

Sole Source Notification

Holocaust Education

It is the intent of Washington State to promote open competition and transparency for all contracts for goods and services. In accordance with Department of Enterprise Service (DES) policy #DES-140-00, all intended sole source contracts must be made available for public inspection for a period of not less than ten (10) working days before the start date of the contract. This Sole Source Notification satisfies the requirement.

This Sole Source Notification is available at the [Office of Superintendent of Public Instruction \(OSPI\) website](#) and at the Department of Enterprise Services, [Washington Electronic Business Solution \(WEBS\) Procurement website](#) under the following commodity codes: 924-05: Advisory Services, Educational; 924-16: Course Development Services, Instructional/Training; 924-19: Educational Research Services; 924-18: Educational Services, Alternative

The Office of Superintendent of Public Instruction (OSPI) intends to award a \$1,486,000 sole source contract to the Holocaust Center for Humanity for the period of November 2023, through June 30, 2025.

The purpose of this contract is to support Washington teachers in acquiring and implementing lessons, as well as research-based, scholarly pedagogical practices regarding the Holocaust, and other examples of genocide.

Additionally, lessons and content shall examine the ramifications of prejudice, racism, and intolerance, as well as the necessity for civic participation toward a pluralistic democracy through the lens of Holocaust and genocide education. In collaboration with OSPI, the Contractor shall support efforts for the expansion of comprehensive Holocaust and genocide education across Washington state.

Consultants contemplating the above requirements shall submit capability statements detailing their ability to meet the state's requirements **no later than 3:00 pm on October 27, 2023**.

Capability statements must address the following state requirements:

- Entity must possess the skills and knowledge to provide professional development and instructional resources to Washington teachers to include social and emotional learning, cultural competency, and diversity, equity, and inclusion standards on the implementation of research-based lessons on Holocaust and genocide education.
- Entity must possess the skills and ability to facilitate a Washington State Holocaust and genocide education steering group of experts and educators within Washington state to expand Holocaust and genocide education efforts in Washington State.



- Per required legislation, entity must be a nonprofit organization.
- Per required legislation, entity must support Washington teachers in implementing lessons on the Holocaust for the expansion of comprehensive Holocaust and genocide education.

In the absence of other qualified sources, and pending approval by the Department of Enterprise Services, it is OSPI's intent to make a sole source award of the contract mentioned above to Holocaust Center for Humanity.

Although this Sole Source Notification is not an invitation to bid, if you feel your firm is able to provide the goods or services listed above, you may submit a capability statement to:

Kyla Moore
Office of Superintendent of Public Instruction
Email: contracts@k12.wa.us

In accordance with DES Sole Source policy process #PRO-DES-140-00A, the following documents are attached:

- *Attachment 1 – A copy of the Sole Source Contract Filing Justification*
- *Attachment 2 – A copy of the proposed draft sole source contract in significantly final form*

Attachment 1 – Sole Source Contract Filing Justification

Specific Problem or Need

- *What is the business need or problem that requires this contract?*
Engrossed Substitute Senate Bill 5187, Sec. 522(5)(c) allocates funding to OSPI for the purpose of contracting with a nonprofit organization that supports Washington teachers in implementing lessons on the Holocaust for the expansion of comprehensive Holocaust and genocide education.

Sole Source Criteria

- *Describe the unique features, qualifications, abilities or expertise of the contractor proposed for this sole source contract.*

The proposed contractor, the Holocaust Center for Humanity (HCH) , is a nonprofit organization that has provided lessons to students, teachers, administrators, state employees, as well as the general public about the histories, stories, and lessons of the Holocaust, other genocides, and crimes against humanity, since 1989.

HCH is a state and nationally respected educational institution within the Smithsonian network, and bears the approbation of the Claims Conference, the Seattle Office of Arts & Culture, as well as the National Endowment for the Humanities.

HCH was responsible for the generation of Washington state's Holocaust and Genocide teaching and learning guidelines and best practices, and therefore has established relationships with OSPI and many of the districts and schools in the K-12 system, as well as dozens of national and international Holocaust and genocide education institutions and leaders.

Additionally, HCH is well-known regionally for its high-quality programming and menu of offerings that address and exceed expectations with regard to the components of Washington's Holocaust Instruction RCW 28A.300.115/116 and authorizing legislation SB 5612 (2019).

Such offerings include HCH's speakers' bureau, which sponsors a host of living survivors and descendants from the Holocaust, other genocides, and crimes against humanity. Survivor testimony is regarded as a paramount instructional tool within the content-area, as it leaves impressions and emotional impacts that can last a lifetime. No other institution in Washington can provide such a unique asset in direct relation to instruction on the subject of the Holocaust, other genocides, and crimes against humanity, especially within the context of age-appropriate K-12 educational schemas.

