



**Request for Proposal:**

**Job Order Contract Services**

**RFP No. 23-2446**

**Lake Washington School District  
February 27, 2023**

**Responses Due: March 16, 2023**

## Job Order Contract Services

### 1.0 Introduction

The Lake Washington School District intends to deliver a Job Order Contract (JOC) to create a collaborative, informed and efficient delivery process. The collective team of LWSD, the contractor, subcontractors, and sub-consultants will share the common goals of cost effectiveness, efficiency, and predictable completion. The successful Job Order Contractor is expected to:

- Embrace an integrated project team model together with LWSD, the contractor, specialty consultants, and key subcontractors all focused on the best interest of the project.
- Provide high quality pre-construction consulting services including accurate cost estimating, detailed scheduling, constructability, phasing, logistics, collaboration with the design consultants, and assistance in the selection of materials.
- Identify and lead the process of evaluating and making decisions regarding the bundling and sequencing opportunities between the sites.
- Assist LWSD in establishing and achieving high performance design and construction goals including the delivery of safe and effective security systems.
- Develop strategic procurement plans to maximize competition for materials and subcontracts.
- Solicit and manage subcontractor and supplier bidding to obtain competitive pricing from high quality subcontractors and vendors.
- Provide high quality construction services to deliver a quality project, safely, on time and under budget.
- Provide robust training for LWSD maintenance and custodial staff members including documentation.
- Provide thorough project closeout services planned well in advance.

### 2.0 General Information

- All proposals are subject to RCW 39.10.470
- The LWSD guarantees the minimum contracted amount committed to the selected contractor will be \$100,000.00 per year.
- The annual maximum dollar amount that can be awarded under this job order contract is four million dollars per year for a maximum of three years. Any unused capacity from the previous year may be carried over for one year and added to the immediate following year's limit. The maximum annual volume including unused capacity shall not exceed the limit of two years.
- The maximum dollar amount that can be issued in a single purchase order is \$500,000.00, excluding

Washington State Sales & Use Tax.

- No more than twenty percent of the dollar value of a work order may consist of items of work not contained in the unit price books. (UPB)
- The initial contract term for this job order contract will not exceed two years. When the initial contract comes to term, there may be an option to extend the contract for an additional year, with the maximum number of extensions being limited to one (maximum contract term is 3 years). All unit price coefficients shall remain constant throughout the duration of the contract and any potential contract extensions. Unit price coefficients shall be applied to the unit prices derived from the “Bare Cost Total” column within the RS Means Data.
- The job order contractor shall publish notification of intent to perform public works projects at the beginning of each contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated.
- The contract will be awarded in the form of LWSD's Contract for Job Order Contracting.
- Pursuant to RCW 39.10.440(4), at least 90% of the work contained in a job order contract must be subcontracted to entities other than the job order contractor. The successful job order contractor will not be allowed to self-perform more than 10% of the direct construction work with their own personnel. The job order contractor must distribute contracts as equitably as possible among qualified and available subcontractors including certified minority and woman-owned subcontractors to the extent permitted by law as demonstrated on the subcontractor and supplier project submission and shall limit subcontractor bonding requirements to the greatest extent possible.
- Job order contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued. Prevailing wage rates shall be determined based on the geographical area that the work is to be performed in and are set by the Department of Labor and Industries.
- For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each work order issued shall be treated as a separate contract. The alternate filing provisions of RCW 39.12.040(2) apply to each work order that otherwise meets the eligibility requirements of RCW 39.12.040(2).
- Any new stand-alone permanent structure constructed under work order shall not exceed three thousand gross square feet.
- LWSD, pursuant to state law, may issue no work orders until it has approved, in consultation with the Office of Minority and Women’s Business Enterprises or the equivalent local agency, a plan prepared by the job order contractor that equitably spreads certified women and minority business enterprise subcontracting opportunities, to the extent permitted by the Washington State Civil Rights Act, RCW 49.60.400, among the various subcontract disciplines.
- Any work order over \$350,000.00, excluding Washington State Sales & Use Tax, and including over 600 single trade hours shall utilize a state registered apprenticeship program for that single trade in

accordance with RCW 39.04.320. However, LWSD may adjust this requirement for a specific work order for the following reasons: (a) The demonstrated lack of availability of apprentices in specific geographic areas; (b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation; (c) Participating contractors have demonstrated a good faith effort to comply with the requirements of RCW 39.04.300 and 39.04.310; or (d) Other criteria LWSD deems appropriate.

### 3.0 Contractor Requirements

The successful contractor will be expected to meet the following qualifications:

- Contractor shall have direct access to the tools and test equipment required to complete the work as defined herein. The contractor shall employ certified technicians skilled in the maintenance of the access control and intrusion detection system.
- The contractor's primary office shall be located within 100 miles of the project sites.

Please see Sections 9 and 14 for scoring criteria associated with this section and for direction on how to address these required qualifications.

### 4.0 Procurement Approach

Ensuring the safety of the LWSD students and staff is of top priority and therefore is time sensitive. Because of the time sensitive nature of this project, it has been determined that Job Order Contracting will benefit the public and student body by effectively reducing lead times and bypassing the time-consuming aspects of the traditional public works process. This enables the school district to promptly implement new security measures for the safety of the students and staff.

LWSD intends to award a contract (or contracts) for JOC services utilizing a three-step competitive selection process to procure the highest qualified contractor with the strongest management team at market competitive fees.

- Step 1: Contractor Qualification Proposals as set forth in Section 6 of this RFP and evaluated in accordance with the criteria in Section 14. LWSD will short-list firms for interviews to further evaluate proposer qualifications against LWSD criteria.
- Step 2: Extended interviews of short-listed firms. This may include jobsite and/or office visits as well as extended interviews with LWSD selection committee members. Following interviews, the selection committee may adjust Proposal scores for any or all short-listed proposers based on information gained during site visits and/or interviews.
- Step 3: Request for Price Coefficients. Based on the evaluations of interviews, the most highly qualified teams will be invited to submit final composite bid coefficients for pricing.
- The firm or firms with the highest total score for qualifications and final proposal will be selected to provide JOC services.

All costs incurred in this RFP process shall be borne by the proposing firms. LWSD may select multiple contractors as part of this procurement.

## 5.0 Anticipated Schedule

### 5.01 Selection of Job Order Contractor

RFP Advertisement (1)	Monday, February 27, 2023
RFP Advertisement (2)	Monday, March 6, 2023
Questions Due	Friday, March 10, 2023
Responses Due	Thursday, March 16, 2023
Notify JOC Finalists	Wednesday, March 22, 2023
Interviews	Tuesday, March 28, 2023
Issue Request for Coefficients	Wednesday, March 29, 2023
Coefficient Proposals Due and JOC Award	Monday, April 3, 2023
Contract Execution	Monday, April 17, 2023

### 5.02 Work Schedule

- It will not be permissible for the contractor to be working on site while school is in session, however, work hour exceptions may be approved by the District on a specific work order basis. “Hours of non-operation” includes but are not limited to nights, holiday breaks, weekends, and summer breaks.
- The LWSD 2022-2024 school calendars can be found at this link: <https://www.lwsd.org/about-us/district-calendar>

## 6.0 Scope of Work

The JOC Contract awarded under this solicitation may be utilized at any of the Lake Washington School District sites. This is a fixed price, indefinite quantity type contract for the performance of a broad range of construction services to include minor construction repair, renovations, alterations, and maintenance projects on an as-needed basis as may be required and requested. The specific work requirements will be identified in Work Orders to be issued by the School District.

## 7.0 Selection and Award Process

LWSD will be contracting for JOC services based on a combination of qualifications and Unit Price Bid Coefficients as described below:

- 7.01 All firms submitting proposals will be ranked based on the evaluation criteria set forth in Section 14 of these instructions. The highest ranked firms will be invited to extended interviews including possible site and/or office visits. LWSD is not bound by any particular number of firms selected for interviews.
- 7.02 Interviews and possible site visits may be held to further evaluate proposer qualifications against the evaluation criteria detailed in Section 14 of these instructions. Qualification scoring may be adjusted by the Selection Committee following interviews based on the information gathered during interviews.
- 7.03 Following interviews, LWSD may reduce the number of firms further and solicit a Request for Coefficients from one or more firms specifying the unit price Coefficients that the contractor plans to use for duration of the contract.

- 7.04 The successful proposer or proposers will be scored based on the highest combination of scores for Qualifications, Interviews, and composite bid coefficients.
- 7.05 Approval of the Board of Directors of the Lake Washington School District is required prior to the execution of contract documents.

## 8.0 Qualification Proposal (100 pts)

Respond to each of the items set forth below in a clear and concise manner. Responses must be in the same order as listed, clearly separated with tabs and labeled by response. Pay attention to specific requests for information. The submittals shall be organized in a manner that will enable the JOC selection committee to quickly assess pertinent information. The submittal shall be bound in 8-1/2" x 11" format; three (3) signed hard copies are required. The submittals shall be tabbed according to this section. Please limit submittals to 10 double-sided pages maximum excluding tabs.

Please address any questions related to this RFP to Laura DeGooyer via email [ldegooyer@lwsd.org](mailto:ldegooyer@lwsd.org) and [construction@lwsd.org](mailto:construction@lwsd.org). No phone calls will be accepted. Nor is any applicant to contact any architects or OAC Services staff. Any questions received will be answered by distribution to all applicants. All questions are due March 10, 2023.

Submit Proposals by 2:00 P.M. PST Thursday, March 16, 2023:

To: Laura DeGooyer  
Capital Program Manager  
Lake Washington School District - Support Services Center  
15212 NE 95th St, Second Floor  
Redmond, WA 98052

### 8.01 Letter of Interest: (0 points)

The letter of interest should not be more than two (2) pages and may contain any information not shown elsewhere in the submittals.

### 8.02 Contractor Requirements (25 points)

Describe how your firm meets each of the previously defined contractor requirements set forth in this RFP in Section 3.0. If the perspective contractor does not meet one or more of these requirements, the contractor shall receive no points allocated to this section.

### 8.03 Staff Qualifications (25 points)

8.03.1 Provide an organizational chart and a staffing plan (in narrative form) showing proposed staff, reporting relationships and key responsibilities for each staff member. Describe roles and responsibilities for pre-construction and construction phase services. At a minimum include information for the following staff members: the principal-in-charge or corporate executive with signatory authority, project manager, and superintendent.

Clearly identify the key individual(s) who will provide a leadership role for the project(s) and be the day-to-day contact for LWSD. Demonstrate how each individual has accomplished a similar role on other projects. All staff members proposed shall be available throughout the term and not changed without consent from LWSD.

8.03.2 Provide a resume for each proposed staff member, include profiles of the last 5 relevant projects, employment history, education, and personal references. Clearly state years of industry experience and years of employment at proposing firm.

8.04 Firm Capacity (15 points)

8.04.1 Describe the types of projects or services the firm generally performs and the relative dollar value of each type. Provide the firm's bonding capacity and state the ability of the firm to bond your proposed projects. List the name, contact person, and telephone number of the firm's bonding agent, and include a statement from the bonding agent committing to bond the proposed projects.

8.04.2 Provide a visual summary of your firm's targeted revenue and confirmed contract through 2025. Display how this Job Order Contract fits with your future staffing plan and projected workloads exterior to this contract and associated projects.

8.04.3 Provide profiles of five (5) successfully completed relevant projects where (a) the basis of compensation was a negotiated price for either public or private customers, and/or (b) was a K12 education project, regardless of whether the project was JOC or design- bid-build. For each project provide the duration of construction, initial price, the final price, references from the owner (include the person who is familiar with your firm's performance) and note if any of the individuals named in your project team participated as members of the project team for the listed project.

8.05 Project Management (25 points)

8.05.1 The project's funding is limited and obtaining competitive subcontractor and supplier pricing is critical to successful delivery. Layout your strategy and approach to attract subcontractor interest in this project and obtain cost competitive pricing in this busy local market. How will you ensure equitable competition amongst subcontractors for this Job Order Contract? Layout how you plan to address situations in which subcontractors are either behind schedule or are not in conformance with the project requirements. How will you coordinate with other school projects in the market including other LWSD projects?

8.05.2 Provide your firm's plan to manage the JOC contract. Present your firm's plan for identifying, selecting, managing, and assisting subcontractors.

8.05.3 Describe how your firm handles unsatisfactory subcontractor performance.

8.05.4 What tools and techniques your firm will use to ensure these projects are to remain on schedule and under budget. If your firm has experience with managing budgets for other projects and clients, provide examples of how your firm managed the budget associated with each of those projects.

8.06 Accident Prevention and Safety Program (10 points)

8.06.1 Provide a summary of your team’s accident prevention program and submit your team’s EMR and OSHA (WISHA) Lost Time Accident Rate for the past five (5) years.

8.06.2 Provide a record of claims, litigation, or arbitration matters initiated by your firm or against your firm (in which you were a named party), for the last five years. List the name of the project, the date of litigation, arbitration or mediation, the amount of the settlement, award, or judgment, and identify your involvement, i.e. defendant or plaintiff.

