

General Terms and Conditions

1. **Vendor agrees by signature of contract that services are not to begin until approved purchase order has been issued. As part of this agreement between North Kitsap School District and the vendor, it is agreed that payment for services satisfactorily rendered, shall be mailed to the vendor within thirty days of receipt of an invoice. All invoices must reference the purchase order number.**
2. **All vendors certify that they are an independent contractor/consultant and not an employee of the district. The school district is not responsible for any liability regarding worker compensation statutes.**
3. **The contractor/consultant ensures the North Kitsap School District that its agency/labor union will comply with all state and federal guidelines and/or regulations. Therefore, all applicants seeking employment opportunities will be considered and will not be discriminated against on the basis of race, creed, color, national origin, age, gender, sexual orientation, religion, marital status, or disabilities (for qualified individuals). This is in accordance with Title VII of the 1964 Civil Rights Act, 1973, as amended; and Title IX/RCW 28A.640 of the Education Amendments of 1972, as amended.**
4. **North Kitsap School District has a no smoking policy, RCW 28A.210.310.**
5. **Contractor/consultant will prohibit any employee from working at a public school who has been convicted of or pled guilty to any felony crime under RCW 28A.400.322. Failure to comply will be grounds for immediate contract termination.**

Public Works Terms & Conditions

1. **BIDDER RESPONSIBILITY.** The Contractor will comply with all Bidder Responsibility Criteria per RCW 39.04.350.
2. **SCOPE OF WORK.** The Contractor shall perform such work and accomplish such tasks, including furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Contractor responsibilities throughout this Agreement and as detailed above or as attached hereto and incorporated herein (the "Project").
3. **COMPENSATION AND METHOD OF PAYMENT**
 - a. **A. Payments for work provided hereunder shall be made following the performance of such work, unless otherwise permitted by law and approved in writing by the District.**
 - b. **No payment shall be made for any work rendered by the Contractor except for work identified and set forth in this Agreement.**
 - c. **The District shall pay the Contractor for work performed under this Agreement pursuant to accepted bid/proposal attached and by this reference incorporated herein, with the exception that specific payment terms and other provisions of this contract shall govern over any inconsistent language in Exhibit B and that the "Payment Terms" and "Acceptance of Proposal" language in Exhibit B is hereby deleted.**
 - d. **The Contractor shall submit to the District on forms approved by the District, a voucher or invoice for services rendered during the pay period. Pursuant to the prevailing wage terms below, the District shall initiate authorization for payment after receipt of said approved voucher or invoice and shall make payment to the Contractor within thirty (30) days of confirmation that such work has been completed in accordance with this Agreement.**
4. **REPORTS AND INSPECTIONS**
 - a. **The Contractor at such times and in such forms as the District may require, shall furnish to the District such statements, records, reports, data, and information as the District may request pertaining to matters covered by this Agreement. All of the reports, information data, and other related materials, prepared or assembled by the Contractor under this Agreement and any information relating to personal, medical and financial data will be treated as confidential insofar as is allowed by Washington State laws regarding disclosure of public information, Chapter 42.56, R.C.W. Generally, Chapter 42.56, R.C.W. requires disclosure of all but the most personal and sensitive information in District hands.**
 - b. **The Contractor shall at any time during normal business hours and as often as the District or State Auditor may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the District or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The District shall receive a copy of all audit reports made by the agency or firm as to the Contractor's activities. The District may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the Contractor's activities which relate, directly or indirectly, to this Agreement.**
5. **INDEPENDENT CONTRACTOR RELATIONSHIP**
 - a. **The parties intend that an independent contractor relationship will be created by this Agreement. The District is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of work and/or services will lie solely with the discretion of the Contractor. No agent, employee, servant or representative of the**

Contractor shall be deemed to be an employee, agent, servant or representative of the District for any purpose, and the employees of the Contractor are not entitled to any of the benefits the District provides for its employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

- b. In the performance of the work herein contemplated the Contractor is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the District and shall be subject to the District's general rights of inspection and review to secure the satisfactory completion thereof.

- 6. **CONTRACTOR EMPLOYEES/AGENTS.** The District may in its sole discretion require the Contractor to remove an employee(s), agent(s) or servant(s) from employment on this Project.

- 7. **HOLD HARMLESS/INDEMNIFICATION.**

- a. The Contractor shall indemnify and hold the District and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the District arising out of, in connection with, or incident to the execution of this Agreement and/or the Contractor's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the District, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the District, its agents, employees and/or officers from any claims arising from the sole negligence of the District, its agents, employees, and/or officers. The Contractor expressly agrees that the indemnification provided herein constitutes the Contractor's waiver of immunity under Title 51 RCW, for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.
- b. No liability shall attach to the District by reason of entering into this Agreement except as expressly provided herein.