Additional unique and high-quality offerings include:

- a repository of teaching and learning resources for educators, such as safe-in/safe-out protocols for teaching on controversial subject matter.
- the "teaching trunk" program for this content area, which brings students into closer contact to tangible teaching and learning materials, such as artefacts and literature related to the Holocaust, other genocides, and crimes against humanity.
- Educators for Change: an established network of k-12 educators and institutional leaders whose focus is professional development toward higher-quality execution of instruction in classrooms.
- An annual writing, art, and film contest for students grades 5-12.
- A student leadership board focusing on the lessons of this content area.
- A graphic novel generated via local survivor testimony sources and curated by HCH staff.
- Ambassadors for Change: a yearlong cohort for young adults (ages 21-40) organized to raise awareness for the Holocaust Center, inspire change in the community, and help to unite personal and professional networks through mission-based social and educational opportunities.
- Field Trips: in-person and virtual.
- Traveling exhibits for districts/schools.
- Lunch-and-Learn series for educators and the public.
- Clock hours opportunities that include SEL and CCDEI/Equity clock hours credits.
- The Powell Teacher Fellowship: a 3-day summer session at HCH for grades 8-12 educators to work collaboratively in increasing their expertise in this content area.

- A robust archive of local and regional survivor testimonies, narratives, and videos to use as teaching tools in the classroom and elsewhere.

Outside of offerings, the HCH employs an expert staff of Holocaust and genocide scholars, researchers, and educators, with experience in the classroom, as well as an understanding of typical school/district/state educational systems. The staff can be relied upon to provide timely and accurate reporting, as well as robust data analyses of their activities.

- *What kind of market research did the agency conduct to conclude that alternative sources were inappropriate or unavailable? Provide a narrative description of the agency's due diligence in determining the basis for the sole source contract, including methods used by the agency to conduct a review of available sources such as researching trade publications, industry newsletters and the internet; contacting similar service providers; and reviewing statewide pricing trends and/or agreements. Include a list of businesses contacted (if you state that no other businesses were contacted, explain why not), date of contact, method of contact (telephone, mail, e-mail, other), and documentation demonstrating an explanation of why those businesses could not or would not, under any circumstances, perform the contract; or an explanation of why the agency has determined that no businesses other than the prospective contractor can perform the contract.*

There are no other non-profits within Washington State that work directly with Washington educators, administrators, and students in providing lessons, pedagogical practices, and professional development on Holocaust and genocide education. OSPI conducted research and identified out of state organizations that provide similar resources and services, however those identified are outside of Washington State:

- Echoes and Reflections, New York
- The United States Holocaust Memorial Museum, Washington D.C.
- Auschwitz-Birkenau, Memorial and Museum, Oświęcim, Poland
- Oregon Jewish Museum and Center for Holocaust Education, Oregon

OSPI has identified institutions of higher education that focus on Holocaust and genocide education resources; however, these institutions do not provide resources that align with K-12 learning standards:

- Pacific Lutheran University
- Western Washington University
- Central Washington University

OSPI also identified organizations within Washington state that provide professional development for educational resources within different subject areas that do not directly align with the needs within this legislation, those include:

Furthermore, the HCH is a leading and trusted institution within state, national, and international contexts, and provides high-quality, research/scholarship-informed

instructional materials and pedagogical practices within this content area that no other organizational body in Washington state can fulfill.

This organization also had previously partnered with OSPI to do the similar work to the satisfaction of OSPI. Additionally, HCH is a non-partisan institution in alignment with its nonprofit status, and has avoided political incidents despite the sometimes controversial nature of the subject matter. It is in the best interest of the state to engage with this mission-driven institution, that truly places the education of students, educators, and the public at the forefront of its programming.

- *What considerations were given to providing opportunities in this contract for small business, including but not limited to unbundling the goods and/or services acquired.*
The legislation requires that OSPI contracts with an expert non-profit organization. We were not able to find a small business that meets the requirement to work with an organization with the knowledge and skills to support Washington teachers in implementing lessons specifically on the Holocaust for the expansion of comprehensive Holocaust and genocide education.
- *Provide a detailed and compelling description that includes quantification of the costs and risks mitigated by contracting with this contractor (i.e. learning curve, follow-up nature).*
Risks will be mitigated because the Holocaust Center for Humanity has previously partnered with OSPI and has an anti-bias program designed to support Washington teachers in implementing lessons of the Holocaust with a comprehensive online encyclopedia of local Holocaust education resources. The online encyclopedia includes teaching trunk materials, Anne Frank materials, genocide resources, and video testimonies. The legislative intent was to expand this current program and make available to additional schools and educators through professional development and outreach. If another entity was to fulfill this proposed contract, their materials would have to be developed to meet the legislative requirements, which would significantly increase cost and implementation time.
- *Is the agency proposing this sole source contract because of special circumstances such as confidential investigations, copyright restrictions, etc.? If so, please describe.*
No.
- *Is the agency proposing this sole source contract because of unavoidable, critical time delays or issues that prevented the agency from completing this acquisition using a competitive process? If so, please describe. For example, if time constraints are applicable, identify when the agency was on notice of the need for the goods and/or service, the entity that imposed the constraints, explain the authority of that entity to impose them, and provide the timelines within which work must be accomplished.*
No.