8.06.3 Provide a record of complaints filed against your firm by regulatory agencies (e.g., OSHA, L&I, WSHA, WDFW, WDOE, County regulators, etc.) for the last five years. List the name of the project, the date of complaint, the amount of the settlement and identify your involvement, i.e. defendant, plaintiff, etc.

## 9.0 Interviews (100 pts)

The most highly ranked firms submitting proposals will be invited for extended interviews to assist LWSD in determining the proposers with the strongest management teams, relevant experience and project approach including their leadership and communication skills. LWSD is not bound by any particular number of firms selected for interviews. LWSD may visit jobsites and offices and hold a formal interview at LWSD offices.

Should your firm be invited to interview, questions will be directed to the proposed key project staff. At a minimum, a corporate executive, the project manager, and superintendent shall be in attendance. In addition to presenting qualifications, experience, and the project team’s approach to the project, the interviewees will be expected to respond to questions from the panel regarding the firm’s proposal as well as additional questions that might be posed in correspondence directed to the most qualified proposers after this solicitation is closed.

## 10.0 Bid Coefficients Proposal

Following interviews, LWSD may at its sole discretion invite selected firms to submit Unit Price Coefficient Proposals. If a Unit Price Coefficient Proposal is requested, the firm will be required to submit two amounts on a form to be provided by LWSD (see attachment A). The first number shall be for the “Standard Coefficient (normal working hours)”, and the second shall be for the “Non-Standard Coefficient (Non-standard working hours).

10.1 State your two bid coefficients as numerical values in the spaces designated. For the purposes of evaluation, the LWSD anticipates that 50% of the work performed during normal working hours, and 50% of the work will be performed during non-standard working hours. Pursuant to RCW 39.10.430 the bid coefficient is intended to cover all Contractor and Subcontractor overhead, profit and markup including:

- Insurance, bonds and indemnification
- Supervision
- Project management
- Site superintendence
- Office management and equipment
- Business risks such as a lower-than-expected volume of work, smaller-than-anticipated job orders and material cost fluctuations
- Regulatory compliance, including permitting and reporting



- Security requirements
- Vehicles and gas
- Chemical toilets
- Gang boxes
- Storage containers

10.2 Normal working hours are defined as hours that are worked between the times of 7 am and 5 pm Mon – Friday. Non-standard hours are defined as any hours of work that are not performed during the normal working hours previously defined.

10.3 After the sum of points has been calculated (line three in this section), the composite bid coefficients will be calculated for each perspective contracting firm that has been invited to submit a Bid Coefficient Proposal. The composite bid coefficients will be calculated by taking the contractors bid coefficients, multiply them by the LWSD’s anticipated percent of the work to be performed under normal working hours and non-standard working hours, and by summing up the resulting products. Each firm’s total points will then be divided by the composite bid coefficient calculated. See example located in section 10.04 to view an example of how this process will be performed.

10.4 Example Calculation of composite bid coefficients:

Classification of Work Hours	LWSD's Std/Non-Std Multiplier	Contractors Bid Coefficient	Calculated Weighted Coef
Standard	0.5	a	0.5*a
Non-Standard	0.5	b	0.5*b
Composite Coefficient			0.5*a + 0.5*b

10.5 For each work order, the total sum that is paid to the contractor will be calculated by multiplying the “Bare Total” value for the specified material item by the quantity of the item required, the designated city cost index, and the bid coefficient.

$$\begin{aligned}
 & \textit{Total Contractors Compensation} \\
 & = \textit{Material bare total costs from RSMeans} * \textit{Quantities of materials} \\
 & * \textit{City Cost Index} * \textit{Contractors bid coefficients}
 \end{aligned}$$

10.6 No other entries, modifications, or qualifications should be made to the proposal. LWSD reserves the right to reject any or all proposals, and to waive informalities or non-material irregularities in the proposals received.

10.7 The name, address, and contractor registration number of proposer shall be typed or printed on the bid in the space provided. The name must match the name on the proposal guarantee.

10.8 Proposals must be signed and submitted on the forms furnished by LWSD or on copies of those forms.

10.9 Firms shall submit proposals in the format provided in the proposal form. Only the amounts and information asked for in the proposal form will be considered as the proposal.

## 11.0 Contractors Registration

All proposers must be registered by the Washington State Department of Labor and Industries in accordance with RCW 18.27.020 and have active status at the time of submission.

## 12.0 DBE/MWBE Outreach

LWSD encourages proposals from disadvantaged, women and minority business enterprises and outreach to these organizations as part of subcontractor bid packages on this project.

## 13.0 Evaluation Criteria

All proposals received will be reviewed by an evaluation committee assembled by LWSD in accordance with the criteria defined below. The points assigned demonstrate the relative weight LWSD assigns to each category. All proposers will be given the opportunity to view submittal documents, completed score sheets and other documents following the award of a job order services contract. Proposal scoring will be added to interview scoring and will be divided by the calculated composite coefficient. The firm with the highest final score will be awarded the job order services contract for the LWSD security system enhancements project.

### 13.01 Qualification Proposal Scoring Criteria

13.1.1	Contractor Requirements	maximum of 25 points
13.1.2	Staff Qualifications	maximum of 25 points
13.1.3	Firm Capacity	maximum of 15 points
13.1.4	Project Management	maximum of 25 points
13.1.5	<u>Accident Prevention, Safety and Claims</u>	<u>maximum of 10 points</u>
	Total RFP Points Possible	maximum of 100 points

### 13.02 Interview

The selection committee will review all conforming proposals received in response to this RFP and based upon the results of their scoring per section 13.01, will invite a reduced number of firms to interview. The focus of the interview is to determine the relative strength of the firms' proposed staff members and other factors supporting successful project delivery. The interview will be based on the same criteria as the Proposal and scored per section 13.01 and scored separately, maximum possible interview points is 100 points.

### 13.03 Bid Coefficients Proposal

The firms the selection committee believes to be most qualified based upon the interviews and site visits will be requested to submit sealed proposals for Unit Price Coefficients. Qualified contractors will submit sealed proposals for Unit Price Coefficients in person at the time and location specified in this RFP. At such time, all bid coefficient proposals will be opened, and final firm scores will be calculated as follows:

$$\text{Final Awarded points} = \frac{\text{Qualifications Proposal Points} + \text{Interview Points}}{\text{Composite Coefficient}}$$

Note: The JOC firm or firms earning the highest final score will be selected for LWSD job order contracting services.

LWSD reserves the right to waive any informalities or irregularities in any submittal.

## 14.0 Protest Procedures

Firms that submitted Fee Proposals but were not selected as the highest scoring proposer may file a protest with the LWSD within ten (10) business days of LWSD's notification of results. Any such protest shall include the following:

### 14.01 Time for Protest

Per RCW 39.10.430(5) the JOC teams not selected shall have ten business days from notification to submit a protest. Pursuant to statutory requirements, the District will not execute the contract with the winning team until two business days after the final protest decision is transmitted to the protestor.

### 14.02 Form of Protest

In order to be considered, a protest shall be in writing, and addressed to Brian Buck, Executive Director, Support Services, Lake Washington School District, 15212 NE 95th Street, Redmond WA 98052. It shall be the sole responsibility of the firm submitting the protest to ensure the timely delivery of such protest. The protest shall include the following:

- The name, address, and phone number of the applicant protesting, or the authorized representative of the applicant submitting the proposal;
- The name of the project for which the protest is submitted;
- A detailed description of the specific grounds for the protest and any supporting documentation. It is the responsibility of the protesting applicant to supplement its protest with any subsequently discovered documents prior to review and decision; and
- The specific ruling or relief requested.

### 14.03 Format of Protest

Upon receipt of a timely written protest, the LWSD shall take appropriate measures to investigate the protest and shall respond in writing to the protestor. Per the RCW, contracts cannot be executed for a period of two days following notification of the determination of the protest. The decision of the LWSD shall be final.

**Notice: Prospective proposers are instructed not to contact any LWSD staff, faculty, students or consultants connected with the project in regard to this solicitation. This prohibition includes but is not limited to OAC Services and its sub consultants. Prospective proposers are asked to not visit the site other than the scheduled pre-proposal meeting and site tour. All questions regarding this Request for Qualifications shall be submitted via email as described above.**

## 15.0 Job Order Contract

Attached is a draft of the Lake Washington School District Job Order Contract.

**FORM A**

**Unit Price Coefficient Bid Form**

It is required that all firms who are invited to submit a bid coefficients proposal complete this form in its entirety and submit this form on the pre-determined submittal date. Should the prospective firm fail to submit this form, the firm will be declared non-responsive and will not be considered for further evaluation.

The initial JOC term is two years, with the optional extension for an additional year. Unit Price Coefficients will remain constant throughout the entirety of this contract and any additional extensions should they occur. No Annual adjustments shall be made to the Unit Price Coefficients proposed in this document.

Pursuant to and in compliance with the RFP, Instructions to Bidders, drawings and other documents relating thereto, the undersigned Bidder hereby proposes to supply all material and perform all Work on the terms and conditions herein contained and as follows:

**Please enter your firm's bid Unit Price Coefficients to be used for the duration of this contract:**

**A. Standard Coefficient (normal working hours):** \_\_\_\_\_

**B. Non-Standard Coefficient (non-standard working hours):** \_\_\_\_\_

ADDENDA

Receipt of Addenda Number(s) \_\_\_\_\_ is hereby acknowledged. (Bidders must complete the blank to acknowledge receipt of all addenda.) The provisions therein have been included in the Base Bid.

The party by whom this bid is submitted and with whom the contract will be entered into in case the award is made to the party is a(n):

- Corporation
- Partnership
- Joint Venture
- Individual or Sole Proprietorship
- Limited Liability Company

To which address notice of acceptance should be mailed or delivered.

ACKNOWLEDGEMENT

The undersigned acknowledges that he/she has read and understands the Equal Employment Compliance Statement:

SIGNATURES (To be completed for all bids)

_____	_____
LEGAL NAME OF PERSON OR ENTITY SUBMITTING BID	ADDRESS
_____	_____
AUTHORIZED SIGNATURE	CITY, STATE AND ZIP
_____	_____
NAME PRINTED OR TYPED	TELEPHONE/FAX
_____	_____
TITLE	E-MAIL ADDRESS
_____	_____
WASHINGTON STATE CONTRACTORS NUMBER	EXPIRATION DATE
_____	_____
WASHINGTON STATE CONTRACTOR UBI NUMBER	EXPIRATION DATE

CONTRACT

BETWEEN

LAKE WASHINGTON SCHOOL DISTRICT NO. 414

AND

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FOR

JOB ORDER CONTRACTING

JOB ORDER CONTRACT GENERAL CONDITIONS  
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## JOB ORDER CONTRACT

THIS CONTRACT, entered into and made effective the \_\_\_\_\_ day of March, 2020, by and between LAKE WASHINGTON SCHOOL DISTRICT NO. 414, a Washington municipal corporation (hereinafter referred to as Owner), and LINCOLN CONSTRUCTION, INC., a Washington corporation with offices at 21323 Mountain Hwy E., Spanaway, Washington 98387 (hereinafter referred to as Job Order Contractor).

WITNESSETH:

THAT IN CONSIDERATION of the mutual promises and covenants hereinafter contained in this Contract by these presents do agree, as follows:

### JOB ORDER CONTRACT GENERAL CONDITIONS

#### ARTICLE 1 DEFINITIONS

1.1 **"AIA Masterspec"** is the industry-standard master specification system recommended for architectural, engineering, and construction/building specifications.

1.2 **"Affidavit of Wages Paid"** means the form for Public Works contracts, including Job Order Contracts, requiring that each and every employer on the project file with the Washington State Department of Labor and Industries affirming that prevailing wages have been paid under the requirements of RCW 39.12.

1.3 **"Application for Payment"** means a written request submitted by Contractor to the Owner, for payment of Work completed in accordance with the Contract Documents and approved Job Order, supported by such substantiating data as Owner may require.

1.4 **"Architect," "Engineer," or "A/E"** means a person or entity lawfully entitled to practice architecture or engineering, representing Owner within the limits of its delegated authority. In cases where no outside Architect, Engineer, or A/E is associated with specific Work or Job Order, the Owner's representative will act instead.

1.5 **"Change Order"** means a written instrument signed by Owner and Contractor stating their agreement upon all of the following, for the Contract or for an individual Job Order: (1) a change in the Work; (2) the amount of the adjustment in the Sum, if any; and (3) the extent of the adjustment in the Time, if any.

1.6 **"Claim"** means Contractor's exclusive remedy for resolving disputes with the Owner regarding the terms of a Change Order, as more fully set forth in Article 25.

1.7 **"Collusion"** means an agreement between two or more persons to defraud persons or institutions of their legal rights, or to obtain an object forbidden by law.

1.8 **"Contingency"** means an event that may occur in the future, especially a problem, emergency, or expense that might arise unexpectedly, needs to be dealt with, and therefore must be prepared for.

1.9 **"Contract"** is the **"Job Order Contract"** as defined below in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated definitive Job Orders.

1.10 **"Contract Award Amount"** is the "Minimum Committed Amount" and is the minimum dollar amount of total Job Orders that the Owner commits to spending.

