTOR shall re-execute any work that fails to conform to the requirements of the contract and that appears during the progress of the work and shall remedy any defects due to faulty materials or workmanship which appear within a period of one year from the date of completion of the contract. The provisions of this article apply to work done by subcontractors as well as work done by direct employees of the CONTRACTOR.

#### **ARTICLE 11. INDEPENDENT CONTRACTOR**

11.1 CONTRACTOR shall at all time be an INDEPENDENT CONTRACTOR in performing the work under this Contract including any additions thereon and shall furnish all supervision and direction required to complete the work.

11.2 The CONTRACTOR is responsible for all state and federal taxes on payments earned under the agreement and on the earnings paid to any workers hired by the CONTRACTOR.

#### **ARTICLE 12. ASSIGNMENT AND SUBCONTRACTS**

12.1 The CONTRACTOR shall not assign his interest in this contract nor sublet nor subcontract any portion of the work. The CONTRACTOR agrees to bind every subcontractor approved by the OWNER to all of the terms and conditions of this agreement. The CONTRACTOR agrees that he is fully responsible to the OWNER for the acts and omissions of his subcontractor, as CONTRACTOR is for the acts and omissions of himself and of persons directly employed by him.

#### **ARTICLE 13. INDEMNIFICATION**

13.1 CONTRACTOR agrees to indemnify and save harmless OWNER, and any of its affiliated companies from and against all claims, demands, liabilities, suits, judgments and decrees, losses and costs and/or expenses of any kind or nature whatsoever on account of injuries to or death of any person or persons or damage to any property occurring directly or indirectly from the performance of work hereunder by CONTRACTOR or his employees, agents, servants, associates or subcontractors however such injuries or death or damage to property may be caused.

#### **ARTICLE 14. WAIVER OF CLAIMS, LIENS, ETC.**

14.1 CONTRACTOR, individually and on behalf of his subcontractors, materialmen and workers hereby waives and agrees to indemnify and save harmless the OWNER from all attachments, claims, and liens against OWNER and OWNER's property by reason of labor or materials or both, furnished under this CONTRACT.

#### **ARTICLE 15. MISCELLANEOUS**

- 15.1 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 15.2 OWNER and CONTRACTOR acknowledge that this Agreement is subject to the "Preference for State Laborers" as provided in Wyoming Statute per Wyoming Statute § 16-6-203 et.seq. Said Statute requires, in part, that "Wyoming labor be used except other laborers may be used when Wyoming laborers are not available for the employment from within the state or are not qualified to perform the work involved." CONTRACTOR, by signing this Agreement, specifically acknowledges the requirements of Wyoming Statute § 16-6-203 and pursuant to said statute, CONTRACTOR agrees that it shall use Wyoming laborers as required.

**ARTICLE 16. LIQUIDATED DAMAGES**

- 16.1 The OWNER and CONTRACTOR recognize that time is of the essence in this AGREEMENT. OWNER and CONTRACTOR agree that, as liquidated damages for delay, the CONTRACTOR shall pay the OWNER Five hundred (\$500) for each day that expires after the time specified for final completion.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this **AGREEMENT** in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR.

This **AGREEMENT** will be effective on April 24, , 2013.

**CONTRACTOR** Powder River Heating & Air Conditioning, Inc.

By *Kevin Magnuson*

Title CORPORATE SECRETARY

Attest *Lisa Wilcox*

**OWNER** Campbell County School District No. 1

By *Ally S.*

Title District Representative -

Attest *Maddene Yachning*

**WYOMING SCHOOL FACILITY DEPARTMENT**  
Approval to form and as a third-party beneficiary

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School Facilities Department