- *Is the agency proposing this sole source contract because of a geographic limitation? If the proposed contractor is the only source available in the geographical area, state the basis for this conclusion and the rationale for limiting the size of the geographical area selected.*
No.
- *What are the consequences of not having this sole source filing approved? Describe in detail the impact to the agency and to services it provides if this sole source filing is not approved.*
If this contract is not approved, OSPI will not be in compliance with Engrossed Substitute Senate Bill 5187 522 (5)(c) nor RCW 28A.300.115/116, in ensuring that Holocaust and genocide education is provided to students in Washington schools.

Reasonableness of Cost

- *Since competition was not used as the means for procurement, how did the agency conclude that the costs, fees, or rates negotiated are fair and reasonable? Please make a comparison with comparable contracts, use the results of a market survey, or employ some other appropriate means calculated to make such a determination.*
Costs were mandated in Engrossed Substitute Senate Bill 5187 522(5)(c). With the exception of an agency indirect assessment, OSPI is passing on nearly the full amount to the contractor to complete this work.

Attachment 2 – Proposed Draft Sole Source Contract

See next page

CONTRACT FOR SERVICES
Contract No. 20240098

between

**SUPERINTENDENT OF PUBLIC INSTRUCTION,
STATE OF WASHINGTON**

(hereinafter referred to as Superintendent/OSPI)
Old Capitol Building, PO Box 47200
Olympia, WA 98504-7200

and

HOLOCAUST CENTER FOR HUMANITY

(hereinafter referred to as Contractor)
2045 Second Avenue
Seattle, WA 98121

Employer Identification #91-1464233
Unified Business Identifier #601-218-068

In consideration of the promises and conditions contained herein, Superintendent and Contractor do mutually agree as follows:

I. DUTIES OF THE CONTRACTOR

A. The general objectives of this Contract are as follows:

Contractor shall provide support to Washington teachers in acquiring and implementing lessons, as well as research-based, scholarly pedagogical practices regarding the Holocaust, and other examples of genocide.

Additionally, lessons and content shall examine the ramifications of prejudice, racism, and intolerance, as well as the necessity for civic participation toward a pluralistic democracy through the lens of Holocaust and genocide education. In collaboration with OSPI, the Contractor shall support efforts for the expansion of comprehensive Holocaust and genocide education across Washington state.

B. In order to accomplish the general objectives of this Contract, Contractor shall perform the following specific duties to the satisfaction of the OSPI Contract Manager:

1. Contractor shall lead and collaborate with OSPI to expand Holocaust and genocide education efforts in Washington state. Contractor shall provide professional development and instructional resources to Washington teachers for implementation of research-based pedagogy and focused lessons on Holocaust and genocide education and also includes Social-Emotional Learning, Cultural Competency, and Diversity, Equity and Inclusion standards.

Contractor shall work with a designated representative from OSPI to establish and lead a Washington state Holocaust and genocide education steering group (i.e., "Holocaust and Genocide Education Consortium") of experts and educators to expand, align, and sustain Holocaust and genocide education efforts in Washington state. This shall result in:

- a. Projected Professional Development Plan.
 - b. Updated instructional resources and materials to be published in Open Educational Resources (OER).
 - c. Coordination with designated representative from OSPI (i.e., Holocaust and Genocide Education Liaison) to plan, lead, and facilitate a non-partisan Holocaust and genocide education steering group. The group shall:
 - i. To meet twice a year at minimum;
 - ii. Include representation from OSPI, Contractor's staff, as well as educational practitioners from districts/schools,
 - iii. Document established purpose, agendas, and other documentation reflecting such coordination efforts;
 - iv. Document protocols to ensure participation from members is on a term-limited and policy-grounded basis.
2. Contractor shall provide quarterly reports demonstrating qualitative and quantitative data on the following:

Growth of Holocaust Education in Washington State including:

- a. Increased access to Holocaust and genocide education.
 - b. Impact of access to Holocaust and genocide education to students.
 - c. Impact of access to professional development and instructional resources for teachers in Washington state.
 - d. Participants in Holocaust Education Professional Development including:
 - v. Professional Development Opportunities
 - (1) Date
 - (2) Location
 - vi. By subject
 - vii. By education role
 - viii. Regional Map
 - ix. List of participating school districts, schools, regional educational service districts, other educational bodies.
3. Contractor shall provide an end of contract report that reflects an overall summary of the Fiscal Year (FY) 1 and FY 2 Quarterly reports and will address the following:

Program Evaluation to include:

- a. Changes to the program since the start of the contract if any.
- b. Evaluations of the program/major findings.
- c. Major challenges faced by the program.
- d. How to increase access to age-appropriate materials for elementary, middle, and high school educators and classrooms.
- e. Future opportunities for educators teaching resources and professional development.
- f. Report on additional programming and leadership opportunities for students.
- g. Recommendations for reviewing, updating, and expanding access to high-quality Holocaust and genocide education.

- h. Recommendations for aligning Holocaust and genocide education content with standards for Social Studies , US History and Contemporary World History, as well as English Language Arts, and the Arts.
- i. Documentation of Holocaust and genocide education steering group (i.e., Holocaust and Genocide Education Consortium) participation, outcomes, and projected endeavors.

C. The Contractor shall provide the following deliverables to the OSPI Contract Manager by the dates indicated below:

| SCHEDULE OF DELIVERABLES | |
|----------------------------------------------------------------------------------------|-------------------|
| Deliverable | Due Date |
| 1. Professional Development Plan & Updated Educator Resources for OER. | November 30, 2023 |
| 2. Quarter 1 Report FY1 | |
| 3. Quarter 2 Report FY1 | December 29, 2023 |
| 4. Quarter 3 Report FY1 | March 29, 2024 |
| 5. Quarter 4 Report FY 1 | June 30, 2024 |
| 6. Establishment of Holocaust and Genocide Education steering group (i.e., Consortium) | June 30, 2024 |
| 7. Professional Development Plan & Updated Educator Resources for OER. | October 31, 2024 |
| 8. Quarter 1 Report FY 2 | |
| 9. Quarter 2 Report FY 2 | December 31, 2024 |
| 10. Quarter 3 Report FY 2 | March 31, 2025 |
| 11. End of Contract Report | June 30, 2025 |

II. CONDITIONS OF COMMENCEMENT OF PERFORMANCE AND SCHEDULE OF PERFORMANCE

Contractor shall not commence performance, or be entitled to compensation or reimbursement for any services rendered, prior to the occurrence of each of the following conditions: (1) This Contract must be executed by a representative of the Contractor and the Superintendent; (2) Provisions of Chapter 39.26 RCW require the Agency to file this sole source Contract with the Department of Enterprise Services (DES) for approval; no Contract so filed is effective nor shall work commence under it until the tenth (10th) working day following the date of filing, subject to DES approval. In the event DES fails to approve the Contract, the Contract shall be null and void; and, (3) Contract Manager must confirm the occurrence of conditions number one (1) and two (2) and notify the Contractor to commence performance.

The schedule of performance of Contractor’s duties is as follows subject, however, to the three (3) prior conditions to commencement of performance set forth immediately above:

November 1, 2023, date of approval by DES, or date of execution, whichever is later, through June 30, 2025.

III. DUTIES OF THE SUPERINTENDENT

A. In consideration of Contractor’s satisfactory performance of the duties set forth herein, Superintendent shall compensate Contractor in an amount not to exceed a total of one million four hundred eighty-six thousand dollars (\$1,486,000) as noted below in part B, Schedule of Payments. Payment for satisfactory performance shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work, which will cause the maximum payment to be increased.

Funds for the payment of this Contract are provided by state dollars.

All expenses necessary to the Contractor’s performance of this Contract not specifically mentioned in the Contract shall be borne in full by the Contractor.

B. Payment shall be made to the Contractor as follows:

Periodically (not more often than monthly), in the form of progress payments in the amounts and for the stages of partial performance set forth below:

| SCHEDULE OF PAYMENTS | | |
|----------------------------------------------------------------------------------------|-------------------|----------------|
| Deliverable | Due Date | Payment |
| 1. Professional Development and Updated Educator Resources for OER. | November 30, 2023 | \$297,200 |
| 2. Quarter 1 Report FY1 | | |
| 3. Quarter 2 Report FY1 | December 29, 2023 | \$148,600 |
| 4. Quarter 3 Report FY1 | March 29, 2024 | \$148,600 |
| 5. Quarter 4 Report FY 1 | | |
| 6. Establishment of Holocaust and Genocide Education steering group (i.e., Consortium) | June 30, 2024 | \$148,600 |
| 7. Professional Development Plan and Updated Educator Resources for OER. | October 31, 2024 | \$297,200 |
| 8. Quarter 1 Report FY 2 | | |
| 9. Quarter 2 Report FY 2 | December 31, 2024 | \$148,600 |
| 10. Quarter 3 Report FY 2 | March 31, 2025 | \$148,600 |
| 11. End of Contract Report | June 30, 2025 | \$148,600 |