1.11 **"Contract Documents"** means the Job Order Contract Services Request For Proposal, Instructions for Bidders, if any, completed Proposal Submission or Bid Form for Job Order Contract, Job Orders, General Conditions, Job Order Contract, Change Orders, and any Addenda issued.

1.12 **"Job Order Sum "** is the total amount payable by Owner to Contractor for performance of the Work in accordance with the Contract Documents, including the Contract Award Amount and any amount for Job Orders that is above the Contract Award Amount, including all taxes imposed by law and properly chargeable to the Work, except Washington State sales tax.

1.13 **"Job Order Time"** is a number of calendar days allotted in the Job Order for achieving Substantial Completion of the Job Order.

1.14 **"Contractor"** (also **"Job Order Contractor"**) means the person or entity awarded the Job Order Contract who has agreed with Owner to perform Work in accordance with specific Job Orders, associated Project Documents, and the Contract Documents. Pursuant to RCW 39.06, Contractor must verify responsibility criteria for each first tier subcontractor, and verify that each meets responsibility criteria listed in RCW 39.04.350(1) and other requirements in that section and Contractor shall be registered or licensed as required by the laws of the state of Washington, including but not limited to RCW 18.27.

1.15 **"Coefficient"** also known as **"Cost Coefficient Multiplier"** is the Contractor's competitively bid price adjustment to the unit prices as published in the Unit Price Book (e.g. .95 or 1.10) applied to pre-described and pre-priced tasks contained in the Unit Price Book (UPB). The "Standard Coefficient" is for Work that is conducted during normal working hours (7:00AM to 5:00PM, Monday through Friday) and the "Non-standard Coefficient" is for Work that occurs during other than normal working hours (5:00PM to 7:00AM, Monday through Friday, weekends and holidays).

1.16 **"Drawings"** are the graphic and pictorial portions of the Job Order Proposal showing the design, location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.

1.17 **"Final Acceptance"** means the written acceptance associated with a Job Order issued to Contractor by Owner after Contractor has completed the requirements of the Project Documents.

1.18 **"Final Completion"** means that the Work is fully and finally completed in accordance with the Job Order.

1.19 **"Force Majeure"** means those acts entitling Contractor to request an adjustment in the Job Order Time, as more fully set forth in Article 27.2.

1.20 **"Insurance Certificate"** means that document verifying the policy the Contractor shall purchase from and maintain in a company or companies lawfully authorized and admitted to do business in the State of Washington, possessing the minimum A- Best rating, the financial rating, in the amounts as specified in the General Terms and Conditions, who is reasonably acceptable to the Owner, and shall name the Owner

as additional insured with the additional insured endorsement attached, for Work performed under this Contract.

1.21 **"Intent to Pay Prevailing Wage"** means the form for public works contracts requiring that each and every employer on the project file the Statement of Intent to Pay Prevailing Wages.

1.22 **"Job Order"** is the negotiated and agreed definition of the work to be performed, reflecting the Job Order Request and accepted Job Order Proposal. It is a lump sum, fixed price contract for the agreed upon scope of work.

1.23 **"Job Order Contract"** (JOC) is a contract between the Owner and a licensed contractor in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated definitive Job Orders for public works as defined in RCW 39.10. The Contract and individual Job Orders are further defined and/or limited in location, scope, term, and amounts by the RFP, or Contract Documents, and other requirements included in the JOC General Conditions.

1.24 **"Job Order Proposal"** is a proposal from the Contractor for the Work requested in a Job Order Request including but not limited to: scope, scheduling, drawings, specifications, quantities, dollar amount, submittals and all others as defined in 1.45 below.

1.25 **"Job Order Request"** is a request issued by an Owner to the Contractor for a Job Order Proposal.

1.26 **"MWBE Outreach Plan"** means the Contractor's plan, as required by RCW 39.10.459(5), to equitably spread certified women and minority business enterprise subcontracting opportunities, to the extent permitted by the Washington state civil rights act, RCW 49.60.400, among the various subcontract disciplines..

1.27 **"Notice to Proceed"** means a notice from Owner to Contractor that defines the date on which the Job Order Time on an individual Job Order begins to run.

1.28 **"OSHA Annual Summary"** means the OSHA Annual required report related to incident history including employee time loss and medical history.

1.29 **"Owner"** or **"Lake Washington School District"** means Lake Washington School District No. 414, acting through its authorized representatives with the authority to enter into, administer, and/or terminate the Work in accordance with the Contract Documents and make related determinations and findings.

1.30 **"Partnering"** Owner and Job Order Contractor working in a synergistic way.

1.31 **"Payment and Performance Bond"** means the statutory bonds pursuant to RCW 39.08 that the Contractor shall secure from a surety company acceptable to the Owner, admitted and licensed in the State of Washington, covering the faithful performance of the Contract and payment of all obligations arising thereunder in the form and amount prescribed in the Contract Documents, each in the full amount of the Job Order Sum plus sales tax.

1.32 **"Prevailing Wage"** is the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers, and mechanics. Prevailing wages are established, by the

Department of Labor and Industries, for each trade and occupation employed in the performance of public work. They are established separately for each county, and are reflective of local wage conditions. RCW 39.12.010 and RCW 39.12.015. The Contractor must have received training on the requirements related to public works and prevailing wage under RCW 39.04 and Ch. 39.12 RCW.

1.33 **"Progress Schedule"** means a schedule of the Work, in a form satisfactory to Owner, as further set forth in Article 15.

1.34 **"Proposal"** means a complete, properly signed and formatted offer in response to Lake Washington School District Request for Proposal to enter into a contract for Job Order Contracting services.

1.35 **"Protest of Process"** means the written document filed with Lake Washington School District, giving rise to the protest. The document shall include the name of the protesting Respondent, a detailed description of the specific factual and legal grounds for the protest, copies of all supporting documents, and the specific relief requested

1.36 **"Public Works"** means all work, construction, alteration, repair or improvement that is executed at the cost of the Owner. This includes, but is not limited to, demolition, remodeling, renovation, road construction, building construction, and utilities construction. RCW 39.04.010.

1.37 **"Respondent"** means person or entity who submits a proposal.

1.38 **"Retainage"** is that portion of a government contractor's payment, typically five percent, that is withheld by a government authority until the contract is satisfactorily completed in accordance with the statutory requirements of RCW 60.28.

1.39 **"Specifications"** are that portion of the Job Order and Project Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.40 **"Subcontract"** means a contract entered into between the Job Order Contractor and another contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind for or in connection with the Work.

1.41 **"Subcontractor"** means any entity, other than the Job Order Contractor, who agrees to furnish or furnishes any supplies, materials, equipment, or services of any kind in connection with a Job Order.

1.42 **"Substantial Completion"** means that stage in the progress of a Job Order where Owner has full and unrestricted use and benefit of the facilities for the purposes intended.

1.43 **"Unit Price Book"** shall be the "then current" RS Means *Facilities* Construction Cost Data publication as specified in the RFP containing specific prices to be used in establishing a price for a Job Order.

1.44 **"Weighted Average City Cost Index"** means that section of the "Unit Price Book" applicable to Seattle, Washington that shall be used in calculating the cost of Job Orders.

1.45 **"Work"** means the construction and services required by a Job Order, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and the manufacture and fabrication of components, performed, furnished, or provided in accordance with a Job Order.

## **ARTICLE 2 WORK TO BE PERFORMED**

2.1 In response to Job Orders that may be mutually agreed upon and issued periodically by Owner, Job Order Contractor shall, except as may be specified elsewhere in the Contract, furnish all the Work, including necessary labor, materials, tools, supplies, equipment, transportation, supervision, management, and perform all operations necessary and required for survey, design and construction work which will be defined and further described as to specific project requirements in each Job Order. The Work shall be performed in accordance with the requirements set forth in each Job Order and as further specified in the subsequent section, Contract Pricing Coefficients, and in Scope of Services, both of which are incorporated herein and made a part hereof.

2.2 This Contract embodies the agreement of Owner and Job Order Contractor to terms and conditions which will govern any Work that may be prescribed under a Job Order that may be issued by Owner and agreed to by Job Order Contractor. Nothing herein shall be construed as requiring Owner to issue any Job Order, nor requiring Job Order Contractor to accept same, it being the intent that both parties must mutually agree to any specific Work before a Job Order may be issued.

## **ARTICLE 3 JOB ORDERS**

3.1 Performance of the Work shall be undertaken only upon the issuance of a written Job Order by Owner. Job Orders shall be in accordance with the requirements specified in Scope of Services, and will set forth, with the necessary particularity, the following:

- a. Contract number along with Job Order Contractor's name;
- b. Job Order number and date;
- c. The agreed Work and applicable technical specifications and drawings;
- d. The agreed Job Order Time period of performance and, if required by Owner, a work schedule;
- e. The place of performance;
- f. The agreed total Job Order Sum for the Work to be performed. All Job Orders issued for the same project shall be treated as a single Job Order for purposes of the dollar limit on Job Orders;
- g. Submittal requirements;
- h. Owner's authorized representative who will accept the completed Work;

- i. Signatures by the parties hereto signifying agreement with the specific terms of the Job Order; and
  - j. Such other information as may be necessary to perform the Work.
- 3.2 Job Orders may be amended by Owner in the same manner as they are issued.
- 3.3 Minimum contracted amount committed to Job Order Contractor is \$100,000 per year unless waived by Job Order Contractor. Maximum dollar amount for a Job Order is \$500,000 per RCW 39.10.450(1).
- 3.4 No more than twenty percent (20%) of the dollar value of a Job Order may consist of items of Work not contained in the Unit Price Books (UPB).
- 3.5 Any new stand-alone permanent structure constructed under a Job Order shall not exceed 3,000 gross square feet.
- 3.6 The Owner may issue no Job Orders under a Job Order Contract until it has approved, in consultation with the Office of Minority and Women's Business Enterprises or the equivalent local agency, a plan approved by the Job Order Contractor that equitably spreads certified women and minority business enterprise subcontracting opportunities, to the extent permitted by the Washington State Civil Rights Act, RCW 49.60.400, among the various subcontract disciplines.
- 3.7 Any work order over \$350,000, excluding Washington State Sales and Use Tax, and including over 600 single trade hours shall utilize a state registered apprenticeship program for that single trade in accordance with RCW 39.04.320. The Owner, however, may adjust this requirement for a specific Job Order for the following reasons: (a) The demonstrated lack of availability of apprentices in specific geographic areas; (b) A disproportionately high ratio of material cost to labor hours, which does make feasible the required minimum levels of apprentice participation; (c) Participating contractors have demonstrated a good faith effort to comply with the requirements of RCW 39.04.300 and 39.04.310; or (d) Other criteria the Owner deems appropriate.

#### **ARTICLE 4 SPECIFICATIONS AND DRAWINGS**

- 4.1 Job Order Contractor shall keep on the work site a copy of the drawings and specifications for each active Job Order requiring drawings or specifications and shall at all times give Owner access thereto. Anything mentioned in the specifications and not shown in the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of differences between drawings and specifications, the drawings shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to Owner, who shall promptly make a determination in writing. Any adjustment by Job Order Contractor without such a determination shall be at its own risk and expense. Owner shall furnish from time to time such detail drawings and other information as considered necessary, unless otherwise provided.
- 4.2 Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of Owner is intended and similarly the words

"approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" Owner, unless otherwise expressly stated.

4.3 Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying the Job Order unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."

4.4 Shop drawings means drawings submitted to Owner by Job Order Contractor showing in detail:

- a. The proposed fabrication and assembly of structural elements;
- b. The installation (i.e., form, fit, and attachment details) of materials or equipment; and
- c. The construction and detailing of elements of the Work.

It includes sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Job Order Contractor to explain in detail specific portions of the Work. Owner may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under the Contract.

4.5 Job Order Contractor shall coordinate all shop drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Owner without evidence of Job Order Contractor's approval may be returned for resubmission. Owner will indicate its approval or disapproval of the shop drawings and if not approved as submitted shall indicate Owner's reasons therefor. Any work done before such approval shall be at Job Order Contractor's risk. Approval by Owner shall not relieve Job Order Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of the Contract, except with respect to variations described and approved in accordance with paragraph 4.6 below.

4.6 If shop drawings show variations from the Job Order requirements, Job Order Contractor shall describe such variations in writing, separate from drawings, at the time of submission. If Owner approves any such variation, Owner shall issue an appropriate Contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

4.7 Job Order Contractor shall submit to Owner for approval an appropriate number of copies of all shop drawings as called for under the various headings of the Job Order specifications. Sets of all shop drawings will be retained by Owner and one set will be returned to Job Order Contractor.

4.8 Omissions from the drawings or specifications or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve Job Order Contractor from performing such omitted or mis-described details of the Work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

4.9 Job Order Contractor shall check all Owner-furnished drawings immediately upon receipt and shall promptly notify Owner of any discrepancies. Figures marked on drawings shall be followed in preference to scale measurements. Large scale drawings shall govern small scale drawings. Job Order Contractor

shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors which might have been avoided thereby.