- 8. **INSURANCE.**

The Contractor shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The Contractor shall provide a Certificate of Insurance evidencing:

- a. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage.
- b. Commercial General Liability insurance written on an occurrence basis with limits no less than \$2,000,000 combined single limit per occurrence for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage, explosion, collapse and underground (XCU) if applicable; and employer's liability

The District shall be named as an additional insured on the insurance policy, as respects work performed by or on behalf of the Contractor and a copy of the endorsement naming the District as additional insured shall be attached to the Certificate of Insurance. The District reserves the right to request certified copies of any required policies. The Contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability. Any payment of deductible or self-insured retention shall be the sole responsibility of the Contractor. The Contractor's insurance shall be primary insurance as respects the District and the District shall be given thirty (30) days prior written notice of any cancellation, suspension or material change in coverage.

- 9. **TREATMENT OF ASSETS.** Title to all property furnished by the District shall remain in the name of the District and the District shall become the owner of the work product and other documents, if any, prepared by the Contractor pursuant to this Agreement.

- 10. **COMPLIANCE WITH LAWS**

- a. The Contractor, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
- b. The Contractor specifically agrees to pay any applicable business and occupation (B & O) taxes which may be due on account of this Agreement.

- c. The Contractor shall fully satisfy, and shall require any subcontractors to fully satisfy, any obligation to make industrial insurance premium payments related to the Project and required under RCW 51.12.050 and/or RCW 51.12.070. Specified retainage relating to the Project will be withheld until receipt by the District of evidence that Contractor and all of its subcontractors have fully satisfied any obligation to make industrial insurance premium payments related to the Project and required under RCW 51.12.050 and/or RCW 51.12.070.

11. NONDISCRIMINATION.

- a. The District is an equal opportunity employer.
- b. Nondiscrimination in Employment. In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, religion, color, national origin, age, honorably-discharged veteran or military status, sex, sexual orientation including gender expression or identity, marital status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a person with a disability; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Contractor shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The Contractor shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.
- c. Nondiscrimination in Services. The Contractor will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.
- d. If any assignment and/or subcontracting has been authorized by the District, said assignment or subcontract shall include appropriate safeguards against discrimination. The Contractor shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. ASSIGNMENT/SUBCONTRACTING

- a. The Contractor shall comply with all requirements of RCW 39.30.060 with regards to subcontracting when applicable.
- b. The Contractor shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the District, and it is further agreed that said consent must be sought in writing by the Contractor not less than thirty (30) days prior to the date of any proposed assignment. The District reserves the right to reject without cause any such assignment.
- c. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.
- d. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the District.

13. CONTRACT CHANGES

- a. Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon the District unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.
- b. The District will have the right to make changes to the work provided for hereunder, within its general scope, and the contract time and for contract amount will be equitably adjusted to reflect the change. The Contractor will promptly commence and continue to perform the work as changed notwithstanding disagreement over the equitable adjustment owing therefore.

14. MAINTENANCE AND INSPECTION OF RECORDS

- a. The Contractor shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the District, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