The invoices shall include the Contract number, and document to the OSPI Contract Manager’s satisfaction a description of the work performed and payment requested. Within approximately thirty (30) calendar days of the OSPI Contract Manager receiving and approving the invoice, payment will be mailed or electronically transferred to the Contractor by Agency Financial Services, OSPI.

If errors are found in the submitted invoice or supporting documents, the OSPI Contract Manager will notify the Contractor. In order to receive payment, it shall be the responsibility of the Contractor to make corrections in a timely manner, resubmit the invoice and/or supporting documentation as requested, and notify the OSPI Contract Manager.

- C. Final payment shall be made after acceptance by the Superintendent’s Contract Manager if received by the Superintendent within ninety (90) days after the contract expiration date, unless negotiated with the Contract Manager and the Fiscal Budget Analyst.

IV. CONTRACT MANAGEMENT

The following shall be the contact person for all communications and billings regarding the performance of this contract. Any changes to this information shall be communicated to the other party in writing as soon as reasonably possible.

| Contractor | OSPI |
|------------|------|
| | |

V. INCORPORATION OF ATTACHMENTS AND ORDER OF PRECEDENCE

Each of the attachments listed below is by this reference hereby incorporated into this Contract. In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and state of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Attachment A – Contract for Services, General Terms and Conditions
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

VI. APPROVAL

This Contract shall be subject to the written approval of the Superintendent's authorized representative and shall not be binding until so approved. The Contract may be altered, amended, or waived only by a written amendment executed by both parties.

We the undersigned agree to the terms of the foregoing Contract.

Holocaust Center for Humanity

Superintendent of Public Instruction
State of Washington

Signature

Kyla L. Moore, Contracts Administrator

Printed Name

Date

Title

Date

Who certifies that he/she is the Contractor identified herein, OR a person duly qualified and authorized to bind the Contractor so identified to the foregoing Agreement.

Approved as to FORM ONLY
by the Assistant Attorney General

Attachment A
Contract for Services
GENERAL TERMS AND CONDITIONS

DEFINITIONS

As used throughout this Contract and General Terms and Conditions, the following terms shall have the meaning set forth below:

"Superintendent" shall mean the Office of Superintendent of Public Instruction (OSPI) of the State of Washington, any division, section, office, unit or other entity of the Superintendent, or any of the officers or other officials lawfully representing the Superintendent.

"Contractor" shall mean that firm, provider, organization, individual, or other entity performing service(s) under this Contract, and shall include all employees of the Contractor.

"Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms " Subcontractor" and " Subcontractors" means Subcontractor(s) in any tier.

1. **Access to Data.** In compliance with Chapter 39.26 RCW, the Contractor shall provide access to data generated under this Contract to the Superintendent, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.
2. **Alterations and Amendments.** This Contract may be amended only by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
3. **Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR Part 35.** The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
4. **Assignment.** Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Superintendent.
5. **Assurances.** The Superintendent and the Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable current federal, state and local laws, rules and regulations.
6. **Attorney's Fees.** In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.
7. **Audit Requirements.** If the Contractor is a Subrecipient of federal awards as defined by the Office of Management and Budget (OMB) CFR, Part 200, Subpart F, and expends seven hundred and fifty thousand dollars (\$750,000) or more in federal awards (does not apply to contracts for goods and services) from all federal sources in any fiscal year beginning on or after December 26, 2014, the Contractor shall procure at their expense a single or program-specific audit for that year. The Contractor shall incorporate OMB CFR, Part 200, Subpart F audit requirements into all contracts between the Contractor and its Subcontractors who are

Subrecipients of federal awards. The Contractor shall comply with any future amendments to OMB and any successor or replacement Circular or regulation.