**ARTICLE 5  
USE OF SPECIFICATIONS, DRAWINGS, AND NOTES**

5.1 All drawings (to include as-built drawings), sketches, designs, design data, specifications, notebooks, technical and scientific data provided to Job Order Contractor or developed by Job Order Contractor pursuant to the Contract and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the Work or any part thereof, shall be the property of Owner and may be used by Owner without any claim by Job Order Contractor for additional compensation, unless such material developed by Job Order Contractor does not result in an issued Job Order. In such cases, Job Order Contractor will receive reasonable reimbursement for the development of such materials before Owner uses them in any manner whatsoever. In addition, Owner agrees to hold Job Order Contractor harmless to the extent permitted by law from any legal liability arising out of the Owner's use of such materials.

**ARTICLE 6  
PERMITS AND RESPONSIBILITIES**

6.1 Job Order Contractor shall be responsible for processing of drawings (unless otherwise notified by Owner) for approval by appropriate oversight bodies; for obtaining any necessary licenses and permits; and, for complying with any federal, state, and municipal laws, codes, and regulations applicable to the performance of the Work. Owner will reimburse Job Order Contractor for the actual, documented costs of construction permits required for the performance of the Work. Job Order Contractor shall also be responsible for all damages to persons or property that occur as a result of Job Order Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, and workers, the public, and the property of others. Job Order Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire Work, except for any completed unit of Work which may have been accepted under the contract, unless otherwise directed by Owner.

**ARTICLE 7  
MATERIAL AND WORKMANSHIP**

7.1 All equipment, material, and articles incorporated in the Work covered by this Contract shall be new of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract. References in the specifications to equipment, material, article, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Job Order Contractor may, at its option, use any equipment, material, article, or process that is equal to that named in the specifications so long as the Contractor has received prior written approval of the Owner to do so. Final determination of the suitability and acceptability of any such equipment, material, article, or process shall be the sole judgment of the Owner.

7.2 Job Order Contractor shall obtain Owner's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, Job Order Contractor shall furnish to Owner the name of the manufacturer, the model number, and other information concerning the



performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by the Contract or by Owner, Job Order Contractor shall also obtain Owner's approval of the material or articles which Job Order Contractor contemplates incorporating into the Work. When requesting approval, Job Order Contractor shall provide full information concerning the material or articles. When directed to do so, Job Order Contractor shall submit samples for approval. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

7.3 Job order Contractor shall supervise and direct the Work, using its best skill and attention, and shall perform the Work in a skillful manner. Job Order Contractor shall be solely responsible and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, unless the Job Order gives other specific instructions concerning these matters. Job Order Contractor shall disclose its means and methods of construction when requested by Owner.

7.4 At all times during the performance of a Job Order and until the Work is completed and accepted, Job Order Contractor shall directly superintend the Work or assign and have on the site a competent superintendent who is satisfactory to Owner and has authority to act for Job Order Contractor. Owner may require Job Order Contractor to remove the superintendent from the Work, if Owner reasonably deems the superintendent incompetent, careless, or otherwise objectionable, provided Owner has first notified Job Order Contractor in writing and allowed a reasonable period for transition. Failure by the superintendent to maintain and submit required daily reports may be grounds for Owner to request removal of the superintendent. Daily report shall be turned in if working on punch list. Daily reports will include hours worked.

7.5 Job Order Contractor shall enforce strict discipline and good order among all of the Job Order Contractor's employees and other persons performing the Work. Job Order Contractor shall not permit employment of persons not skilled in tasks assigned to them. Job Order Contractor's employees shall at all times conduct business in a manner which assures fair, equal, and nondiscriminatory treatment of all persons. Owner may, by written notice, request Job Order Contractor to remove from the Work or Project site any employee Owner reasonably deems incompetent, careless, or otherwise objectionable.

## **ARTICLE 8 TESTING OF MATERIALS**

8.1 Unless otherwise specified in a Job Order, the Job Order Contractor shall be responsible for any required testing of materials prior to incorporation into the Work.

## **ARTICLE 9 LAYOUT OF WORK**

9.1 Job Order Contractor shall lay out its Work in accordance with the Job Order plans and specifications and shall be responsible for all measurements in connection with the layout of the Work. Job Order Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. Job Order Contractor shall also be responsible for maintaining and preserving all control points established by Owner.

**ARTICLE 10**  
**SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK**

10.1 Job Order Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to:

- a. Conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. The availability of labor, water, electric power, and roads;
- c. Uncertainties of physical conditions at the site;
- d. The conformation and conditions of the ground; and
- e. The character of equipment and facilities needed preliminary to and during work performance.

10.2 Job Order Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Owner, as well as from the Job Order drawings and specifications made a part of this Contract.

**ARTICLE 11**  
**DIFFERING SITE CONDITIONS**

11.1 Job Order Contractor shall promptly, and before the conditions are disturbed, give a written notice to Owner of:

- a. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Job Order and Project Documents; or
- b. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Job Order.
- c. If Job Order Contractor encounters mold in the course of its Work, it shall notify Owner to evaluate what action might be necessary. Job Order Contractor shall ensure that all building materials used during the Work are dry prior to incorporation into the Work. If Job Order Contractor encounters water intrusion from any source, it shall take immediate steps to ensure that any affected material is dry according to generally accepted industry standards.

11.2 Owner shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Job Order Contractor's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an adjustment shall be made and the Job Order modified in writing accordingly.

11.3 No request by Job Order Contractor for an increase in the Job Order Sum or Job Order Time under this Article shall be allowed, unless Job Order Contractor has given the written notice required.

11.4 No request by Job Order Contractor for an increase in the Job Order Sum or Job Order Time under this Article shall be allowed if made after final payment under such Job Order.

11.5 No request by Job Order Contractor for an increase in the Job Order Sum or Job Order Time under this Article shall be allowed if Job Order Contractor had actual knowledge of the condition.

## **ARTICLE 12 CONTRACT TERM**

12.1 The term of the Contract shall commence on the date it was executed by both parties and shall terminate twenty-four (24) months from date of execution or else in accordance with the terms and conditions of this Contract, unless extended for twelve (12) additional months if mutually agreed to by the Owner and the Contractor.

12.2 Owner shall provide written notice of intent to exercise the contract extension to the Contractor at least sixty (60) calendar days before the expiration of the original Contract term. The Contractor will be presumed to mutually agree to the exercise of the extension option, unless the Contractor notifies the Owner otherwise in writing within ten (10) calendar days of receipt of the Owner's notice to exercise.

12.3 Cost coefficients in Section 9 hereto will remain in place for the extension term.

12.4 Job Orders may be issued at any time during the term of this Contract. This Contract will remain in full force and effect during the performance of any Job Order.

## **ARTICLE 13 COMPENSATION**

13.1 As full consideration for the satisfactory performance by Job Order Contractor of Work prescribed under the Contract and applicable Job Orders, Owner shall pay Job Order Contractor the amounts specified in the individual Job Orders. The amounts in the individual Job Orders will be determined according to Section 9 hereto.

## **ARTICLE 14 INVOICING AND PAYMENTS**

14.1 Pursuant to RCW 39.12, "Prevailing Wages on Public Works," the Contractor will not receive any payment until the Contractor and all Subcontractors of any tier have submitted state-approved "Statements of Intent to Pay Prevailing Wages" to the Owner. The statement must have the approval of the Industrial Statistician of the Department of Labor and Industries before it is submitted to the Owner. The statement must include the Contractor's registration number, the number of workers in each trade classification, and the applicable wage rate for each trade listed. The Contractor agrees to provide each Subcontractor of any tier with each trade listed. The Contractor agrees to provide each Subcontractor of any tier with a schedule of applicable prevailing wage rates. The Contractor and the respective Subcontractors of any tier 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. Effective July 1, 2019, the Contractor must have received training on the requirements related to public works and prevailing wage under RCW 39.04 and Ch. 39.112 RCW. The Contractor must designate a person or persons to be trained on these requirements. The training must be provided by the Department of Labor & Industries or by a training provider whose curriculum is approved by the Department. Contractors that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this requirement. The Department of Labor & Industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its website. The Owner may rely on the records made available to the Department regarding satisfaction of the training requirements or exemption.

14.2 Owner shall make progress payments as invoiced and approved by the Owner. Job Order Contractor shall use an acceptable invoice form and shall include supporting documents to reflect a breakdown of the total price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the estimation of Work completed, Owner will authorize payment for material delivered on the site and preparatory work done if Job Order Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform the Work.

14.3 All material and Work covered by progress payments made shall, at the time of payment, become the sole property of Owner, but this provision shall not be construed as:

- a. Relieving Job Order Contractor from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work; or
- b. Waiving the right of Owner to require the fulfillment of all of the terms of the Contract.

14.4 In accordance with RCW 60.28, a sum equal to five percent (5%) of each invoice shall be retained after award of a Contract for public improvements, or Work for which retained percentages are required to be reserved under the provision of RCW 60.28. The retained percentages will be held in a fund by the Owner not subject to payment until sixty (60) days following the Final Acceptance of the Work, or until receipt of all necessary releases from the Department of Labor and Industries, Department of Revenue, and Department of Employment Security, and any settlement of any lien filed under Chapter 60.28 RCW, whichever is later, as provided for in RCW 39.08.010. In addition, to process payment for retainage, the following is required:

- a. In accordance with RCW 39.12, "Prevailing Wages on Public Works," the Job Order Contractor will submit state-approved "Statement of Affidavit of Wages Paid" for the Contractor and all Subcontractors of any tier, to the Owner.

14.5 Owner shall pay all unpaid amounts due Job Order Contractor under this Contract within sixty (60) days, after:

- a. Presentation of release of all claims against Owner arising by virtue of the Contract, other than claims, in stated amounts, that Job Order Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if Job Order

Contractor's claim to amounts payable under this contract has been assigned. Job Order Contractor shall complete a Contractor's release form acceptable to Owner.

b. Consent of Job Order Contractor's surety, if any.

14.6 Job Order Contractor shall submit invoices to the following address:

LAKE WASHINGTON SCHOOL DISTRICT  
ATTN: BRIAN BUCK  
15212 NE 95<sup>TH</sup> STREET  
REDMOND, WA 98052

## **ARTICLE 15 CONSTRUCTION SCHEDULE**

15.1 Job Order Contractor will submit for approval with the signed Job Order a tentative progress schedule for the Work. The Schedule shall indicate proposed Job Order start date, on-site date, constraining dates, if any, indicated by Owner on Job Order requests, constraining dates in the Job Order Contractor's Work that might affect Owner, such as utility shutdowns and access or use limitations of the site, key dates of interest such as start or complete of Subcontractors, and Substantial and Final Completion dates. Any mutually-agreed adjustments to this Schedule will be incorporated in the Job Order Notice to Proceed. A pre-construction meeting will be scheduled by the Owner prior to the Job Order Contractor mobilizing on site. At this pre-construction meeting, the Job Order Contractor shall have its Schedule updated and presented in a Critical Path Format.

15.2 The Schedule shall be in a form acceptable to the Owner and be capable of being transmitted electronically. The Contractor shall prepare weekly, or other period agreed to by Owner and Job Order Contractor. This Schedule shall show the previous week's progress, the current week, and the anticipated activities for the coming two weeks. If, in the opinion of Owner, the Job Order Contractor is not in conformance with the Progress schedule for reasons other than acts of Force Majeure, Job Order Contractor shall take such steps as are necessary to bring the actual completion dates of its Work activities into conformance with the Progress Schedule, and if directed by Owner, Job Order Contractor shall submit a corrective action plan or revise a Progress Schedule to reconcile with the actual progress of the Work.

15.3 Job Order Contractor shall promptly notify Owner in writing of any actual or anticipated event which is delaying or could delay achievement of any milestone on the Progress Schedule. Job Order Contractor shall indicate the expected duration of the delay and the action being or to be taken to correct the problem. Provision of such notice does not relieve the Job Order Contractor of its obligation to complete the Work within the Job Order Time. If the Job Order Contractor fails to submit a schedule with the Job Order, Owner may withhold approval of progress payments until Job Order Contractor submits the required schedule.

15.4 Job Order Contractor shall submit a progress report for each Job Order every thirty (30) days or as directed by Owner, and upon doing so shall immediately deliver a current schedule to Owner for each Job Order. If Job Order Contractor falls behind the approved schedule, Job Order Contractor shall take steps necessary to improve its progress, including those that may be reasonably required by Owner. Without additional cost to Owner, Owner may require Job Order Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant or equipment, and to submit for

approval any supplementary schedule or schedules in chart form as Owner deems necessary to demonstrate how the approved rate of progress will be regained.

15.5 Emergency Work. Job Order Contractor will give top priority to any emergency Work Owner may have and will allocate all resources necessary to accomplish such Work in accordance with Owner's schedule requirements. To the extent the Contractor incurs additional cost, expense, or schedule delay in performing Owner's emergency Work, Owner will adjust the Contract under Article 22.

15.6 Failure of Job Order Contractor to comply with the requirements of Owner under this clause shall be grounds for a determination by Owner that Job Order Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Job Order. Upon making this determination, Owner may terminate Job Order Contractor's right to proceed with the Work, or any separable part of it, in accordance with Article 27.

