



Request for Proposals

RFP05:20/21

ADVERTISED DATE: SEPTEMBER 10, 2020

Request for Proposals (RFP) Title: Diversity and Equity Consulting Services

RFP Number: RFP05:20/21

Due Date: September 24, 2020 - 2:00 p.m. Pacific Time

Buyer: Sarah Yeckley, CPCP syeckley@everettsd.org

Alternate Buyer: Debbie Montgomery dmontgomery@everettsd.org

Pre-Proposal Conference:

N/A

Sealed Proposals are hereby solicited and will **only** be received by:

Everett Public Schools

Procurement Division
Finance and Business Services

Electronic submissions via the District's Procurement website
<https://www.everettsd.org/Page/4788>

We acknowledge that all Addenda issued for this RFP have been examined as part of the proposal documents.

Company Name

Address

City/State /Postal Code

Signature

Authorized Representative / Title

Email

Phone

Fax

Contact Name:

Phone

Email

DATES TO ADVERTISE

September 10, 2020

September 17, 2020

ADVERTISEMENT FOR REQUEST FOR PROPOSAL (RFP)

Everett Public Schools Finance and Business Services will accept sealed proposals on or before the RFP due date of September 24, 2020, not later than 2:00pm Pacific Time at the Community Resource Center, 3900 Broadway, Everett, Washington, 98201 for:

RFP05:20/21 – Diversity and Equity Consulting Services

RFP Documents can be retrieved from the District's Procurement website at <https://www.everettsd.org/Page/4788> or an electronic copy may be requested from Sarah Yeckley, Procurement Supervisor at syeckley@everettsd.org.

Everett Public Schools reserves the right to cancel or postpone the RFP opening, reject any, and all proposals, and to waive any informalities or irregularities in any bid, or parts thereof.

To be advertised in the Daily Journal of Commerce and Everett Herald.

DEFINITION OF WORDS AND TERMS APPLICABLE ONLY TO INSTRUCTION OF THE RFP

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Addendum/Addenda: Written additions, deletions, clarification, interpretations, modifications or corrections to the solicitation documents issued by the District during the Proposal period and prior to contract award.

Best and Final Offer: Best and Final Offer shall consist of the Proposer's revised proposal and any supplemental information requested during the evaluation of Proposals. In the event of any conflict or inconsistency in the items submitted by the Proposer, the items submitted last govern.

Competitive Range: The Competitive Range consists of the Proposers that have a reasonable chance of selection for contract award. The Proposal Evaluators (PE) shall conduct the initial evaluation of the proposals considering price and Evaluation Factors established in the RFP. The Buyer and Project Manager/PE together shall compare the evaluations and determine the Competitive Range. The Competitive Range may be reduced after the evaluation of additional information, Best and Final Offers and negotiations.

Criteria, Evaluation Criteria or Evaluation Factors: The elements cited in the RFP that the District shall examine to determine the Proposers understanding of the requirements; technical, business and management approach; key personnel; qualification and experience of the Proposer; potential for successfully accomplishing the Contract; risk allocation and the probable cost to the District.

Days: Calendar days.

Measurable Amount of Work: For purposes of payment of a living wage, Measurable Amount of Work means a definitive allocation of an employee's time that can be attributed to work performed on a specific matter, but that is not less than a total of one hour in any one week period.

Proposal Evaluators (PE): Team of people appointed by the District to evaluate the proposals, conduct discussions, call for Best and Final Offers, score the proposals and make recommendations.

Proposer: Individual, association, partnership, firm, company, corporation or a combination thereof, including joint ventures, submitting a proposal to perform the Work.

RFP: Request for Proposals, also known as the solicitation document.

Reference Documents: Reports, Specifications, and drawings which are available to Proposers for information and reference in preparing proposals but not as part of this Contract.

SECTION 1 PROPOSAL PREPARATION

1.1 Proposal Submission

Proposers are encouraged to submit proposals electronically through the District's Procurement Website at <https://www.everettsd.org/Page/4788> .

Sealed proposals shall contain all required attachments and information and be submitted to The District (hereinafter "District") no later than the date, time and place stated on the front of this RFP or as amended. The proposals shall show the title and number, the due date specified, and the name and address of the Proposer on the submitted cover sheet of this RFP. Proposers are cautioned that failure to comply may result in non-acceptance of the proposal. The Proposer accepts all risks of late delivery of mailed proposals or of misdelivery regardless of fault. Proposals properly and timely submitted will be publicly opened.

Proposals will only be accepted from Contractors able to complete the delivery of goods or services described in the specifications. Joint ventures shall submit one proposal for the team, with accompanying proof of the joint venture agreement.

If a company chooses not to submit a proposal, the District requests the company advise the Buyer by email if they desire to remain listed for the subject of this RFP and state the reason they did not submit a proposal.

1.2 Late Proposals

Proposals, modifications of proposals, received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered.

1.3 Cancellation of RFP or Postponement of Proposal Opening

The District reserves the right to cancel this RFP at any time. The District may change the date and time for submitting proposals prior to the date and time established for submittal.

1.4 Proposal Signature

Each proposal shall include a completed Proposal response form, the first page of this document, signed by an authorized representative of the Proposer.

1.5 Addenda

If at any time, the District changes, revises, deletes, clarifies, increases, or otherwise modifies the RFP, the District will issue a written Addendum to the RFP.