- 8. Budget Revisions.** Any monetary amount budgeted by the terms of this Contract for various activities and line-item objects of expenditure may be revised without prior written approval of Superintendent, so long as the revision is no more than ten percent (10%) of the original line item amount and the increase in an amount is offset by a decrease in one or more other amounts equal to or greater than the increase. All other budget revisions exceeding ten percent (10%) shall only be made with the prior written approval of the Superintendent.
- 9. Certification Regarding Debarment, Suspension, and Ineligibility.** The Contractor certifies that neither it nor its principals are debarred, suspended, proposed for debarment, or voluntarily excluded from participation in transactions by any federal department or agency. The Contractor further certifies that they will ensure that potential subcontractors or any of their principals are not debarred, suspended, proposed for debarment, or voluntarily excluded from participation in covered transactions by any federal department or agency. "Covered transactions" include procurement contracts for goods that are expected to equal or exceed twenty-five thousand dollars (\$25,000). Contractor may do so by obtaining a certification statement from the potential subcontractor or subrecipient or by checking online at the System for Award Management (SAM), Excluded Parties List. The Contractor shall immediately notify the Superintendent if, during the term of this contract, Contractor becomes debarred. The Superintendent may immediately terminate this Contract by providing Contractor written notice if Contractor becomes debarred during the term of this Contract.

The Contractor also certifies that neither it nor its principals are debarred, suspended, or proposed for debarment from participation in transactions by any state department or agency. The Contractor further certifies that they will ensure that potential subcontractors or any of their principals are not debarred, suspended, or proposed for debarment from participation in covered transactions by any state department or agency.

- 10. Certification Regarding Lobbying.** The Contractor certifies that Federal-appropriated funds will not be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress or an employee of a member of Congress in obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Contractor shall require its subcontractors to certify compliance with this provision.
- 11. Certification Regarding Wage Violations.** The Contractor certifies that within three (3) years prior to the date of execution of this Contract, Contractor has not been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of RCW chapters 49.46, 49.48, or 49.52.

The Contractor further certifies that it will remain in compliance with these requirements during the term of this Contract. Contractor will immediately notify the Superintendent of any finding of a willful violation entered by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction entered during the term of this Contract.

12. Change in Status. In the event of substantive change in the legal status, organizational structure, or fiscal reporting responsibility of the Contractor, Contractor agrees to notify the Superintendent of the change. Contractor shall provide notice as soon as practicable, but no later than thirty (30) days after such a change takes effect.

13. Confidentiality. The Contractor acknowledges that all of the data, material and information which originates from this Contract, and any student assessment data, material and information which will come into its possession in connection with performance under this Contract, consists of confidential data owned by the Superintendent or confidential personally identifiable data subject to the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) or other privacy laws, and that the data must be secured and protected from unauthorized disclosure by the Contractor. The Contractor is wholly responsible for compliance with FERPA requirements.

The Contractor, therefore, agrees to hold all such material and information in strictest confidence, not to make use thereof other than for the performance of this Contract, to release it only to authorized employees and agents requiring such information and not release or disclose it to any other party. The Contractor agrees to release such information or material only to employees and agents who have signed a written agreement expressly prohibiting disclosure or usages not specifically authorized by this Contract.

14. Copyright Provisions. Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and copyright shall be owned by the Superintendent. The Superintendent shall be considered the author of such Materials. If Materials are not considered "works for hire", Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the Superintendent effective from the moment of creation of such Materials.

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

Contractor understands that, except where otherwise agreed to in writing or approved by the Superintendent or designee, all original works of authorship produced under this Contract shall carry a [Creative Commons Attribution License](#), version 4.0 or later.

All Materials the Contractor has adapted from others' existing openly licensed resources must be licensed with the least restrictive open license possible that is not in conflict with existing licenses.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, Contractor will license the materials to allow others to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. If the Contractor would like to limit these pre-existing portions of the work to [non-commercial use](#), the [Creative Commons Attribution-NonCommercial](#) (preferred) or [Creative Commons Attribution-NonCommercial-ShareAlike](#) licenses, version 4.0 or later, are acceptable for these specific sections.

The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to apply such a license.

The Contractor shall exert all reasonable effort to advise the Superintendent, at the time of delivery of data furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Superintendent shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this Contract. The Superintendent shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

15. Covenant Against Contingent Fees. The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Contractor for the purpose of securing business. The Superintendent shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.

16. Disputes. In the event that a dispute arises under this Contract, it shall be determined by a Dispute Board in the following manner: (1) The Superintendent shall appoint a member to the Dispute Board; (2) the Contractor shall appoint a member to the Dispute Board; (3) the Superintendent and the Contractor shall jointly appoint a member to the Dispute Board; (4) the Dispute Board shall evaluate the dispute and make a determination of the dispute; and, the determination of the Dispute Board shall be final and binding on the parties hereto.