15.7 Time is of the essence for all Work to be performed under this Contract. Contractor shall note that the Work must be completed within the time limit stated in the Job Orders. Owner may incur serious and substantial damages if Substantial Completion of the Work does not occur within the Job Order Time. However, it would be difficult, if not impossible, to determine the exact amount of such damages. Consequently, provisions for liquidated damages may be included in a Job Order at the option of the Owner. Any liquidated damages amount that may be set forth in each Job Order will be assessed not as a penalty, but as liquidated damages for breach of the Job Order.

## **ARTICLE 16 SUPERINTENDENCE BY JOB ORDER CONTRACTOR**

16.1 At all times during performance of a Job Order and until the Work is completed and accepted, Job Order Contractor shall directly superintend the Work or assign and have on the site a competent superintendent who is satisfactory to Owner and has authority to act for Job Order Contractor.

## **ARTICLE 17 INSPECTION OF CONSTRUCTION AND ACCEPTANCE**

17.1 Job Order Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work called for conforms to Job Order requirements and the Contract Documents. Job Order Contractor shall maintain complete inspection records and make them available to Owner. All Work shall be conducted under the general direction of Owner and is subject to inspection and test by Owner at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

17.2 Owner inspections and tests are for the sole benefit of Owner and do not:

- a. Relieve Job Order Contractor of responsibility for providing adequate quality control measures;
- b. Relieve Job Order Contractor of responsibility for damage to or loss of the material before acceptance;

- c. Constitute or imply acceptance; or
- d. Affect the continuing rights of Owner after acceptance of the complete Work under paragraph 17.8 below.

17.3 The presence or absence of an inspector does not relieve Job Order Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specification without Owner's written authorization.

17.4 Job Order Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge to Job Order Contractor any additional cost of inspection or test when Work is not ready at the time specified by Job Order Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. Owner shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size, and performance tests shall be performed as described in the Job Order.

17.5 Job Order Contractor shall, without charge, replace or correct Work found by Owner not to conform to Job Order requirements, unless Owner consents to accept the Work with an appropriate adjustment in Contract price. Job Order Contractor shall promptly segregate and remove rejected material from the premises.

17.6 If Job Order Contractor does not promptly replace or correct rejected Work, Owner may:

- a. By Contract, or otherwise, replace or correct the Work and charge the cost to Job Order Contractor, or
- b. Terminate for default Job Order Contractor's right to proceed.

17.7 If, before acceptance of the entire Work, Owner decides to examine already completed Work by removing it or tearing it out, Job Order Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of Job Order Contractor or its Subcontractors, Job Order Contractor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet requirements, Owner shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of the period of time for performance.

17.8 Substantial completion means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Work or a portion thereof for its intended purposes.

Unless otherwise specified in the Job Order, Owner shall accept, as promptly as practicable after completion and inspection, all Work required by the Job Order or that portion of the Work Owner determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes, or Owner's rights under any warranty or guarantee.

**ARTICLE 18  
OPERATIONS AND STORAGE AREAS**

18.1 Job Order Contractor shall confine all operations (including storage of materials) to areas authorized or approved by Owner.

18.2 Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by Job Order Contractor only with the approval of Owner and shall be built with labor and materials furnished by Job Order Contractor without expense to Owner. The temporary buildings and utilities shall remain the property of Job Order Contractor and shall be removed by Job Order Contractor at its expense upon the completion of the Work. With the written consent of Owner, the buildings and utilities may be abandoned and need not be removed.

18.3 Job Order Contractor shall use only established roadways or temporary roadways constructed by Job Order Contractor when and as authorized by Owner. Job Order Contractor shall comply with all federal, state, and local laws and regulations when transporting materials.

**ARTICLE 19  
PROTECTION OF EXISTING VEGETATION, STRUCTURES,  
EQUIPMENT, UTILITIES, AND IMPROVEMENTS**

19.1 Job Order Contractor shall protect from damage all existing structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the site, including adjacent property of a third party, that are not to be removed and that do not unreasonably interfere with the Work required under the Job Order. Job Order Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance by the operation of equipment, or by workmen, Job Order Contractor shall immediately notify the Owner, and shall then trim those limbs or branches with a clean cut and paint the cut with a tree pruning compound, or otherwise repair or correct the damage as directed by Owner.

19.2 Job Order Contractor shall protect from damage all existing improvements and utilities at or near the site and on adjacent property of third parties, the locations of which are made known to or should be known by Job Order Contractor. Job Order Contractor shall immediately notify the Owner of any damage to existing improvements or utilities caused during the course of executing the Job Order. Job Order Contractor shall then timely repair any damage to those facilities, including those that are the property of third parties, resulting from failure to comply with the requirements of the Job Order or failure to exercise reasonable care in performing the Work. If Job Order Contractor fails or refuses to repair the damage promptly, Owner may have the necessary repair work performed and charge the cost to the Job Order Contractor.

**ARTICLE 20  
CLEANING UP AND REFUSE DISPOSAL**

20.1 Job Order Contractor shall at all times keep the site, include hauling routes, utilities, and storage areas, free from accumulations of waste materials. Before completing the Work, Job Order Contractor shall remove from the premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Owner. Upon completing the Work, Job Order Contractor shall leave the site in a clean and orderly



condition satisfactory to Owner. Final cleanup of the premises shall be included in the period of performance of the Job Order. Job Order Contractor shall be responsible for all construction refuse disposal containers and their removal from the site. Disposal of any hazardous materials not addressed and priced in the Job Order will be segregated for disposal by Owner unless Owner requires Job Order Contractor to dispose of the materials, in which case, an equitable adjustment in the price will be negotiated and agreed.

## **ARTICLE 21 WARRANTY OF CONSTRUCTION**

21.1 In addition to any other warranties in any Job Orders, Job Order Contractor warrants, except as provided in paragraph 21.10 of this Article, that Work performed conforms to the Job Order requirements and is free of any defect in equipment, material or design furnished, or workmanship performed by Job Order Contractor or any of its Subcontractors or suppliers at any tier.

21.2 This warranty shall continue for a period of one (1) year from the date of Final Acceptance of the Work. If Owner takes possession of any part of the Work before Final Acceptance, this warranty shall continue for a period of one (1) year from the date possession is taken.

21.3 Job Order Contractor shall remedy at Job Order Contractor's expense any failure of the Work to conform to the plans and specifications, or any construction defect. In addition, the Job Order Contractor shall remedy at Job Order Contractor's expense any damage to Owner's real or personal property, when that damage is the result of:

- a. Job Order Contractor's failure to conform to requirements; or
- b. Any defect of equipment, material, workmanship, or design furnished by the Job Order Contractor.

21.4 Job Order Contractor shall restore any Work damaged in fulfilling the terms and conditions of this Article3. Job Order Contractor's warranty with respect to Work repaired or replaced will run for one (1) year from the date of repair or replacement.

21.5 Owner shall notify Job Order Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

21.6 If Job Order Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Job Order Contractor's expense.

21.7 With respect to all warranties, expressed or implied, from Subcontractors, manufacturers, or suppliers for Work performed and materials furnished for Job Orders issued under this Contract, Job Order Contractor shall:

- a. Obtain all warranties for the Work in the Job Order;
- b. Require all warranties to be executed, in writing, for the benefit of Owner; and
- c. Enforce all warranties for the benefit of Owner.

21.8 In the event Job Order Contractor's warranty under paragraph 21.2 of this Article has expired, Owner may bring suit at its expense to enforce a Subcontractor's, manufacturer's, or supplier's warranty.

21.9 Unless a defect is caused by the negligence of Job Order Contractor or Subcontractor or supplier at any tier, Job Order Contractor shall not be liable for the repair of any defects of material or design furnished by Owner or for the repair of any damage that result s from any defect in Owner-furnished material or design.

21.10 Job Order Contractor is not responsible for and does not warranty preexisting work or facilities that may be assigned to Job Order Contractor except as modified by the Job Order.

21.11 This warranty shall not limit Owner's rights under Article 17 of this Contract with respect to latent defects, gross mistakes, or fraud, or under any applicable statutes of limitation.

21.12 Nothing contained in this Article 21 shall be construed to establish a period of limitation with respect to other obligations that Job Order Contractor might have under the Contract or a Job Order. Establishment of the time period of one year as described in Paragraph 21.2 relates only to the specific obligation of Job Order Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract or a Job Order may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Job Order Contractor's liability with respect to its obligations other than specifically to correct the Work.

## **ARTICLE 22 CHANGES**

22.1 Owner may order additions, deletions, revisions, or other changes in the Work defined by a specific Job Order or of the Job Order Contract. These changes shall be incorporated into the Contract Documents through the execution of Change Orders. If any change ordered by Owner causes an increase or decrease in the Job Order Sum or Time, an adjustment shall be made and such adjustment(s) shall be incorporated into a Change Order or an additional Job Order, at the option of the Owner. Further, the Job Order Contractor can request an adjustment if the cost of Job Order Contractor's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible. Job Order Contractor shall be entitled to make a request for an adjustment in a Job Order Sum in accordance with the following procedure. No change in a Job Order Sum shall be allowed to the extent that Job Order Contractor's changed cost of performance is due to the fault or negligence of Job Order Contractor, or anyone for whose acts Job Order Contractor is responsible; the change is concurrently caused by Job Order Contractor and Owner; or the change is caused by an act of force Majeure as defined in Article 27.

22.2 If Owner desires to order a change in the Work, it may request a written Change Order Proposal (COP) from Job Order Contractor. Shall submit a Change Order Proposal within ten (10) days of the request from Owner, or within such other period as mutually agreed. Job Order Contractor's proposal shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Job Order Sum or Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.

22.3 Upon receipt of the Change Order Proposal, or a request for an adjustment in the Job Order Sum or Time, or both, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Job Order Contractor, and provide written authorization to proceed with the Change Order or Job Order. Pending agreement on the terms of the Change Order or Job Order, Owner may direct Job Order Contractor to proceed immediately with the work proposed. Job Order Contractor shall not proceed with any change in the Work until it has obtained Owner's approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Project and Contract Documents.

22.4 The Change Order Proposal shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order or Job Order, or related to the events giving rise to the request for an adjustment.

22.5 If Owner and Job Order Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Job Order Sum or Time, Job Order Contractor may at any time in writing, request a final offer from Owner. Owner shall provide Job Order Contractor with its written response within 30 days of Job Order Contractor's request. Owner may also provide Job Order Contractor with a final offer at any time. If Job Order Contractor rejects Owner's final offer, or the parties are otherwise unable to reach agreement, Job Order Contractor's only remedy shall be to file a Claim as provided in Article 25.

## **ARTICLE 23 CHANGE IN THE JOB ORDER SUM**

23.1 Job Order Contractor, in connection with any proposal it makes for a Job Order change shall furnish a price breakdown itemized as required by Owner. Pricing for such changes shall be based on quantities mutually agreed to by Job Order Contractor and Owner and the rates contained in the Unit Price Book, modified by the appropriate city cost index, as adjusted by the applicable coefficient(s).

23.2 Job Order Contractor shall furnish to the Owner a written proposal for any proposed extension in the period of performance. The proposal shall contain a price breakdown and period of performance extension justification.

23.3 A Job Order Sum can only be changed by Change Order. Job Order Contractor shall include any request for a change in the Job Order Sum or in the Job Order Time in its Change Order Proposal.

23.4 If the cost of Job Order Contractor's performance is changed due to the fault or negligence of Owner, Job Order Contractor shall be entitled to make a request for an adjustment in the Job Order Sum in accordance with the following procedure. No change in the Job Order Sum shall be allowed to the extent: Contractor's changed cost of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible; the change is concurrent caused by Contractor and Owner; or the change is caused by an act of Force Majeure as defined in Article 27.

- a. A request for an adjustment in the Job Order Sum shall be based on written notice delivered to Owner within seven days of the occurrence of the event giving rise to the request. For purposes of this part, "occurrence" means when Job Order Contractor knew, or in its diligent prosecution of the Work should have known of the event giving rise to the request.

If Job Order Contractor believes it is entitled to an adjustment in the Job Order Sum, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Job Order Contractor shall give Owner access to any such records and, if requested, shall promptly furnish copies of such records to Owner.

- b. Job Order Contractor shall be entitled to any adjustment in the Job Order Sum for any occurrence of events or costs that occurred more than seven days before Job Order Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an adjustment in the Job Order Sum; the nature of the impacts to Job Order Contractor and its Subcontractors of any tier, if any; and to the extent possible, the amount of the adjustment in Job Order Sum requested. Failure to properly give such written notice shall constitute a waiver of Contractor's right to an adjustment.
- c. Within 30 days of the occurrence of the event giving rise to the request, Unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Job Order Contractor shall supplement the written notice provided in accordance with subparagraph "a" above with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Job Order Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Project and Contract Documents provide entitlement to an adjustment to the Job Order Contractor or such act, event or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Job Order Time, Job Order Contractor shall demonstrate the impact on the Progress Schedule. Failure to provide such additional information and documentation within the time allowed or within the format required shall constitute a waiver of Job Order Contractor's right to an equitable adjustment.
- d. Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Job Order Contractor shall proceed diligently with performance of the Work.
- e. Any requests by Job Order Contractor for an adjustment in the Job Order Sum and in the Job Order Time that arise out of the same event(s) shall be submitted together.