1.6 Questions and Interpretation of the RFP

No oral interpretations of the RFP will be made to any Proposer. All questions and any explanations must be requested in writing and directed to the Buyer no later than **five (5)** Days prior to the due date specified in the solicitation. Oral explanations or instructions are not binding. Communications concerning this RFP with other than the listed Buyer or Procurement staff may cause the Proposer to be disqualified. Any information modifying a solicitation will be furnished to all Proposers by addendum. **Communications concerning this proposal, with other than the listed Buyer may cause the Proposer to be disqualified.**

1.7 Schedule

Day/Month/Year	Event
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<u>10/September/2020</u>	Public announcement of Request for Proposals
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<u>16/September/2020</u>	Preproposal questions due, in writing
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<u>24/September/2020</u>	Proposals due no later than 2:00pm Pacific Time
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<u>25/September/2020</u>	*Begin Evaluation of Proposals
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<u>30/September/2020</u>	*Begin Interviews/Demonstrations/conduct Site Visits, if applicable
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<u>2/October/2020</u>	*Begin Negotiations
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<u>28/October/2020</u>	*Execute Contract
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*NOTE: Dates preceded by an asterisk are estimated dates. Estimated dates are for information only.

1.8 Examination of Proposal and Contract Documents

The submission of a proposal shall constitute an acknowledgement upon which the District may rely that the Proposer has thoroughly examined and is familiar with all requirements and documents pursuant with the RFP, including any addenda and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods or services to be provided hereunder.

The failure of a Proposer to comply with the above requirement shall in no way relieve the Proposer from any obligations with respect to its proposal or to any Contract awarded pursuant to this RFP. No claim for additional compensation shall be allowed which is based upon a lack of knowledge or misunderstanding of this RFP.

1.9 Cost of Proposals and Samples

The District is not liable for any costs incurred by Proposer in the preparation and evaluation of proposals submitted. Samples of items required must be submitted to location and at time specified. Unless otherwise specified, samples shall be submitted with no expense to the District. If not destroyed by testing, samples may be returned at the Proposer's request and expense unless otherwise specified.

1.10 Modifications of Proposal or Withdrawal of Proposal Prior to Proposal Due Date

At any time before the time and date set for submittal of proposals, a Proposer may submit a modification of a proposal previously submitted to the District. All proposal modifications shall be made in writing, executed and submitted in the same form and manner as the original proposal.

Proposals may be withdrawn by written notice received prior to the exact hour and date specified for receipt of proposals. A proposal also may be withdrawn in person by a Proposer or authorized representative provided their identity is made known and they sign a receipt for the proposal, but only if the withdrawal is made prior to the exact hour and date set for receipt of proposals. All requests for modification or withdrawal of proposals, whether in person or written, shall not reveal the amount of the original proposal.

1.11 Proposal Withdrawal After Public Opening

Except for claims of error granted by the District, no Proposer may withdraw a proposal after the date and time established for submitting proposals, or before the award and execution of a Contract

pursuant to this RFP, unless the award is delayed for a period exceeding the period for proposal effectiveness.

Requests to withdraw a proposal due to error must be submitted in writing along with supporting evidence for such claim for review by the District. Evidence must be delivered to the District within two (2) Days after request to withdraw. The District reserves the right to require additional records or information to evaluate the request. Any review by the District of a proposal and/or any review of such a claim of error, including supporting evidence, creates no duty or liability on the District to discover any other proposal error or mistake, and the sole liability for any proposal error or mistake rests with the Proposer.

1.12 Error and Administrative Corrections

The District shall not be responsible for any errors in proposals. Proposers are responsible for all errors or omissions in their proposals, and any such errors or omissions will not serve to diminish their obligation to the District. A proposer who claims error and fails to enter a contract with the District, shall be prohibited from proposing on the same commodity or service if the requirement is subsequently resolicited by the District. Negligence in preparing a proposal does not give a proposer the right to withdraw their proposal after opening. Proposers shall only be allowed to alter proposals after the submittal deadline in response to requests for clarifications or Best and Final Offers by the District.

The District reserves the rights to allow corrections or amendments to be made that are due to minor administrative errors or irregularities, such as errors in typing, transposition or similar administrative errors.

1.13 Proposal Content Requirements

A. The proposal shall contain the following items and follow the sequence outlined below:

Sec. 1 & 2 Instructions and Information about the RFP Process

Cover sheet with Proposer's Signature

Sec 3 - Scope of Work and Proposal Requirements

Optional – Executive Summary or Overview of Proposal – two pages maximum.

Proposer's Response to RFP Scope of Work and Evaluation Criteria

Price Proposal

References

Contract: Identify any exceptions to the District's terms and conditions and attachments with a signed letter from an attorney or authorized representative

B. Submit one original [marked ORIGINAL] proposal and one copy of the proposal and attachments.

1. Proposers shall submit with their original proposal an exact duplicate of the original proposal, in Microsoft Word format.

1.14 Compliance with RFP Terms, Attachments and Addenda

A. The District intends to award a Contract based on the terms, conditions, attachments and addenda contained in this RFP. Proposers shall submit proposals, which respond to the requirements of the RFP.

B. Proposers are strongly advised to not take exceptions to the terms, conditions, attachments and addenda; exceptions may result in rejection of the proposal. An exception is not a response to a

proposal requirement. If an exception is taken, a 'Notice of Exception' must be submitted with the proposal. The 'Notice of Exception' must identify the specific point or points of exception and provide an alternative.