As alternatives to the above Dispute Board process: (1) if the dispute is between two or more state agencies, any one of the agencies may request intervention by the Governor, as provided by 43.17.330 RCW, in which event the Governor's process shall control; and, (2) if the dispute is between a non-state agency and another state agency or non-state agency party to this Contract, all the disputing parties may mutually agree to mediation prior to submitting the dispute to a Dispute Board in the event the dispute is not resolved pursuant to mediation within an agreed-upon time period.

17. Duplicate Payment. The Superintendent shall not pay the Contractor, if the Contractor has charged or will charge the state of Washington or any other party under any other contract or agreement, for the same services or expenses.

18. Electronic signature. Any signature page delivered via fax machine or electronic image scan, receipt acknowledged in each case, shall be binding to the same extent as an original, wet ink signature page. Any Party who delivers such a signature page agrees to later deliver an original counterpart to any Party which requests it.

19. Entire Agreement. This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

20. Ethical Conduct. Neither the Contractor nor any employee or agent of the Contractor shall participate in the performance of any duty or service in whole or part under this Contract in

violation of, or in a manner that violates any provision of the Ethics in Public Service law at Chapter 42.52 RCW, RCW 42.17A.550, RCW 42.17A.555, and 41.06.250 prohibiting the use of public resources for political purposes.

Contractor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to the Superintendent's employees.

21. Governing Law and Venue. This Contract shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

22. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Superintendent and all officials, agents, and employees of the Superintendent, from and against all claims for injuries or death arising out of or resulting from the performance of this Contract. "Claim" as used in this Contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Additionally, "claims" shall include but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in an unfair trade practice or in unlawful restraint of competition. Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

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

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless Superintendent and its agents, employees, or officials.

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

24. Insurance.

- a. **Worker's Compensation Coverage.** The Contractor shall at all times comply with all applicable worker's compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the fullest extent applicable. This requirement includes the purchase of industrial insurance coverage for the Contractor's employees, as may now hereafter be required of an "employer" as defined in Title 51 RCW. Such worker's compensation and occupational disease requirements shall include coverage

for all employees of the Contractor, and for all employees of any subcontract retained by the Contractor, suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Satisfaction of these requirements shall include, but shall not be limited to:

- 1) Full participation in any required governmental occupational injury and/or disease insurance program, to the extent participation in such a program is mandatory in any jurisdiction;
- 2) Purchase worker's compensation and occupational disease insurance benefits to employees in full compliance with all applicable laws, statutes, and regulations, but only to the extent such coverage is not provided under mandatory governmental program in "a" above, and/or;
- 3) Maintenance of a legally permitted and governmentally approved program of self-insurance for worker's compensation and occupational disease.

Except to the extent prohibited by law, the program of the Contractor's compliance with worker's compensation and occupational disease laws, statutes, and regulations in 1), 2), and 3) above shall provide for a full waiver of rights of subrogation against the Superintendent, its directors, officers, and employees.

If the Contractor, or any subcontractor retained by the Contractor, fails to effect and maintain a program of compliance with applicable worker's compensation and occupational disease laws, statutes, and regulations and the Superintendent incurs fines or is required by law to provide benefits to such employees, to obtain coverage for such employees, the Contractor will indemnify the Superintendent for such fines, payment of benefits to Contractor or subcontractor employees or their heirs or legal representatives, and/or the cost of effecting coverage on behalf of such employees. Any amount owed the Superintendent by the Contractor pursuant to the indemnity may be deducted from any payments owed by the Superintendent to the Contractor for the performance of this Contract.

- b. **Proof of Insurance.** Certificates and or evidence satisfactory to the Superintendent confirming the existence, terms and conditions of all insurance required above shall be delivered to the Superintendent within five (5) days of the Contractor's receipt of Authorization to Proceed.
- c. **General Insurance Requirements.** Contractor shall, at all times during the term of the Contract and at its cost and expense, buy and maintain insurance of the types and amounts listed above. Failure to buy and maintain the required insurance may result in the termination of the Contract at the Superintendent's option. By requiring insurance herein, Superintendent does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the Superintendent in this Contract.

Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish proof of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein.

Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

25. Licensing and Accreditation Standards. The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary to the performance of this Contract.

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

27. Non-Discrimination. The Contractor shall comply with all the federal and state non-discrimination laws, regulations and policies, which are otherwise applicable to the Superintendent. Accordingly, no person shall, on the ground of sex, race, creed, religion, color, national origin, marital status, families with children, age, veteran or military status, sexual orientation, gender expression, gender identity, disability, or the use of a trained dog guide or service animal, be unlawfully excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any activity performed by the Contractor and its agents under this Contract. The Contractor shall notify the Superintendent immediately of any allegations, claims, disputes, or challenges made against it under non-discrimination laws, regulations, or policies, or under the Americans with Disabilities Act. In the event of the Contractor's noncompliance or refusal to comply with this nondiscrimination provision, this Contract may be rescinded, cancelled or terminated in whole or part, and the Contractor may be declared ineligible for further contracts with the Superintendent.