#### **ARTICLE 24**

#### **OWNER'S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE**

24.1 Owner may order Job Order Contractor, in writing, to suspend for up to ninety (90) days, or for such longer period as mutually agreed.

24.2 If the performance of all or any part of the Work is suspended, delayed, or interrupted by an act of Owner in the administration of a Job Order, or by Owner's failure to act within the time specified in the Job Order (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of overtime for performance of the Job Order necessarily caused by the suspension, delay, or interruption, and the Job Order will be modified in writing accordingly.

24.3 Upon receipt of a written notice suspending the Work, Job Order Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost of performance directly attributable to such suspension. Within a period of up to ninety (90) days after the notice is delivered to Job Order Contractor, or within any extension of that period to which the parties shall agree, Owner shall either cancel the written notice suspending the Work, or terminate the Work covered by the notice as provided in the termination provisions of Article 26. If a written notice is canceled over the period of notice or any extension thereof expires, Job Order Contractor shall resume work.

24.4 A claim under this Article shall not be allowed for any costs incurred more than thirty (30) calendar days before Job Order Contractor shall have notified Owner in writing of the act or failure to act (but this requirement shall not apply as to a claim resulting from a suspension order), and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption but not later than the date of final payment under the Job Order.

## **ARTICLE 25 CLAIMS AND DISPUTE RESOLUTION**

25.1 The parties are fully committed to working with each other throughout the term of the Contract and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Job Order Contractor and Owner each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays, and disruptions to the Work.

25.2 Throughout the course of the dispute resolution process the Job Order Contractor shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Job Order Contractor, pending the final resolution of any dispute or disagreements between the parties.

25.3 If the parties fail to reach agreement on the terms of any Change Order for Owner directed Work as provided in Article 23, or on the resolution of any request for an adjustment in the Job Order Sum or Job Order Time, Job Order Contractor's only remedy shall be to file a claim with the Owner as provided in this section after proceeding through Level I of the dispute resolution set forth below.

25.4 Dispute Resolution - Level I: Job Order Contractor and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between the parties' representatives (i.e., the Owner's Project Manager and the Contractor's Project Superintendent).

25.5 Dispute Resolution - Level II: Any dispute not satisfactorily resolved at the field level shall be submitted to the Owner's Designee (listed below), in written form ("Notice of Dispute"), within thirty (30) days of the date of occurrence of the event leading to or giving rise to the dispute. Said Notice of Dispute shall include a clear description of the issue and the proposed remedy. The Owner's Designee shall render his/her decision in writing, and mail or otherwise furnish a copy thereof to the Job Order Contractor within twenty (20) days of receipt.

*Owner designates the individual listed below as its representative under Paragraph 25.4, which individual has the authority and responsibility for resolving disputes under this Contract.*

**Brian Buck**

**Director of Support Services  
Lake Washington School District No. 414  
15212 NE 95<sup>th</sup> Street  
Redmond, WA 98052  
Ph: 425-936-1102**

*Contractor designates the individual listed below as its representative under Paragraph 25.3, which individual has the authority and responsibility for avoiding and resolving disputes under this Contract.*

25.6 Failure to properly submit the Notice of Dispute as outlined above shall constitute a waiver of the dispute and any potential Claim.

25.7 Any dispute not finally resolved under this Article may be brought before the Superior Court of the State of Washington in King County and adjudicated in accordance with the laws of the State of Washington. Job Order Contractor shall serve and file a lawsuit within 120 days of Owner's final decision on a claim or dispute. This requirement cannot be waived except by an explicit waiver signed by Owner. The failure to file a lawsuit within said 120-day period shall result in Owner's decision rendered in accordance with this Contract and shall be final and binding on Job Order Contractor and all of its Subcontractors.

25.8 At any time, either before or after litigation has been commenced by the Job Order Contractor, Owner may require Contractor to participate in mediation before a sole mediator, mutually agreed upon by the parties, and with mediation costs split equally by the parties.

## **ARTICLE 26 TERMINATION FOR CONVENIENCE OF OWNER**

26.1 Owner may terminate performance of the Work under this Contract in whole or, from time to time, in part if Owner determines that termination is in Owner's interest. Owner shall effect such termination by delivering to Job Order Contractor a Notice of Termination specifying the extent of termination and the effective date.

26.2 After receipt of a Notice of Termination, and except as directed by Owner, Job Order Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:

- a. Stop work as specified in the notice;
- b. Place no further subcontracts or orders (referred to as subcontracts in this Article) for materials, services or facilities, except as necessary to complete any Work not terminated;
- c. Assign to Owner, as directed by Owner, all right, title, and interest of Job Order Contractor under the subcontracts to the extent they relate to the Work terminated, in which case Owner shall have the right to settle or to pay any termination settlement proposal arising out of those terminations, or with approval or ratification to the extent required by Owner, settle all outstanding liabilities and termination settlement proposals arising from the

termination of subcontracts, the approval or ratification of which will be final for purposes of this Article;

- d. As directed by Owner, transfer title and deliver to Owner:
  - i. The fabricated or unfabricated parts, Work in process, completed Work, supplies and other material produced or acquired for the Work terminated; and
  - ii. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to Owner;
- e. Complete performance of the Work not terminated;
- f. Take any action that may be necessary, or that Owner may direct, for the protection and preservation of the property related to this Contract that is in the possession of Job Order Contractor and in which Owner has or may acquire an interest; and
- g. Use its best efforts to sell, as directed or authorized by Owner, any property of the types referred to in this Paragraph 26.2; provided, however, that Job Order Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, Owner. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Owner under the Contract, credited to the price or cost of the Work, or paid in any other manner directed by Owner.

26.3 After termination, Job Order Contractor shall submit a final termination settlement proposal to Owner in the form and with the certification prescribed by Owner. Job Order Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination.

26.4 Job Order Contractor and Owner may agree upon the whole or any part of the amount to be paid because of the termination. The Contract shall be amended, and Job Order Contractor paid the agreed amount.

26.5 If Job Order Contractor and Owner fail to agree on the whole amount to be paid Job Order Contractor because of the termination of Work, Owner shall pay Job Order Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under Paragraph 26.4 above:

- a. For Work performed before the effective date of termination, the total (without duplication of any items) of:
  - i. The cost of this Work based on Section 9 hereto;
  - ii. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision (i) above; and
- b. The reasonable costs of settlement of the Work terminated, including:

- i. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
- ii. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
- iii. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

26.6 Except for normal spoilage, and except to the extent that Owner expressly assumed the risk of loss, Owner shall exclude from the amounts payable to Job Order Contractor under Paragraph 26.5 above, the fair value, as determined by Owner, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Owner or to a buyer.

26.7 In arriving at the amount due Job Order Contractor under this Article, there shall be deducted:

- a. All unliquidated advances or other payments to Job Order Contractor under the terminated portion of the Job Order;
- b. Any claim which Owner has against Job Order Contractor under the Contract; and
- c. The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Job Order Contractor or sold under the provisions of this Article and not recovered by or credited to Owner.

26.8 If the termination is partial, Job Order Contractor may file a proposal with Owner for an equitable adjustment of the price(s) of the continued portion of the Job Order. Any proposal by Job Order Contractor for an equitable adjustment under this Article shall be requested within ninety (90) calendar days from the effective date of termination unless extended in writing by Owner. Owner may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Job Order Contractor of the terminated portion of the Job Order, if Owner believes the total of these payments will not exceed the amount to which Job Order Contractor will be entitled.

26.9 If the total payments exceed the amount finally determined to be due, Job Order Contractor shall repay the excess to Owner upon demand.

26.10 Unless otherwise provided in this Contract or by statute, Job Order Contractor shall maintain all records and documents relating to the terminated portion of this Contract for five (5) years after final settlement. This includes all books and other evidence bearing on Job Order Contractor's costs and expenses under this Contract. Job Order Contractor shall make these records and documents available to Owner, at Job Order Contractor's office, at all reasonable times, without cost. If approved by Owner, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

## **ARTICLE 27 DEFAULT OR DELAY**



27.1 If Job Order Contractor refuses or fails to prosecute the Work, or any separable part, with the diligence that will ensure its completion within the time specified in the Job Order including any extension, or fails to complete the Work within this time, Owner may order the Job Order Contractor, in writing, to stop work, or any portion thereof, until satisfactory correction action has been taken. In the alternative, Owner may terminate the Job Order Contractor's right to proceed with the Work (or separable part of the Work), upon ten (10) days' written notice to the Job Order Contractor. In this event, Owner may take over the Work and complete it by Contract or otherwise and may take possession of and use any materials, appliances, and plant on the site necessary for completing the Work. Job Order Contractor shall be entitled to an adjustment in the Job Order Time or Job Order Sum for any increase cost or time of performance attributable to Job Order Contractor's failure or refusal to perform or from any reasonable remedial action taken by Owner based upon such failure.

27.2 Force Majeure. Any delay in or failure of performance by Owner or Job Order Contractor, other than the payment of money, shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party ("For Majeure"). Acts of Force Majeure include, but are not limited to:

- a. act of god or of the public enemy,
- b. acts or omissions of the Owner or any government entity,
- c. fire or other casualty for which Job Order Contractor is not responsible,
- d. quarantine or epidemic,
- e. strike or defensive lockout,
- f. unusually severe weather (the basis used to define normal weather will be data showing high and low temperatures, precipitation, and number of days and severe weather in the city closest to the site for the previous ten (10) years, as compiled by the United States Department of Commerce National Weather Service.), or
- g. delays of Subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Job Order Contractor and the Subcontractors or suppliers; and

Job Order Contractor, within 20 calendar days from the beginning of any such delay (unless extended by Owner), notifies Owner in writing of the causes of delay. The Owner shall ascertain the facts and the extent of delay. If, in the judgment of Owner, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of Owner shall be final and conclusive on the parties, but subject to appeal and review under Article 25.

27.3 If, after termination of Job Order Contractor's right to proceed, it is determined that Job Order Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Owner.

27.4 The rights and remedies of Owner in this Article are in addition to any other rights and remedies provided by law or under this Contract.

## **ARTICLE 28 SAFETY**

28.1 Job Order Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 (OSHA), all applicable state including WISHA and local laws, ordinances, and regulations during the performance of the Work. Job Order Contractor shall indemnify Owner for fines, penalties, and corrective measures that result from the acts of commission or omission of Job Order Contractor, its Subcontractors, if any, agents, employees, and assigns and its failure to comply with such safety rules and regulations.

28.2 Job Order Contractor shall furnish and enforce the use of individual personnel/site protective equipment as needed to complete the Work, including, but not limited to, hard hats, rain gear, protective footwear, protective clothing and gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards, and high visibility reflective safety vests.

28.3 Job Order Contractor shall provide its employees safety training to include special training prior to working with hazardous materials or operations.

28.4 Job Order Contractor shall provide warning signs, barricades, and verbal warnings as required.

28.5 Job Order Contractor shall inform its employees of emergency procedures to be adhered to in case of a fire, medical emergency, or any other life-threatening situations.

28.6 Job Order Contractor shall promptly notify Owner of any accident involving personnel or damage to material and equipment. Copies of any injury reports or accident investigation reports shall be provided to the Owner.

28.7 Job Order Contractor shall maintain a set of WISHA articles at the jobsite as they apply to the Work being performed. Copies shall be provided to Owner when requested.

28.8 Job Order Contractor shall submit to Owner a copy of its safety policies and program procedures which establish the safety rules and regulations as they are to be applied to performance of the Work. These documents shall be submitted by Job Order Contractor within fourteen (14) calendar days after issuance of a Job Order and prior to the commencement of the Work.

28.9 Job Order Contractor shall assign, during performance of the Work, a designated safety representative to develop and monitor the project safety program. The name, company address, and telephone number of the assigned individual shall be submitted to Owner by Job Order Contractor along with its safety policies and program procedures.

28.10 Job Order Contractor shall provide and maintain on the jobsite, at all times, completely stocked first aid kit(s) which contains all standard emergency medical supplies in accordance with WAC.

28.11 Job Order Contractor shall make available for its employees and those of its Subcontractors, while they are performing Work on the site, emergency medical treatment either at the site or at a nearby medical facility.

28.12 Owner reserves the right to approve and monitor Job Order Contractor's safety policies and program procedures as applied during performance of the Work. Failure to comply with safety policies and program procedures, once approved by Owner, shall be cause for the termination of the Job Order in accordance with Article 27.

**ARTICLE 29  
USE AND POSSESSION PRIOR TO COMPLETION**

29.1 Owner shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any Work, Owner shall furnish Job Order Contractor a list of items of Work remaining to be performed or corrected on those portions of the Work that Owner intends to take possession of or use. However, failure of Owner to list any item of Work shall not relieve Job Order Contractor of responsibility for complying with the terms of this Contract. Owner possession or use shall not be deemed an acceptance of any Work under this Contract.

29.2 While Owner has such possession or use, Job Order Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from Owner's possession or use, notwithstanding the terms of Article 6. If prior possession or use by Owner delays the progress of the Work or causes additional expense to Job Order Contractor, an equitable adjustment shall be made in the Job Order price or the period of performance, and the Job Order shall be modified in writing accordingly.

