



Pasco School District No. 1

General Terms and Conditions

INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this agreement. Contractor and his or her employees or agents performing under this contract are not employees or agents of the District. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the District by reason hereof, nor will the Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

ADVANCE PAYMENTS

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the District.

AMENDMENTS

This contract may be amended by mutual agreement of the parties. Such amendments shall be binding only if they are in writing and signed by personnel authorized to bind each of the parties.

ASSIGNMENT

Neither this contract, nor any claim arising under this contract, shall be transferred, or assigned by the Contractor without prior written consent of the District.

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The Contractor shall not use or disclose any information concerning the District, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the District, or as may be required by law.

COPYRIGHT PROVISIONS

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the District. The District shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the District, effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, the Contractor hereby grants to the District a nonexclusive, royalty-free, irrevocable

license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the District.

The Contractor shall exert all reasonable effort to advise the District, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for securing business.

The District shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage, or contingent fee.

DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the District Superintendent. The request for a dispute hearing must: 1) Be in writing 2) State the dispute issue(s) 3) State the relative position of the parties 4) Be mailed to the District Superintendent and the other party's (respondent's) contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requester's statement to both the agent and the requester within five (5) working calendar days.

The District Superintendent shall review the written statements and reply in writing to both parties within five (5) working calendar days. The District Superintendent may extend this period if necessary by notifying the parties.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable Alternate Dispute Resolution method in addition to the dispute resolution procedure outlined above.

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

DOCUMENTATION

The Contractor shall produce written reports or other written documents as requested by the District. All written reports required under this contract must be delivered to the Contract Manager.

The Contractor shall provide access to data generated under this contract to the District and to State and

Federal Auditors at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models. These records shall be retained for a minimum of three years.

GOVERNING LAW

This contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Franklin County.

INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the District and all officials, agents and employees of the District, from and against all claims arising out of or resulting from the performance of the contract.

"Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting there from. Contractor's obligations to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the state for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the District shall not be eliminated or reduced by any actual or alleged concurrent negligence of the District or its agents, employees and officials.

INSURANCE

Prior to commencing work, the Contractor agrees to obtain and continuously carry, during the period this Agreement remains in force, such insurance as the Owner considers necessary for the proper protection of the parties hereto and in forms approved by the Owner. Minimum amounts and units of insurance coverage are required as follows:

- Commercial General Liability, written on an Occurrence Form, with Broad Form Property Damage, Broad Form Contractual, Personal Injury, including other coverage on Broadening Endorsement; Explosion, Collapse, and Underground (XCU) Coverage; Products and Completed Operations; and Owner's and Contractor's Protective
- Bodily Injury and Property Damage Liability: \$1,000,000 Combined Single Limit
- Automobile Liability - Owned Automobiles and automobiles under long-term lease, including Hired Automobiles and Non-Owned Automobiles
- Bodily Injury and Property Damage Liability: \$1,000,000 Combined Single Limit
- Workman's compensation insurance, in statutory limits, covering all employees who perform any of the obligations assumed by the Bidder under the Contract.

The Contractor shall pay all premiums and costs in connection with all insurance. The Contractor shall require all insurance companies issuing any policies of insurance to the Contractor, which the Contractor is required to provide hereunder, to certify to the District in writing that such policies have been issued and are in force and will not be canceled for any reason (including non-payment of premium), annulled, materially altered, or reduced except upon thirty (30) days' notice in writing to the District of cancellation or alteration. The Contractor shall not cancel policies of insurance required hereunder either before or after completion of the work without the written consent of the District.

The Contractor shall require all insurance companies to name the District (including its managers, directors, employees, servants, and agents), as an Additional Insured with a Cross Liability clause endorsed on liability insurance policies. The Contractor further agrees that, in the event any work to be performed under the Agreement is further sublet, the subcontractor shall comply with the insurance requirements heretofore stated.

LIMITATION OF AUTHORITY

Only the Contract Manager or delegate, by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Contract Manager.

PUBLICITY

The Consultant agrees to submit to the District all advertising and publicity matters relating to this contract wherein the District's name is mentioned or language used from which the connection of the District's name may be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the District.

REGISTRATION WITH DEPARTMENT OF REVENUE

The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

REGULATORY COMPLIANCE

District and Contractor agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

- Nondiscrimination for Labor Agreements/Contracts All applicants seeking employment opportunities and all contracts for goods and services will be considered and will not be discriminated against on the basis of race, color, national origin, gender, or disability. This is in accordance with Title VI of the 1964 Civil Rights Act; Section 504 of the Rehabilitation Act, 1973, as amended; Americans with Disabilities Act, July 26, 1990, PL 101-336, and Title IX of the Education Amendments of 1972, as amended.
- Equal Employment Opportunity All contractors will take affirmative action which shall make effective equal opportunities of employees and applicants in compliance with the provisions of Executive Order 11264, dated September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
- Work Conditions Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations 29 CFR part 5

All material/equipment furnished will be required to satisfy any applicable requirements of the Washington Industrial Safety and Health Act in effect at the time of delivery. It shall be the responsibility of the Contractor to comply with this requirement insofar as compliance is within his/her control.