- C. The District reserves the right to reject any proposal for any reason including, but not limited to, the following –
- Any proposal, which is incomplete, obscure, irregular or lacking necessary detail and specificity;
 - Any proposal that has any qualification, limitation, exception or provision attached to the proposal;
 - Any proposal from Proposers who (in the sole judgment of the District) lack the qualifications or responsibility necessary to perform the Work;
 - Any proposal submitted by a Proposer which is not registered or licensed as may be required by the laws of the state of Washington or local government agencies;
 - Any proposal, from Proposers who are not approved as being compliant with the requirements for equal employment opportunity; and
 - Any proposal for which a Proposer fails or neglects to complete and submit any qualifications information within the time specified by the District.
- D. The District may, at its sole discretion, determine that a proposal with a 'Notice of Exception' merits evaluation. A proposal with a 'Notice of Exception' not immediately rejected may be evaluated, but its competitive scoring shall be reduced to reflect the importance of the exception. Evaluation and negotiation shall only continue with the Proposer if the District determines that the proposal continues to be advantageous to the District.
- E. In consideration for the District's review and evaluation of its proposal, the Proposer waives and releases any claims against the District arising from any rejection of any or all proposals, including any claim for costs incurred by Proposers in the preparation and presentation of proposals submitted in response to this RFP.
- F. Proposals shall address all requirements identified in this RFP. In addition, the District may consider proposal alternatives submitted by Proposers that provide cost savings or enhancements beyond the RFP requirements. Proposal alternatives may be considered if deemed to be in the District's best interests. Proposal alternatives shall be clearly identified.

1.15 Acceptance of Contract, Attachments and Addenda

Proposer(s) shall review the Contract, and all its attachments, and submit a signed letter by their attorney or authorized legal representative stating they intend to comply with all the terms and conditions. The signed letter shall be submitted with the proposal.

If there are exceptions taken to the terms and conditions in Attachment A Contract and any of its attachments, the Proposer's attorney or authorized legal representative shall sign an exception letter describing reasoning for the exceptions and include the exception letter and Attachment A Contract as an attachment to the proposal, identifying the exceptions and proposed changes. All proposed changes shall be tracked the Contract using the tracking changes feature in Microsoft Word®.

The project schedule is such that it requires a very efficient proposal review and negotiation period. It is very important that any possible roadblocks or issues the Proposer may have with the terms and conditions are identified during the proposal process and resolved prior to proceeding with the Contract negotiations.

1.16 Forms Required before Contract Signing

- The Proposer shall submit within five (5) Days of notification from the District the insurance certificate and endorsement meeting the levels of coverage set forth in this RFP.
- W-9 if not already on file with the District.

1.17 Collusion

If the District determines that collusion has occurred among Proposers, none of the proposals from the participants in such collusion shall be considered. The District's determination shall be final.

1.18 Proposal Price and Effective Date

- A. The proposal price shall include everything necessary for the prosecution and completion of Work under the Contract including but not limited to furnishing all materials, equipment, supplies, tools, plant and other facilities and all management, supervision, labor and service, except as may be provided otherwise in this RFP. Proposed Prices shall include all freight charges, FOB to the designated delivery point. Washington State sales/use taxes and Federal excise taxes shall not be included in the proposal price. The District shall pay any Washington State sales/use taxes applicable to the Contract price or tender an appropriate amount to the Contractor for payment to Washington State. The District is exempt from Federal excise taxes. All other government taxes, duties, fees, royalties, assessments and charges shall be included in the Proposal price.
- B. In the event of a discrepancy between the unit price and the extended amount for a proposal item, the District reserves the right to clarify the Proposal.
- C. The Proposer agrees if they offer the same service or product to another customer comparable in size at a lower price than the rates detailed on this RFP, the Proposer will adjust the District costs to the lower rate.
- D. The proposal shall remain in effect for 90 Days after the proposal due date, unless extended by agreement.

1.19 Procedure When Only One Proposal Is Received

If the District receives a single responsive, responsible proposal, the District may request an extension of the proposal acceptance period and/or conduct a price or cost analysis on such proposal. The Proposer shall promptly provide all cost or pricing data, documentation and explanation requested by the District to assist in such analysis. By conducting such analysis, the District shall not be obligated to accept the single proposal; the District reserves the right to reject such proposal or any portion thereof.

PROPOSAL EVALUATION AND CONTRACT AWARD

1.20 Proposal Evaluation

- A. The District will evaluate proposals using the criteria set forth in this RFP. If deemed necessary, written and/or oral discussions, site visits or any other type of clarification of proposal information may be conducted with those Proposers whose proposals are found to be potentially acceptable. Identified deficiencies, technical requirements, terms and conditions of the RFP, costs or prices, and clarifications may be included among the items for discussion. The discussions are intended to give Proposers a reasonable opportunity to resolve deficiencies, uncertainties and clarifications as requested by the District and to make the cost, pricing or technical revisions required by the resulting changes. In addition, the District may request additional business and administrative information.

- B. The District may find that a Proposer appears fully qualified to perform the Contract or it may require additional information or actions from a Proposer. In the event the District determines that the proposal is not within the Competitive Range the District shall eliminate the proposal from further consideration.
- C. The evaluation of Proposers' proposals and additional information may result in successive reductions of the number of proposals that remain in the Competitive Range. If applicable to the procurement, the firms remaining in the Competitive Range may be invited to continue in the proposal evaluation process, and negotiations.
- D. The District reserves the right to contact all references provided by the bidder and additional customers not listed by the bidder. All information obtained by the District will be used in the evaluation process.
- E. Upon completion of discussions, the District may issue to all remaining potentially acceptable Proposers within the competitive range a request for Best and Final Offers. The request shall include notice that discussions are concluded, an invitation to submit a revised proposal with a Best and Final Offer, and a new submittal date and time.
- F. The District may enter negotiations with one or more Proposers to finalize Contract terms and conditions. Negotiation of a Contract shall be in conformance with applicable federal, state and local laws, regulations and procedures. The objective of the negotiations shall be to reach agreement on all provisions of the proposed Contract. In the event negotiations are not successful, the District may reject proposals.
- G. The District reserves the right to make a Contract award without written and/or oral discussions with the Proposers and without an opportunity to submit Best and Final Offers when deemed to be in the District's best interests. Contract award, if any, shall be made by the District to the responsible Proposer whose proposal best meets the requirements of the RFP, and is most advantageous to the District, taking into consideration price and the other established evaluation factors. The District is not required to award a Contract to the Proposer offering the lowest price. The District shall have no obligations until a Contract is signed between the Proposer and the District. The District reserves the right to award one or more contracts as it determines to be in its best interest.