**ARTICLE 30  
OTHER CONTRACTS**

30.1 Owner may undertake or award other contracts for additional work at or near the site of work under this Contract. Job Order Contractor shall fully cooperate with the other general contractors and with Owner's employees and shall carefully adapt scheduling and performing the work under this Contract to accommodate the additional work, heeding any direction that may be provided by Owner. Job Order Contractor shall not commit or permit any act that will interfere with the performance of work by any other general contractor or by Owner's employees.

**ARTICLE 31  
DISSEMINATION OF CONTRACT INFORMATION**

31.1 Job Order Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning this Contract, any Job Order or the Work performed under this Contract, without the prior consent of Owner.

**ARTICLE 32  
PERFORMANCE AND PAYMENT BONDS**

32.1 Job Order Contractor shall furnish Performance and Payment Bonds, from a Bonding Company licensed to do business in the State of Washington, rated A or better of AM Best, each in an amount equal to one hundred percent (100%) of the Work, in a penal amount equal to the aggregate price of all Job Orders issued to the Job Order Contractor, but not less than \$500,000. If the Contractor is being awarded projects

up to the \$4 million limit, then the Contractor must provide Payment and Performance Bonds in that amount. At the beginning of the second year of the Contract, the Contractor shall provide a separate Payment Performance Bond, or a Rider to the original Bonds, less a dollar amount of Job Orders that have received Final Acceptance and for which the retainage bond obligation has been release by the Owner, plus Washington State sales tax. AIA Payment Bond and Performance Bond Forms A312 are required by the Owner for the Work of this Contract. These forms must be obtained from the Contractor's Bonding Company. The Payment Bond shall cover payment to laborers and mechanics, including payments to Employee Benefit Funds, and payments to Subcontractors, material suppliers, and persons who shall supply such person or persons, or Subcontractors for the materials and supplies. The Performance and Payment Bonds must be submitted to Owner within ten (10) calendar days after issuance of a Job Order. A Notice to Proceed will not be issued until properly executed bonds are received and accepted by Owner. Owner shall reimburse Job Order Contractor the premium cost after submission of proof of premium payment. Increases in the penal sum of the bonds will be provided promptly by Job Order Contractor, unless waived by Owner.

### **ARTICLE 33 INSURANCE**

33.1 Job Order Contractor ;shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction of this Contract possessing an AM Best policyholder's rating of A- or better and a financial rating of no less than IX and reasonably acceptable to the Owner on an occurrence-based Commercial General Liability Insurance Policy written on an industry standard CG 00 01 Form and in effect during the term of this Contract with minimum limits of liability as stated below. Such insurance shall protect Job Order Contractor from claims which may arise out of or result from Job Order Contractor's operations whether such operations are performed by Job Order Contractor or by any Subcontractor and suppliers of any tier; on Work the Job Order Contractor may subcontract or sublet to others; and on the indemnity provisions of this Contract.

The Job Order Contractor's policy shall be designated primary coverage for both defense and indemnity, and any Owner's policies excess. Such limits of liability insurance shall have per project general aggregate provisions and shall not be less than the following:

- a. \$1,000,000 per occurrence for bodily injury liability including sickness, disease or death and property damage liability because of damage to or destruction of property of others including loss of use thereof arising out of the operation of automobiles. Hired and non-owned auto liability shall be included; and
- b. \$1,000,000 for claims for damages insured by personal injury liability coverage (included and defined in the Commercial General Liability Insurance Policy) which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person.

33.2 The policies providing Commercial General Liability and Automobile Liability insurance as required above shall be endorsed to name Owner as Additional Insured and shall be on Form CG 20 10 (11-85 addition or equivalent).

33.3 The policies and coverages shall be on an occurrence basis and shall be maintained without interruption from the date of commencement of the Work until the date of Final Acceptance and termination

of any coverage required to be maintained after final payment. Completed operations coverage shall remain in force for three (3) years after Final Acceptance. In addition, the Job Order Contractor shall purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit, and other similar employee benefit acts in the State of Washington statutory amount and Stop Gap Liability Insurance (Employer's Contingent Liability Insurance) with coverage of at least \$1,000,000 each occurrence/each incident. All policies and certificates must be signed copies and policies shall contain a provision that written notice must be provided to the Owner 30 days before the policies are canceled; Contractor must provide the Owner and Architect 45 days' written notice by certified mail before the policies expire or any coverages afforded under the policy are reduced, limits decreased, or the additional insureds removed. The Contractor shall furnish to the Owner and Architect copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage or limits. Losses up to the deductible amount or otherwise not covered by insurance shall be the responsibility of the Contractor.

33.4 Proof of compliance with these insurance requirements shall be furnished Owner in the form of an original certificate of insurance signed by an authorized representative or agent of the insurance company(ies) within ten (10) days of execution of this agreement. Renewal or replacement certificates shall be furnished Owner not less than twenty-one (21) days prior to the expiration or termination date of the applicable policy(ies). The Job Order Contractor shall furnish the Owner certificates of insurance on AIA Document G705 or ACORD Certificate of Liability Insurance as evidence of all insurance required by this Job Order Contract, including an endorsement to the insurance policies naming the Owner, the Architect, their consultants and employees, any required governmental agencies and others designated in the Contract Documents as additional insureds. If the agreement is executed, no Progress Payment will be due until all such certificates are furnished.

33.5 The Owner's specification or approval of the insurance in this Contract or of its 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, indemnification, or applicable law provisions. The Job Order Contractor may, at its expense, purchase larger coverage amounts. Notwithstanding anything herein to the contrary, the Job Order Contractor shall provide all bonding, insurance, and permit documentation as required by governmental entities for all portions of the Project. If the Owner is damaged by the failure of the Job Order Contractor to maintain any of the insurance in this Article 34 or to so notify the Owner, then the Job Order Contractor shall bear all costs attributable thereto.

33.6 Job Order Contractor shall require any and all Subcontractors performing Work under this Contract to carry insurance of the types and with limits of liability as Job Order Contractor shall deem appropriate and adequate for the Work being performed. Job Order Contractor shall obtain and make available for inspection by Owner upon request current certificates of insurance evidencing insurance coverages carried by such Subcontractors.

## **ARTICLE 34 INDEMNIFICATION**

34.1 Job Order Contractor shall defend, indemnify, and hold Owner and A/E harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

- a. The sole negligence of Job Order Contractor or any of its Subcontractors;

- b. The concurrent negligence of Job Order Contractor, or any Subcontractor, but only to the extent of the negligence of Job Order Contractor or such Subcontractor; and
- c. The use of any design process, or equipment which constitutes an infringement of any United States patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret.

34.2 In any action against Owner and any other entity indemnified in accordance with this section, by any employee of Job Order Contractor, its Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Job Order Contractor or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Job Order Contractor waives its immunity under industrial insurance RCW Title 51, as to Owner and A/E only, in accordance with RCW 4.24.115(2).

34.3 JOB ORDER CONTRACTOR AND OWNER EXPRESSLY AGREE THAT EACH HAS READ AND REVIEWED THIS ARTICLE ENTITLED INDEMNIFICATION, THAT THIS SECTION HAS BEEN THE SUBJECT OF NEGOTIATION BETWEEN THE PARTIES, AND THAT CONTRACTOR AGREES TO BE BOUND BY THE TERMS THEREOF.

### **ARTICLE 35 CONTRACT ORDER OF PRECEDENCE**

35.1 Any conflict or inconsistency in the Contract Documents shall be resolved by giving the Documents precedence in the following order:

- a. Signed Job Order Contract and Change Orders to the Contract;
- b. Job Order Contract General Conditions;
- c. Job Orders and Change Orders to Job Orders;
- d. Specifications (specific to the individual Job Order);
- e. Drawings (in case of conflict within the drawings, large-scaled detailed drawings shall take precedence over small-scaled planned drawings);
- f. Signed and completed Proposal and Unit Price Coefficient Bid Form; and
- g. RFP for Job Order Contracting.

### **ARTICLE 36 NOTICES**

36.1 All notices to either party by the other shall be delivered personally or sent by first class United States mail, registered or certified mail, postage prepaid, addressed to such party at the following respective addresses for each:

- a. Owner:  
Brian Buck  
Director of Support Services  
Lake Washington School District No. 414  
15212 NE 95<sup>th</sup> Street  
Redmond, WA 98052
  
- b. Job Order Contractor:

and shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change of address to the other in the manner provided for above.

**ARTICLE 37  
SEVERABILITY AND CHANGES IN LAW**

37.1 If any provision of this Contract, or the application thereof to any person or circumstances is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this Contract in the event any provision hereof is declared illegal, invalid, or unenforceable.

37.2 If the law to Job Order Contracting is changed during the term of this Contract, the parties agree to execute a proper amendment to reflect those changes.

**ARTICLE 38  
WAIVERS**

38.1 Neither Owner's review, approval, or acceptance of, nor payment for, the Work required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of the Contract, and Job Order Contractor shall be and remain liable to Owner in accordance with applicable law and the terms of this Contract for all damages to Owner caused by Job Order Contractor 's negligent act, error, or omission in the performance of any of the Work.

38.2 The waiver by Owner of any breach of any term, covenant, condition, or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or of a breach of any other term, covenant, condition, or agreement herein contained.

**ARTICLE 39  
MERGER**

39.1 This Contract and all procurement documents incorporated by reference set forth the entire agreement between the parties with respect to the subject matter thereof, and supersedes and replaces all

proposals, negotiations, representations, and implied obligations. The obligations, liabilities, and remedies set forth herein are exclusive and shall operate as limitations on any action brought in connection with the Work, including an action in tort.

**ARTICLE 40  
NON-AVAILABILITY OF FUNDS**

40.1 Every payment obligation of the Owner under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the Owner at the end of the period for which funds are available.

**ARTICLE 41  
AUDIT OF RECORDS**

41.1 Pursuant to applicable laws, the Job Order Contractor shall retain and shall contractually require each Subcontractor to retain all data, books, and other records ("records") relating to this Contract for a period of five (5) years after completion of this Contract. All records shall be subject to inspection and audit by Owner at reasonable times. Upon request, the Contractor shall produce the original of any or all such records. If approved by Owner, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

41.2 All claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Job Order Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Job Order Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.

41.3 In support of Owner audit of any Claim, Job Order Contractor shall, upon request, promptly make available to Owner all documents as requested including daily timesheets, supervisor's daily reports, payroll register, earnings record, payroll tax form, material invoices and delivery confirmations, equipment records, contracts with Subcontractors, canceled checks (payroll and vendors), job cost reports, job payroll ledger, general ledger, cash disbursements journal, financial statements, depreciation records, worksheets or software used to prepare the Claim estimating the cost components, and all other documents used by Job Order Contractor to prepare its Bid and Claims.

**ARTICLE 42  
NONDISCRIMINATION**

42.1 In the performance of this Contract, Job Order Contractor assures compliance with state and federal guidelines and regulations regarding nondiscrimination and harassment involving any employee/student on the basis of race, color, gender, religion, national origin, creed, marital status, age, sexual orientation, pregnancy, or the presence of any sensory, mental, or physical disability in employment, services, or any other benefits under the Contract. The Job Order Contractor shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, color, gender, religion,



national origin, creed, marital status, age, sexual orientation, pregnancy, or the presence of any sensory, mental, or physical disability.

**ARTICLE 43  
THIRD PARTY ANTITRUST VIOLATIONS**

43.1 The Job Order Contractor assigns to the Owner any claim for overcharges, resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the Job Order Contractor toward fulfillment of this Contract.

**ARTICLE 44  
INTERPRETATION, JURISDICTION AND VENUE**

44.1 This Contract shall be construed and interpreted solely in accordance with the laws of the State of Washington. Jurisdiction and venue for any lawsuit or cause of action arising under or in connection with this Contract shall be filed exclusively in the Superior Court of Washington for King County.

\_\_\_\_\_:

LAKE WASHINGTON SCHOOL  
DISTRICT NO. 414:

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name Brian Buck

Title \_\_\_\_\_

Title Director of Support Services

Date \_\_\_\_\_

Date \_\_\_\_\_

UBI No.

## CONTRACT PRICING COEFFICIENTS

- 1.0 Job Order Contractor shall furnish all supervision, labor, materials, tools, supplies, equipment, transportation, insurance, taxes, overhead and profit to perform all operations necessary and required in accordance with the terms and conditions of the Contract, and as further specified in individual Job Orders.
  
- 2.1 Coefficients.
  
- 2.2 Coefficient for Standard Hours:
  
- 2.3 Coefficient for Non-standard Hours:
  
- 3.1 Pricing the Work.
  
- 3.2 The actual pricing for Work performed under the Contract will be based on the mutually agreed quantities applied to the "Total including O&P column" rates contained in the Unit Price Book, modified by the City of Seattle total weighted average City Cost Index, as adjusted by application of the appropriate coefficient as set forth above.
  