Compliance with the Davis-Bacon Act (40 USC 276a to 27a-7) as supplemented by Department of Labor regulations (29 CFR part 5) for federally funded construction projects.

- Contractor Employee Standards Contractor shall prohibit any of the establishment's employees, including subcontractors, from working in contact with children at a public school, who has plead guilty

to or been convicted of any felony crime involving the physical neglect of a child under RCW 9A.42, the physical injury or death of a child under RCW 9A.32 or 9A.36 (except motor vehicle violations under RCW 46.61), sexual exploitation of a child under RCW 9.68, several offenses under RCW 9A.44 where a minor is the victim, promoting prostitution of a minor under RCW 9A.88, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction. Failure to comply with this section shall be grounds to immediately terminate the contract.

- Environmental Protection Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 1857(h)), section 508 of the Clean Water Act 33 USC 1368, Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR part 15).
- Prevailing Wage All laborers, workers, or mechanics involved in construction, alteration, repair, improvement, or maintenance shall be paid the prevailing wage rates for that trade or craft in Franklin County as of the date of contract award. Contractor and all subcontractors shall file Intent to Pay Prevailing Wage with the Department of Labor and Industries and present documentation of acceptance by Labor and Industries to the District prior to receiving any payment.
 - Dispute Resolution Any dispute regarding Prevailing Wage which the parties cannot resolve among themselves shall be referred to the Director of Labor and Industries for arbitration. The Director's decision shall be final, conclusive, and binding on all parties of the dispute.
- Public Works Contractor will comply with Washington State Public Work Requirements for any project identified as such by the District. Additionally, Contractor is responsible for ensuring that these conditions are carried forward to any and all subcontracts. Prevailing Wage requirements shall apply to all public work.
 - Apprentice Utilization Any Public Works project estimated to cost over \$2 million requires apprentice labor hours equaling fifteen percent (15%) of the total labor hours.
 - Retainage All public work projects require five percent (5%) retainage or bid bond at the monthly pay estimates. Retained amounts shall be held until after final completion of the work. In addition, an Affidavit of Wages Paid must be approved by the Department of Labor and Industries and documentation of such presented to the District.
 - Contractor Surety Bond Contractor shall make, execute, and deliver to the District a good and sufficient performance bond which shall state that the contractor shall faithfully perform the provisions of the contract and shall pay all labor, subcontractors, material suppliers, and taxes as required by law.
 - Postings Intent to Pay forms listing the labor classification and wages used on the project shall be made available for worker inspection, together with the address and phone number of the local Labor and Industries Industrial Statistician.
- Federal Programs By acceptance of this purchase order, the seller certifies that neither the seller nor its principles have been suspended or disbarred from Federal Procurement programs.

SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

SITE SECURITY

While on District property, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

SUBCONTRACTING

Neither the Contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the District. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to the District for any breach in the performance of the Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances, and certifications set forth in this agreement are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

TAXES

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, the District may, by providing 10 calendar day written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the District shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

- Termination Procedures Upon termination of this contract, the District, in addition to any other rights provided in this contract may require the Contractor to deliver to the District any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The District shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the District, and the amount agreed upon by the Contractor and the District for:

- Completed work and services for which no separate price is stated,
- Partially completed work and services,
- Other property or services that are accepted by the District, and
- The protection and preservation of property, unless the termination is for default, in which case the Contract Manager shall determine the extent of the liability of the District. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract.

The District may withhold from any amounts due the Contractor such sum as the Contract Manager determines to be necessary to protect the District against potential loss or liability. The rights and remedies of the District provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the District, the Contractor shall:

- Stop work under the contract on the date, and to the extent specified, in the notice;
- Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- Assign to the District, in the manner, at the times, and to the extent directed by the Contract Manager, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the District has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Manager to the extent Contract Manager may require, which approval or ratification shall be final for all the purposes of this clause;
- Transfer title to the District and deliver in the manner, at the times, and to the extent directed by the Contract Manager any property which, if the contract had been completed, would have been required to be furnished to the District;
- Complete performance of such part of the work as shall not have been terminated by the Contract Manager; and
- Take such action as may be necessary, or as the Contract Manager may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the District has or may acquire an interest.

TREATMENT OF ASSETS

Title to all property furnished by the District shall remain in the District. Title to all property furnished by the Contractor, the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vests in the District upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the District upon

- Issuance for use of such property in the performance of this contract, or
- Commencement of use of such property in the performance of this contract, or
- Reimbursement of the cost thereof by the District in whole or in part, whichever first occurs

Any property of the District furnished to the Contractor shall, unless otherwise provided herein or approved by the District, be used only for the performance of this contract. The Contractor shall be responsible for any loss or damage to property of the District that results from the negligence of the Contractor or that results

from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices. If any District property is lost, destroyed, or damaged, the Contractor shall immediately notify the District and shall take all reasonable steps to protect the property from further damage.

The Contractor shall surrender to the District all property of the District prior to settlement upon completion, termination, or cancellation of this contract. All reference to the Contractor under this clause shall also include Contractor's employees, agents, or subcontractors.

WAIVER

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the District.