- b. The Contractor shall retain all books, records, documents and other material relevant to this agreement, for six (6) years after its expiration. The Contractor agrees that the District or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.
15. **POLITICAL ACTIVITY PROHIBITED.** None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.
16. **PROHIBITED INTEREST.** No member, officer, or employee of the District shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
17. **RETAINAGE.** Notwithstanding any other provision of this Agreement, in accordance with RCW 60.28, the District shall retain five (5) percent from the monies earned by Contractor as a trust fund, in lieu of Retainage Bond. Said retainage shall be reserved in a District fund until forty-five (45) days following final acceptance of the Project as completed, payment of retainage will be subject to releases from the Department of Revenue, the Department of Labor & Industries, and the Employment Security Division
- a. Contractor shall notify the District in writing before starting work if retainage is desired to be held by other means instead of District funds.
 - b. Where applicable, the amount of retainage will be in accordance with the following section regarding Performance Bond.
18. **PERFORMANCE BOND.** In accordance with Ch. 39.08 RCW, Contractor shall furnish to the District a bond, with a surety company licensed as a surety in Washington as surety, conditioned that Contractor shall faithfully perform all provisions of this Agreement and pay all laborers, mechanics, subcontractors and materialmen, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for carrying out the Project. Said bond shall be in the amount of the total amount of this Agreement. If the total contract amount is \$150,000 or less, Contractor may opt to have the District retain ten (10) percent of the contract amount in lieu of the Performance Bond, for a period of thirty days after the date of final acceptance, or until receipt of all necessary releases from the Department of Revenue, the Department of Labor & Industries, the Employment Security Division, and settlement of any liens filed under Ch. 60.28 RCW, whichever is later.
19. **PREVAILING WAGE.**
- a. Contractor shall pay all laborers, workers, or mechanics performing work under this Agreement prevailing wages as required by Ch. 39.12 RCW, and shall satisfy all other requirements of that chapter, including without limitation requiring that all subcontractors performing work related to the project comply with the requirements of that chapter. The hourly minimum rates of wage which may be paid to laborers, workers, or mechanics for work related to the Project are shown on the Department of Labor and Industries web site at the following locations:
 - i. Journey: <https://secure.lni.wa.gov/wagelookup/rates/journey-level-rates>
 - ii. Apprentice: <https://secure.lni.wa.gov/wagelookup/rates/apprentice-rates>
 - iii. Use the effective date as of the date of signing of this agreement for Kitsap County. A copy of the applicable wage rates are available for viewing in the District's offices and will be mailed to Contractor upon request
 - b. Prior to the Contractor starting work under this Agreement, the Contractor and each subcontractor shall submit to the Department of Labor & Industries a Statement of Intent to Pay Prevailing Wages approved by the industrial statistician of the Washington State Department of Labor & Industries and complying with the requirements of RCW 39.12.040. Prior to release of the sums retained pursuant to section 17 of this Agreement ["Retainage"], Contractor and each subcontractor shall submit to the District an Affidavit of Wages Paid approved by the industrial statistician of the Washington State Department of Labor & Industries and complying with the requirements of RCW 39.12.040
 - c. For contracts under \$5,000 the alternative Combined Intent/Affidavit for Small Works Projects will be initiated with LNI by the District.
 - d. Contractors shall file certified payroll records with the Department of Labor & Industries and retain those records in accordance with RCW 39.12.120.
20. **RECORDS CHECK/CRIMES AGAINST CHILDREN**

- a. In the event Contractor or any of Contractor's agents, employees, or applicants for employment will have regularly scheduled unsupervised access to children and/or hire employees who will have regularly scheduled unsupervised access to children, Contractor shall require a record check through the Washington State Patrol criminal investigation system under RCW 43.43.830-43.43.834, 10.97.030 and 10.97.050, and through the Federal Bureau of Investigation before hiring the employee or allowing such employee onto the Project site. The record check shall include a fingerprint check using a complete Washington State criminal identification fingerprint card. The Contractor shall provide a copy of the record to the person applying for employment to the District. If the Contractor or applicant has a record check within previous two (2) years, the Contractor may waive the requirement. The Contractor shall pay for the requirements set forth in this paragraph.
 - b. In accordance with RCW 28A.400.330, contractor shall prohibit any employee of the Contractor from working at a public school who has or may have contact with children at a public school during the course of his or her employment and who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction. Any failure to comply with this section shall be grounds for the school district immediately terminating the contract.
 - c. Contractor shall require any subcontractor(s) to fully comply with the requirements of this section.
21. **APPRENTICE UTILIZATION REQUIREMENT.** The Contractor shall comply with the apprentice utilization requirement of RCW 39.04.320(1)(c), as may hereafter be amended, and as such requirement may be adjusted by the District for this Agreement pursuant to RCW 39.04.320(2).
22. **TERMINATION.**
 - a. **Termination for Convenience.** The District may terminate this Agreement, in whole or in part, at any time, by written notice to the Contractor. In the event of termination for the convenience of the District, the Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit a termination claim to the District. If the Contractor has any property in its possession belonging to the District, the Contractor will account for the same, and dispose of it in the manner directed by the District.
 - b. **Termination for Cause.** If the Contractor fails to perform in the manner called for in this Agreement, or if the Contractor fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days written notice thereof, the District may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.
23. **NOTICE.** Notice provided for in this Agreement shall be sent by e-mail to the addresses designated for the parties on the first page of this Agreement.
24. **ATTORNEYS FEES AND COSTS.** If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.
25. **JURISDICTION AND VENUE.**
 - a. This Agreement has been and shall be construed as having been made and delivered with the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.
 - b. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Kitsap County, Washington.
26. **SEVERABILITY.**
 - a. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations

of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

- b. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

27. ENTIRE AGREEMENT. The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.