- 3.3 Excluded Sections of the Unit Price Book. The following sections of the Unit Price Book are not allowable for use and inclusion when pricing proposals:
  - 0121 Allowances
  - 0131 Project Management and Coordination
  - 0132 Construction Progress Documentation (except for 013233 - Construction Photos which is included)
  - 0141 Regular Requirements (except for 014126 - Permits Rule of Thumb, most cities, which is included)
  - 0151 Temporary Utilities
  - 0152 Construction Facilities
  
- 4.1 Hours of Work.
  
- 4.2 Standard hours of work will be from 7 AM to 5 PM, Monday through Friday, unless alternate standard hours are agreed to and adopted.
  
- 4.3 Non-standard hours are hours required by Owner to be worked before 7 AM and after 5 PM (unless alternate standard hours are agreed and adopted), Monday through Friday, and all hours worked on Saturdays, Sundays, and holidays will be considered non-standard hours.
  
- 4.4 Non-standard hours worked by Job Order Contractor to regain schedule or for Job Order Contractor's convenience shall not be entitled to application of the coefficient for non-standard hours.

**SCOPE OF SERVICES TO BE PROVIDED**

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**1.0 GENERAL INFORMATION:**

This is a fixed unit-price, indefinite quantity type Contract for the performance of a broad range of construction services to include, but not be limited to, minor construction, modernization, renovations, and alteration projects on an as-needed basis as required by Owner. The specific work requirements will be defined in Job Orders to be issued by Lake Washington School District Department of Support Services.

**2.0 DOCUMENTS:**

The following documents shall be used in the generation and execution of Work under this Contract:

- 2.1 The currently applicable (current version for the site of the Work) Unit Price Book, RS Means Facilities, contains pricing information for the Work to be accomplished in the unit of measure specified. The Unit Price Book will be updated effective upon receipt by Job Order Contractor of any periodic updating. Previously issued Job Orders and changes will not be retroactively repriced although any changes priced after receipt of an update will be priced by the updated version of the Unit Price Book.
- 2.2 The Construction Specifications Institute (CSI) construction specifications in effect at Contract signing shall be the specifications under this Contract.
- 2.3 The Job Order Contractor must provide the Owner with a MWBE Outreach Plan that equitably spreads subcontracting opportunities. The MWBE Outreach Plan must be approved by the Owner, in consultation with the Office of Minority and Women’s Business Enterprises or the equivalent local agency, prior to any Job Orders being issued under the Job Order Contract.
- 2.4 Lake Washington School District General Terms and Conditions shall be adhered to in all instances.
- 2.5 Lake Washington School District Construction Standards Manual shall be utilized to determine the level of quality of fixtures, equipment, and construction.
- 2.6 All relevant national, state, and local laws, codes, and regulations.

**3.0 WORK AUTHORIZATION:**

Any Work required under this Contract shall be authorized by issuance of formal, written Job Orders, after Owner's acceptance of the MWBE Outreach Plan, as follows:

- 3.1 As the need exists (as determined by Owner) for performance under the terms of this Contract, Owner will notify verbally or in writing (including email) Job Order Contractor of an existing requirement by issuing a request for Job Order Proposal.
- 3.2 Upon the receipt of this notification, Job Order Contractor shall respond within two (2) working days, or as otherwise agreed, by:
  - 3.2.1 Visiting the proposed site in the company of Owner, or

- 3.2.2 Establishing contact with Owner to further define the scope of the requirement.
- 3.3 After mutual agreement on the scope of the individual requirement, Job Order Contractor shall then prepare a proposal for accomplishment of the task defining and restating the scope and providing a line item proposal of the individual tasks, quantities, costs, and schedule, including any incidental design drawings, specifications, etc., as applicable, unless Job Order Contractor, in its sole discretion, elects not to undertake the Work. If the Work is declined, Job Order Contractor will so notify Owner within five (5) working days.
- 3.4 The Unit Price Book shall serve as the basis for establishing the value of the Work to be performed. Less than 20% (i.e., not more than 19.99%) of the dollar value of the Work may consist of items not in the Unit Price Book.
- 3.5 Job Order Contractor's proposal shall be submitted within five (5) working days of receipt of a Request for Job Order Proposal unless otherwise agreed.
- 3.6 Upon receipt of Job Order Contractor's proposal, Owner will review the proposal for completeness and will reach agreement with Job Order Contractor on pricing, schedule, and all other terms, prior to issuance of a Job Order.
- 3.7 A list of subcontractors, a performance bond, and evidence of insurance shall be submitted within ten (10) days of the issuance of the Intent to Award the Job Order Contract. (NOTE: Any future modification to the list of Subcontractors shall be submitted to the Lake Washington School District Project Manager within 72 hours of the change in Subcontractor.) At least 90% of the Job Order Contract must be subcontracted to entities other than the Job Order Contractor.
- 3.8 Owner will issue a form Notice to Proceed in the form of a Purchase Order. Attached to the Purchase Order shall be the accepted JOC Job Order Proposal. This set of documents shall be known as the "Job Order."
- 3.9 The Job Order is a lump sum, fixed price contract for the agreed upon scope of work.
- 3.10 In the event of emergency requirements for service, the procedures above will be expedited upon receipt of a verbal Job Order by Lake Washington School District Director of Support Services, Forrest Miller, or his designated representative. Work will commence as required and documentation will be provided as soon as possible.
- 3.11 In the event Owner does not issue a Job Order after receipt of Job Order Contractor's proposal, Owner is not obligated to reimburse Job Order Contractor for any costs incurred in the preparation of the proposal.

#### **4.0 SCHEDULING AND COMPLETION OF WORK:**

- 4.1 For each project, Owner will issue a Purchase Order that will act as the official "Notice to Proceed" and will contain the negotiated and approved Job Order Proposal. Any preliminary work started or materials ordered or purchased before receipt of the Job Order shall be at the risk and expense of the Contractor. The Contractor shall diligently prosecute the Work to completion within the time set forth in the Job Order. The period of

performance includes allowance for mobilization, holidays, weekend days, normal inclement weather, and cleanup; therefore, claims for delay based on these elements will not be allowed. When the Contractor considers the Work complete and ready for its intended use, the Contractor shall request Owner to inspect the Work to determine the status of completion. When Owner determines the Work to be substantially complete, Owner will issue a Certificate of Substantial Completion with a list of items to be completed or corrected prior to final payment of the Job Order. The Contractor shall proceed promptly to complete and correct items on the list.

- 4.2 Job placement of materials and equipment shall be approved by the Owner so as to ensure minimum interference to Owner operations and personnel.
- 4.3 Furniture and portable office equipment in the immediate work area will be moved by the Job Order Contractor and replaced to its original location. If the furniture and portable office equipment cannot be replaced to its original location, Owner will designate new locations. If furniture and portable office equipment (or other items) must be moved and/or stored outside the immediate area, Owner will compensate Job Order Contractor for any such transportation and storage costs incurred.
- 4.4 The Job Order Contractor shall take all precautions to ensure that no damage will result from its operations to private or public property. All damages shall be reported to Owner's Project Manager, and then repaired or replaced by the Job Order Contractor at no cost to Owner.
- 4.5 The Job Order Contractor shall be responsible for providing all necessary traffic control (motor/pedestrian) such as permits, street blockages, traffic cones, flagmen, etc., as well as any necessary safety fencing, barriers, netting, or other measures as required for each Job Order at no additional cost to Owner.
- 4.6 The Contractor shall be responsible for obtaining all required permits. The Contractor will include the actual cost for such permits in the monthly invoices.

## **5.0 JOB ORDER CLOSEOUT:**

Upon completion of the Work, submit for Owner's review the following items as applicable in a format provided by Owner.

- 5.1 Warranty Certificates;
- 5.2 Summary cost breakdown by Contractor to include JOC and Subcontractors, identifying any minority or women-owned business;
- 5.3 Certificate of Occupancy;
- 5.4 As-built Drawings;
- 5.5 Operations and Materials;
- 5.6 Retainage Invoice; and

5.7 State approved Affidavit of Wages Paid.

**6.0 QUARTERLY REPORT:**

The Job Order Contractor shall submit to Owner quarterly reports in a format provided by Owner to include at a minimum the following:

- 6.1 Aggregate to date cost breakdown;
- 6.2 Total number of Job Orders to date;
- 6.3 Total number of Job Orders completed to date;
- 6.4 Total dollar value of Job Orders assigned to date but not completed;
- 6.5 Total dollar value of invoice submitted to date;
- 6.6 Dollar value ratio of Work completed to date by Subcontractors versus Job Order Contractor; and
- 6.7 Total number of standard to non-standard hours worked to date.

**7.0 QUALITY ASSURANCE/QUALITY CONTROL PROGRAM:**

The Job Order Contractor shall submit, for Owner's approval, a Quality Assurance/Quality Control Plan within fifteen (15) calendar days after Contract Award. This plan should address all aspects of quality control including responsibility for surveillance of work, documentation, trend analysis, corrective action and interface with Owner's inspectors.

**8.0 DESIGN:**

Job Order Contractor's duties under the Contract include the preparation of shop drawings or sketches necessary to permit orderly construction of Owner's design plans. Job Order Contractor agrees to provide detailed design drawings and plans if requested by Owner.

**9.0 CONTRACTOR'S PROJECT SUPERINTENDENT:**

The Job Order Contractor's Project Superintendent shall be knowledgeable in multiple disciplines including, but not limited to, carpentry, concrete, electrical, mechanical, HVAC, paving, landscaping, painting, roofing, plumbing, safety, and other general construction practices and standards. The Project Superintendent's background and credentials must be acceptable to Owner, and should the designated Project Superintendent become unavailable for any reason, Owner reserves the right to make final approval of any proposed replacement. Registration as a Professional Engineer in the State of Washington is desirable, but not required.

**10.0 JOC PROJECT SUPPORT REQUIREMENTS:**

- 10.1 Computer: The Contractor is to provide and maintain in an operational condition at least one computer system for the Contractor's JOC staff use. The Contractor shall provide all installation, removal, repair, maintenance, and updates to this system. Computer system

repair, maintenance, update, or replacement action shall be promptly initiated by the Contractor as needed; all such actions shall be completed and the affected computer system shall be fully operational within twenty-four (24) hours. The Contractor will provide a communication link for connection of his computer to the Lake Washington School District Computer System, or to the Internet (at the discretion of the Owner).

10.2 Computer Software: The Contractor shall provide the following software for his local office and the Lake Washington School District JOC Project Office:

10.2.1 The Contractor will provide computer software that will provide the user with an automated version of the Unit Price Book items and price information, allow the user to select the desired Unit Price Book items and quantities from the automated listings, and based on these selections will extend and total the Unit Price Book costs for project proposals. At least one copy of this software shall also be provided to Owner after Contract Award.

10.2.2 The supplier of the JOC software may from time to time issue updates to, or replacements for the software. All changes and updates to the software will be made by the Contractor and a new copy of the software will be furnished to Owner. The Contractor shall promptly install the new software, at no additional cost to Owner, and shall provide Owner with computer printouts that adequately verify the incorporation of these changes.

10.2.3 The Contractor shall not alter, append, delete or otherwise modify the programming, Unit Price Book items, or prices contained in the JOC software, unless otherwise directed by Owner.

10.2.4 Each project proposal submitted by the Contractor shall contain a computer-generated printout of all proposed Unit Price Book items, quantities, extended prices, and total proposed cost.

## **11. OWNER-FURNISHED UTILITIES:**

Owner shall provide at no cost to Job Order Contractor utilities and toilet facilities that are existing and available at each site for Work performed under the Contract. If utilities and/or toilet facilities are not existing and available, a price will be negotiated and included in the Job Order to compensate Job Order Contractor for providing such items.

11.2 Water. Owner shall furnish to Job Order Contractor from existing Owner facilities and without cost to Job Order Contractor, a supply of water necessary for the performance of Work under this Contract. Owner will in no case furnish or install any required supply connections and piping for the purpose of implementing the availability of the water supply. It is the responsibility of Job Order Contractor to determine the extent to which existing Owner water supply source is adequate for the needs of the Contract.

All taps, connections, and accessory equipment required in making the water supply source available will be accomplished by and at the expense of Job Order Contractor. All Work in connection therewith shall be coordinated, scheduled, and performed as directed and approved by Owner. Said taps, connections, and accessory equipment shall be maintained



by Job Order Contractor in a workmanlike manner in accordance with the rules and regulations of the local authority.

Upon completion of this Contract the removal of all taps, connections and accessories will be accomplished by and at the expense of Job Order Contractor so as to leave the water supply source and facility in its original condition. Such removal shall also be subject to the approval of Owner.

- 11.2 Electricity. Owner shall furnish to Job Order Contractor from existing Owner facilities and without cost to Job Order Contractor, electricity necessary for the performance of Work under this Contract. It is the responsibility of Job Order Contractor to determine the extent to which existing Owner electrical facilities are adequate for the needs of this Contract.

All taps, connections, and necessary equipment required in making the electrical power available will be accomplished by and at the expense of Job Order Contractor. All Work in connection therewith shall be coordinated, scheduled, and performed as directed and approved by Owner. Said taps, connections, and accessory equipment shall be maintained by Job Order Contractor in a workmanlike manner in accordance with the rules and regulations of the local authority.