1.21 Responsive and Responsible

Responsive

The District will consider all the material submitted by the Proposer, and other evidence it may obtain otherwise, to determine whether the Proposer is in compliance with the terms and conditions set forth in this RFP.

Responsible

In determining the responsibility of the Proposer, the District may consider:

- the ability, capacity and skill to perform the Contract and provide the service required;
- the character, integrity, reputation, judgment and efficiency;
- financial resources to perform the Contract properly and within the times proposed;
- the quality and timeliness of performance on previous contracts with the District and other agencies, including, but not limited to, the effort necessarily expended by the District and other agencies in securing satisfactory performance and resolving claims;

- compliance with federal, state and local laws and ordinances relating to public contracts;
- other information having a bearing on the decision to award the Contract.

Failure of a Proposer to be deemed responsible or responsive may result in the rejection of a proposal.

1.22 Evaluation Criteria and Proposal Scoring

Each proposal has a total possible score of 150 points with the points assigned as follows:

	Proposal Evaluation Criteria	Points
Pricing	Proposal Price <i>(pricing will be scored based on prices of other qualified submissions)</i> Proposers may be requested to submit revised pricing information after demonstrations/interviews	10
Experience and Qualifications	Prior Experience – demonstrated in the written submission Prior experiences as related to the RFP with school districts in addressing equity, inclusion, belonging and conflict mediation (for both students and educators) • Demonstrates 0-1 years of school level experience addressing specified content (<i>earns up to a total of 10 out of 30 points</i>); or • Demonstrates 2-3 years of similar district level experience addressing specified content (<i>earns up to a total of 20 out of 30 points</i>); or • Demonstrates 4+ years of experience at a similar district level addressing specified content (<i>earns up to a total of 30 out of 30 points</i>)	30
Methodology	Methodology – demonstrated in the written submission Demonstrates in the written submission an understanding and can relate experience so succeed in dismantling systemic racism and creating a culture of inclusion and belonging • Evidence of development and taught courses on racism, bias, and inclusion (<i>earns up to 10 points</i>); and • Evidence of authored books, articles or blogs on racism, bias and inclusion (<i>earns up to 10 points</i>); and Demonstrates in the written proposal an understanding and can relate experience to conflict mediation and conflict transformation • Evidence of development and taught courses on addressing conflict (<i>earns up to 5 points</i>); and • Evidence of authored books, articles or blogs on addressing conflict (<i>earns up to 5 points</i>)	30
Quality of Proposal	Easy to navigate, responds directly to scope of work and evaluation criteria	10
Terms And Conditions	Compliance with the District Contract's Terms and Conditions	10
References	Customer References – at least 3 provided with submitted proposal	10
	Total possible Written	100

	Proposal Evaluation Criteria	Points
	Demonstration and Interview, if conducted	50
Total Evaluation		150

1.23 Public Disclosure of Proposals

This procurement is subject to the Washington Public Records Act, RCW (Revised Code of Washington) 42.56 et seq. Proposals submitted under this RFP shall be considered public documents unless the documents are exempt under the public disclosure laws. After a decision to award the contract has been made, the proposals shall be available for inspection and copying by the public.

If a Proposer considers any portion of its proposal to be protected under the law, the Proposer shall clearly identify each such portion with words such as “CONFIDENTIAL,” “PROPRIETARY” or “BUSINESS SECRET.” If the District determines that the material is not exempt from public disclosure law, the District will notify the Proposer of the request and allow the Proposer ten (10) Days to take whatever action it deems necessary to protect its interests. If the Proposer does not take such action within said period, the District will release the portions of the proposal deemed subject to disclosure. By submitting a proposal, the Proposer assents to the procedure outlined in this subsection and shall have no claim against the District on account taken under such procedure.

SECTION 2 SCOPE OF WORK

Background

The Everett School District is comprised of over 20,00 students, and is located in Snohomish County, approximately 25 miles north of Seattle. As a school community, we have been deeply affected by the tragic deaths of George Floyd, Ahmaud Arbery, and Breonna Taylor. These lives lost, and others experiencing everyday trauma impacted by systemic racism, remind us that there is much work to be done to improve the lived experiences of our students in our schools.

The Everett School District and Everett community have a responsibility to ensure each student is safe, healthy, engaged, and supported. We are vehemently opposed to racism and any kind of oppression of human beings based on race, gender, ethnicity, sexual preference or identity, age, religion or disability.

This request for proposal is for a regional consultant to support our racial and social justice efforts to create equitable outcomes for all of our students while increasing the sense of belonging and inclusion throughout our district. This consultant will serve as a trainer and coach to help us develop systems to advance our equity, diversity and inclusion work. Foundational to this effort is implementing anti-racism professional development for all staff so no student will be marginalized.

The District is seeking to award this contract to one provider.

The terms of the contract will be from October 28, 2020 to August 31, 2021

Scope of Work

Serve as a conflict mediator: November -July

In coordination with the district will assist in the facilitation of emotionally charged race-based conversations with community, parents, staff and students to ensure all parties feel heard.

- Allow time for healing and learning
- Provide opportunities to hear diverse students and families share their voice and perspective
- Assist the district in identifying issues related to district culture across the system that need to change
- Flexibility and availability to meet on short notice

Equity toolkit: November-March

Develop and implement a toolkit to be used by school leaders to support their community in creating a strategic plan and daily action steps for infusing practices, protocols, and tactics to create and sustain a more inclusive culture. The toolkit needs to provide resources to support working through the impacts of a racial or biased crisis within the school, as well as creating intervention and maintenance plans outside of a crisis. The model should incorporate the voices from the school community and beyond.

Racial equity audit: November- January

- Develop a system for conducting a scan of the school environment and determine which factors need to be addressed to increase the sense of belonging and inclusion for all students
- Complete a scan tool
- Provide professional development on how to effectively scan for equity, inclusion, and belonging.

Strategic Planning (November-July)

Facilitate district staff in strategic planning around racial equity, inclusion and belonging.

- Work with a cross-departmental equity team to establish clear goals, outcomes and measurable benchmarks.

Work Environment

- Sessions will range in length from 2-4 hours. There may be up to two sessions per day. By mutual agreement we may have 8 hour sessions
- Sessions will be conducted via Zoom. If conditions change due to Covid-19 we would expect the vendor to appear in person at times.
- Work done by the vendor in person will be hosted at a district facility.
- Travel arrangements are the responsibility of the vendor, the District will not reimburse for travel costs.
- The consultant must become familiar with the district's policies and procedures pertaining to sexual harassment, HIB, nondiscrimination, and discipline.

Attachment A to RFP #
SAMPLE - Standard Contract - SAMPLE

THIS CONTRACT # _____ ("Contract") is entered into by the Everett Public Schools, (the "District"), and ***TBD*** (the "Contractor"), whose address is _____. The District is undertaking certain activities related to, _____ and, the District desires to engage the Contractor to provide Work in connection with such undertakings of the District,

NOW, THEREFORE, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

I. CONTRACT DOCUMENTS -

The Contractor shall provide all Work described in this Contract, which consists of the following documents and attached exhibits, each of which are made a part hereof by this reference in the following order of precedence:

1. Contract Amendment(s)
2. Contract, which consists of this page, the Terms and Conditions, and the following:
 - ☒ Scope of WorkExhibit A
 - ☒ Price AttachmentExhibit B
 - ☒ Certificate(s) of Insurance and Policy Endorsement.....Exhibit C
 - ☐ Other Exhibits and attachments (if applicable)
3. Request for Proposal (if applicable - as modified by any addenda)
4. Contractor's Proposal (if applicable)

II. CONTRACT TERM

This Contract shall be effective when countersigned by The District and shall expire August 31, 2021, unless extended or terminated earlier pursuant to the terms and conditions of this Contract.

III. CONTRACT AMOUNT

The District shall reimburse the Contractor upon Acceptance of the Work specified in this Contract in an amount not to exceed ***\$TBD***.

IV. ACKNOWLEDGEMENT AND AUTHORITY

The parties acknowledge that they have had the opportunity to review this Contract. Therefore, the parties expressly agree that this Contract shall be given full force and effect according to each and all of its express terms and provisions and the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract.

The parties executing this Contract have authority to sign and bind its represented party to this Contract.

EVERETT PUBLIC SCHOOLS

Authorized Signature

Name and Title (Print or Type)

Date Accepted: _____

COMPANY NAME - *TBD*

Authorized Signature

(For sample only, please do not sign)

Name and Title (Print or Type)

Date Accepted: _____

TERMS AND CONDITIONS

SECTION 1 DEFINITIONS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: A written determination by the District that the Contractor has completed the Work in accordance with the Contract.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms and conditions or Scope of Work, signed by both parties, with or without notice to the sureties.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the District for the performance of Work under the Contract.

Day: Calendar day.

Measurable Amount of Work: A definitive allocation of an employee's time that can be attributed to Work performed under this Contract, but that is not less than a total of one hour in any one week period.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Project Manager: The individual designated by the District to manage the project on a daily basis and who may represent the District for Contract administration.

RCW: The Revised Code of Washington.

Scope of Work (SOW): An exhibit to the Contract consisting of a written description of the Work to be performed.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

Work: Everything to be provided and done for the fulfillment of the Contract and shall include services, goods and supplies specified under this Contract, including Contract Amendments.

SECTION 2 GENERAL PROVISIONS

2.1 Administration

The Contractor shall be responsible for performing the Work. The District is not a party to defining the division of Work between the Contractor and its Subcontractors, if any.

The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform the Work under this Contract.

2.2 Warranty

Contractor warrants that the Work shall in all material respects conform to the requirements of this Contract. Contractor further warrants that qualified professional personnel with in-depth knowledge shall perform the Work in a timely and professional manner, and that the Work shall conform to the standards generally observed in the industry for similar Work.

2.3 Payment Procedures; Prompt Payment of Subcontractors

For Work Accepted by the District the Contractor shall furnish invoices to the project manager identified in notices section of this contract. All invoices shall contain the complete description of the products, services, phases or milestones Accepted, hours worked and Contract hourly rates, or authorized fees.

The District will not be bound by prices contained in an invoice that are higher than those in Exhibit B, or if not used as part of this Contract, then the current price list for this Contract approved by the District. Within thirty (30) Days after receipt of an invoice, the District shall pay the Contractor for Accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the invoice.

If the Contractor is registered with the State of Washington it shall add all applicable State sales or use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to the State of Washington, or the District will make payment directly to the State.

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Subcontract within ten (10) Days from the receipt of each payment the Contractor receives from the District.

2.4 Pricing

Prices shall remain firm for the duration of the Contract. The Contractor may request a price change(s) in writing delivered to the District. The Contractor shall provide documentation satisfactory to the District in support of its request, such as changes to the Producers Price Index for the commodity, the Consumer Price Index for the Seattle-Bellevue-Everett area, or a manufacturer's published notification of price change(s). The District reserves the right, in its sole discretion, to grant the request as submitted, engage the Contractor in a discussion about modifications to the request, or deny the request in its entirety.

The Proposer agrees if they offer the same service or product to another customer comparable in size at a lower price than the rates detailed on this RFP, the Proposer will adjust the District costs to the lower rate.

Any change in pricing granted by the District shall be affected through a Contract Amendment instituting the price adjustment and establishing an effective date.

2.5 Contract Amendment

All changes to the Contract shall be made in writing through a Contract Amendment. No oral statement or other conduct by the District shall change or modify the Contract. The District may perform an analysis of cost, price or schedule to determine the reasonableness of the proposed change to the Contract.

2.6 Changed Requirements

New federal, state and School Board laws, regulations, ordinances, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well. Changed requirements shall be implemented through Section 2.5, Contract Amendment.

2.7 Taxes, Licenses, and Certificate Requirements

If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the District immediately of such condition in writing. The Contractor and Subcontractor(s) shall maintain and be liable for payment of all applicable taxes (except sales/use taxes), fees, licenses permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under this Contract.

2.8 Notices

Unless otherwise specified in the Contract, all notices or documentation required or provided pursuant to this Contract shall be in writing and shall be deemed duly given when received at the addresses first set forth below via certified or registered first class mail, return receipt requested, personal delivery or electronic mail. However, if any of the following occur: "notice to cure" a default, Contractor communication in connection with an alleged default, or notice of termination, such notice or communication shall only be delivered personally, or by certified or registered first class mail, return receipt requested.

THE DISTRICT	CONTRACTOR
<i>TBD</i>	<i>TBD</i>

2.9 Certification Regarding Debarment, Suspension and Other Responsibility Matters

This Contract is a covered transaction for purposes of the Code of Federal Regulations and the Contractor is required to verify that none of the Contractor, its principals, or affiliates, are excluded or disqualified from receiving contract award by the Federal Government. The Contractor is required to comply with CFR and must include the requirement to comply with the CFR in any lower tier covered transaction it enters into. By signing and submitting this Contract, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the District. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the District, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of the CFR while performing this Contract and further agrees to include a provision requiring such compliance in its lower tier covered transactions.

2.10 Compliance with Laws and Regulations

The Contractor shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, RCW Chapter 49.60, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. The Contractor shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

SECTION 3 LEGAL RELATIONS; INDEMNITY AND INSURANCE

3.1 Independent Status of Contractor

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the Contractor and its employees. The Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

3.2 Indemnification and Hold Harmless

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the District, including its employees, directors, agents, volunteers, and affiliates, from and against any and all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgements, costs, and expenses (including, without limitation, reasonable attorney's fees and costs) arising out of this Contract, except for any actions arising from the sole negligence or willfull misconduct of the District, its employees, directors, agents, volunteers, and affiliates. The District shall have the right to demand that the Contractor defend any and all claims, lawsuits, or proceedings related to services provided under the Contract, without cost to the District, with legal representation acceptable to the District.

The indemnification, hold harmless, protection and defense obligations contained herein shall survive the expiration, abandonment or termination of this Contract.

Nothing contained within this Section 3.2 shall affect and/or alter the application of any other section contained within this Contract.

3.3 Evidence and Cancellation of Insurance

- A. Prior to execution of the Contract, the Contractor shall file with the District evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the District shall receive notice at least forty-five (45) Days prior to the effective date of any cancellation, lapse or material change in the policy.
- B. The Contractor shall, upon demand of the District, deliver to the District all such policies of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.
- C. Failure to provide such insurance in a timeframe acceptable to the District shall enable the District to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/Default/Non-appropriation." Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.

3.4 Insurance Requirements

Upon execution of this Contract, the Contractor, at its own cost, shall have procured and will maintain for the duration of this Contract, insurance as specified in the Minimum Scope and Limits of Insurance. The Contractor shall furnish the District with certificates of insurance and endorsements required by

this Contract. The District reserves the right to require complete, certified copies of all required insurance policies at any time.

Each insurance policy shall be written on an "occurrence" form; except that professional liability, errors and omissions, will be acceptable on a "claims made" form.

If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the Work which is the subject of this Contract.

By requiring such minimum insurance coverage, the District shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

A. Minimum Scope and Limits of Insurance

The Contractor shall maintain limits no less than,

1. General Liability: \$1,000,000.00 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$1,000,000.00 aggregate limit. CG 00 01 current edition, including Products and Completed Operations
2. Professional Liability, Errors and Omissions: \$3,000,000.00 Per Claim and in the Aggregate
3. Automobile Liability: \$1,000,000.00 combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1.
4. Workers' Compensation: Statutory requirements of the State of residency, and
5. Employers' Liability or "Stop Gap" coverage: \$100,000.00.

B. Other Insurance Provisions and Requirements

The insurance coverage(s) required in this Contract are to contain, or be endorsed to contain the following provisions:

All Liability Policies except Workers Compensation and Professional Liability:

1. The District, its officers, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Such coverage shall be primary and non-contributory insurance as respects the District, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2010 11/85" or its equivalent is required. **The District requires this Endorsement to complete the Contract.**

All Policies:

1. The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
2. Any deductibles or self-insured retentions must be declared to, and approved by, the District. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the District and shall be the sole responsibility of the Contractor
3. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after forty-five (45) Days prior written notice, has been given to the District.
4. Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability, Errors and Omissions insurance coverage may be placed with insurers with a Bests' rating of B+:VII. Any exception must be approved by the District.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the District, promptly obtain a new policy, and shall submit the same to the District, with the appropriate certificates and endorsements, for approval.

C. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. **Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract not provided by the Contractor, shall be subject to all of the requirements stated herein.**

D. Work Site Safety

The Contractor shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable federal, state , District and local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor's compliance with these provisions.

SECTION 4 CONFLICTS OF INTEREST AND NON-COMPETITIVE PRACTICES

4.1 Conflicts of Interest and Non-Competitive Practices

- A. Conflict of Interest - By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or officers hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the District. The District shall require that the Contractor take immediate action to eliminate the conflict.
- B. Contingent Fees and Gratuities - By entering into this Contract to perform Work, the Contractor represents that:

1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
 2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its officers, agents, employees or representatives, to any official, member or employee of the District or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.
 3. Any Person having an existing contract with the District or seeking to obtain a contract who willfully attempts to secure preferential treatment in his or her dealings with the District by offering any valuable consideration, thing or promise, in any form to any District official or employee shall have his or her current contracts with the District canceled and shall not be able to bid on any other District contracts for a period of two (2) years.
- C. Disclosure of Current and Former District Employees - To avoid any actual or potential conflict of interest or unethical conduct:
1. District employees or former District employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the District or within one (1) year after leaving District employment if he/she participated in determining the Work to be done or processes to be followed while a District employee.
 2. Contractor shall identify at the time of offer current or former District employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former District employees involved in this Contract may result in termination of this Contract.
 3. After Contract award, the Contractor is responsible for notifying the District's Project Manager of current or former District employees who may become involved in the Contract any time during the term of the Contract.

SECTION 5 RECORDS AND AUDITS

5.1 Retention of Records, Audit Access and Proof of Compliance with Contract

A. Retention of Records

The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

B. Audit Access

The Contractor shall provide access to its facilities, including those of any Subcontractors, to the District, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the Work provided under this Contract. The District shall give reasonable notice to the Contractor of the date on which the audit shall begin.

5.2 Audit Exception

The Contractor agrees that it is financially responsible for and will repay the District all indicated amounts following an audit exception that occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall survive the expiration or termination of this Contract.

5.3 Federal Funding Audit

If the Contractor expended a total of \$750,000.00 or more in federal awards during its fiscal year, and is a non-profit organization, and is, under this Contract, carrying out or administering a program or portion of a program, it shall have an independent audit conducted in accordance with OMB Circular A-133, which shall comply with the requirements of GAAS (generally accepted auditing standards), GAO's Government Audit Standards and OMB Circular A-133, as amended and as applicable. Contractors expending federal awards from more than one source shall be responsible for determining if the combined financial awards are equal to or greater than \$750,000.00. The Contractor shall provide one copy of the audit report to each District division providing federal awards to the Contractor no later than nine (9) months subsequent to the end of the Contractor's fiscal year.

5.4 Public Records Requests

This Contract shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, chapter 42.56 RCW (the "Act").

If the Contractor considers any portion of any record provided to the District under this Contract, whether in electronic or hard copy form, to be protected under law, the Contractor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such portion, the District will determine whether the material should be made available under the Act. If the District determines that the material is subject to disclosure, the District will notify the Contractor of the request and allow the Contractor ten (10) business days to take whatever action it deems necessary to protect its interests. If the Contractor fails or neglects to take such action within said period, the District will release the portions of record(s) deemed by the District to be subject to disclosure. The District shall not be liable to the Contractor for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Contractor as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET."

SECTION 6 INTELLECTUAL PROPERTY

6.1 Patents, Copyrights and Rights in Subject Data

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the District. The District in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Contractor agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other work submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this subsection as "Subject Data") shall be vested in the District.

All such Subject Data furnished by the Contractor pursuant to this Contract, other than documents exclusively for internal use by the District, shall carry such notations on the front cover or a title page (or in such case of maps, in the name block), as may be requested by the District. The Contractor shall

also place its endorsement on all Contractor-furnished Subject Data. All such identification details shall be subject to approval by the District prior to printing.

The Contractor shall ensure that the substance of foregoing subsections is included in each subcontract for the Work under this Contract.

6.2 Nondisclosure of Data

Data provided by the District either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the District data in any form without the prior express written approval of the District.

6.3 Non-Disclosure Obligation

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, drawings, schematics, manuals, data and other materials described as “Confidential”, “Proprietary” or “Business Secret”. The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the District or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the District’s or the third party’s confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the District of such requirement prior to disclosure.

SECTION 7 CLAIMS AND APPEALS; DISPUTE RESOLUTION

7.1 Claims and Appeals

The Contractor shall address claims for additional time or compensation under the Contract in writing to the Buyer and Project Manager within ten (10) Days of the date in which the Contractor knows or should know of the basis for the claim. Claims shall be accompanied by supporting documentation and citation to applicable provisions in the Contract documents. The District reserves the right to request additional documentation necessary to adequately review the claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision issued jointly, but absent such written response, the claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager of the claim, or requested additional documentation, whichever is later.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Executive Director of Finance and Business Services. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Executive Director of Finance and Business Services shall review the appeal and make a determination in writing, which shall be final. Appeal to the Executive Director of Finance and Business Services on claims for additional time or compensation shall be a condition precedent to litigation.

At all times, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this Section 8.1 as to any claim and appeal shall operate as a waiver and release of that claim and appeal and an acknowledgment of prejudice to the District.

7.2 Mediation and Arbitration

If a dispute arises out of or relates to this Contract, or the breach thereof, including any Contractor claim, that is not resolved through the required claims and appeal process set forth in Section 7.1, the parties may, upon mutual agreement, endeavor to settle the dispute in an amicable manner by mediation or other agreed form of alternative dispute resolution process prior to commencing litigation.

7.3 Applicable Law and Forum

This Contract shall be governed by all Washington State and Federal laws including RCWs 28A.400.303, 28A.400.330, 9A.32, 9A.36, 9A.42, 9A.44, 9A.64.030, 9A.88 or any other current laws relative to record checks, crimes against children, or conditions required for working with children.

Pursuant to RCW 28A.400.303, any contractor who will have unsupervised access to children under this agreement shall be required to have successful completion of a background check through the Washington State Patrol Criminal Identification System, under RCW 4.43.830-834, RCW 10.97.30 & .50, and through the Federal Bureau of Investigation prior to contracting with the District and prior to unsupervised access to children. Upon approval by the Purchasing Department, when necessary, contracts may commence on a conditional basis pending completion of the background checks. Contractor shall not utilize any employee (or subcontractor or their employees) at the District site or allow any contact between school children and any employee when an employee 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 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 9A.64.030 RCW, or violation of similar laws of another jurisdiction. Any failure to comply with this section shall be grounds for the District to immediately terminate this agreement.

The Contractor, at its own cost, will perform criminal background checks of all individuals providing services under a contractual agreement, and as required by applicable and current Washington State and federal law. Background checks are to be processed through Washington State Patrol criminal investigation system and through the Federal Bureau of Investigation under RCW 28A.400.303.

Tobacco, per RCW 28A210.310, alcohol, drugs, and weapons are prohibited on school grounds.

Any claim, suit, or other legal action pertaining to this Contract shall be brought under the laws of the State of Washington in Snohomish County, Washington.

SECTION 8 TERMINATION

8.1 Termination for Convenience/Default/Non-Appropriation

A. Termination for Convenience

This Contract may be terminated by the District without cause, in whole or in part, upon providing the Contractor ten (10) Days' advance written notice of the termination. If the Contract is terminated pursuant to this Section 9.1.A, the District will be liable only for payment in accordance with the terms of this Contract for Work performed and Accepted prior to the effective date of termination.

B. Termination for Default

If the Contractor does not perform the Work or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the District may terminate this Contract, in whole or in part, for default as follows:

1. A "notice to cure" shall be served on the Contractor by certified or registered first class mail in accordance with Section 2.10. The Contractor shall have ten (10) Days from the date of receipt to cure the default or provide the District with a detailed written plan for review and acceptance, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the District, the District may terminate the Contract by serving a "notice of termination" in accordance with Section 2.10 setting forth the manner in which the Contractor is in default and the effective date of termination.
3. The Contractor shall only be paid for Work performed and Accepted less any damages to the District caused by or arising from such default. All termination payment requests are subject to an analysis of cost or price by the District to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the District hereunder in any manner.

C. Termination for Non-Appropriation

1. If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Contract or in any Contract Amendment hereto, the District may, upon written notice to the Contractor, terminate this Contract in whole or in part.

If the Contract is terminated pursuant to this Section 9.1.C: 1) the District shall be liable only for payment in accordance with the terms of this Contract for Work performed and Accepted prior to the effective date of termination; and, 2) the Contractor shall be released from any obligation under this Contract affected by the termination or a related purchase order to provide further Work pursuant to the Contract.

2. Notwithstanding any provision to the contrary, funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the School Board of sufficient funds to support the Work described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year.

SECTION 9 MISCELLANEOUS

9.1 Other Public Agency Orders

Other federal, state, city, school districts and local entities may utilize the terms and conditions established by this Contract if agreeable to all parties. The District does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

9.2 Assignment

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender. If an assignment is approved, it shall be effective upon the posting of all required bonds, securities and the like by the assignee and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

9.3 Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the District shall be entitled to exercise any remedies otherwise provided for in this Contract, including termination for default.

9.4 Confidentiality

In providing services under this Contract, Contractor may have access to personally identifiable education records and confidential information regarding District students or staff (collectively referred to as "Confidential Information"). Contractor agrees that they will maintain the confidentiality of Confidential Information. The use or disclosure of any Confidential Information for any purpose not directly connected to Contractor's services under this Contract is strictly prohibited except where required or authorized by law.

9.5 Discrimination

The Contractor assures the District that the Contractor complies with all state and federal guidelines and/or regulations and does not discriminate on the basis of race, creed, color, national origin, gender, age, marital status, veteran's status, or presence of any physical, sensory or mental handicap, or any other protected group under the law with regard to but not limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; selection for training; rendition of services.

9.6 No Third Party Beneficiary

This Contract is for the sole and exclusive benefit of the District and the Contractor and shall not create a contractual relationship with, or cause of action in favor of, any third party.

9.7 Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or

portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

9.8 Non-Waiver of Breach

No action or failure to act by the District shall constitute a waiver of any right or duty afforded to the District under the Contract; nor shall any such action or failure to act by the District constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the District in writing.

END OF TERMS AND CONDITIONS