28. Overpayments. Contractor shall refund to Superintendent the full amount of any overpayment under this Contract within thirty (30) calendar days of written notice. If Contractor fails to make a prompt refund, Superintendent may charge Contractor one percent (1%) per month on the amount due until paid in full.

29. Payments. No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by the Superintendent. All payments to the Contractor are conditioned upon (1) Contractor's submission of a properly executed and supported voucher for payment, including such supporting documentation of performance and supporting documentation of costs incurred or paid, or both as is otherwise provided for in the body of this Contract under Duties of the Superintendent, and (2) Acceptance and certification by the Superintendent or designee of satisfactory performance by the Contractor.

Except as otherwise provided in this Contract, (1) All approvable vouchers for payment due to the Contractor shall be paid within thirty (30) calendar days of their submission by the Contractor and acceptance and certification by the Superintendent or designee, and (2) All expenses necessary to the Contractor's performance of this Contract not specifically mentioned in the Contract shall be borne in full by the Contractor.

30. Public Disclosure. Contractor acknowledges that the Superintendent is subject to the Washington State Public Records Act, Chapter 42.56 RCW, and that this Contract shall be a public record as defined in RCW 42.56. Any specific information that is claimed by the Contractor to be confidential or proprietary must be clearly identified as such by the Contractor. To the extent consistent with chapter 42.56 RCW, the Superintendent shall

maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view the Contractor's information, the Superintendent will notify the Contractor of the request and the date that such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, the Superintendent will release the requested information on the date specified.

- 31. Publicity.** The Contractor agrees to submit to the Superintendent all advertising and publicity matters relating to this Contract which in the Superintendent's judgment, Superintendent's name can be implied or is specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Superintendent.
- 32. Registration with Department of Revenue.** The Contractor shall complete registration with the Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.
- 33. Records Maintenance.** The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by the Superintendent, personnel duly authorized by the Superintendent, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

- 34. Right of Inspection.** The Contractor shall provide right of access to its facilities to the Superintendent or any of its officers at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract on behalf of the Superintendent. All inspections and evaluations shall be performed in such a manner that will not unduly interfere with the Contractor's business or work hereunder.
- 35. Severability.** The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Contract.
- 36. Site Security.** While on Superintendent premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.
- 37. Subcontracting.** Neither the Contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the Superintendent. Contractor is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. In no event shall the existence of the subcontract operate to release or reduce liability of the Contractor to the Superintendent for any breach in the performance of the

Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Contract.

If, at any time during the progress of the work, the Superintendent determines in its sole judgment that any subcontractor is incompetent, the Superintendent shall notify the Contractor, and the Contractor shall take immediate steps to terminate the subcontractor's involvement in the work. The rejection or approval by the Superintendent of any subcontractor or the termination of a subcontractor shall not relieve the Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to the Superintendent.

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

39. Technology Security Requirements. The security requirements in this document reflect the applicable [requirements of Standard 141.10 of the Office of the Chief Information Officer \(OCIO\)](#) for the state of Washington, which by this reference are incorporated into this agreement.

The Contractor acknowledges it is required to comply with WaTech OCIO IT Security Policy 141 and OCIO IT Security Standard 141.10, Securing Information Technology Assets. OCIO IT Security Standard 141.10, Securing Information Technology Assets, applies to all Superintendent assets stored as part of a service, application, data, system, portal, module, components or plug-in product(s) that are secured as defined by the WaTech OCIO's IT Security Policy 141 and OCIO IT Security Standard 141.10, Securing Information Technology Assets.

As part of OCIO IT Security Standard 141.10, a design review checklist and/or other action may be required. These activities will be managed and coordinated between Superintendent and the Contractor. Any related costs to performing these activities shall be at the expense of the Contractor. Any such activities and resulting checklist and/or other products must be shared with the Superintendent's Information Technology Services.

40. Termination for Convenience. Except as otherwise provided in this Contract, the Superintendent or Superintendent's Designee may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Contract in whole or in part. The notice shall specify the date of termination and shall be conclusively deemed to have been delivered to and received by the Contractor as of midnight the second day of mailing in the absence of proof of actual delivery to and receipt by the Contractor. If this Contract is so terminated, the Superintendent shall be liable only for payment required under the terms of the Contract for services rendered or goods delivered prior to the effective date of termination.

41. Termination for Default. In the event the Superintendent determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Superintendent has the right to suspend or terminate this Contract. The Superintendent shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) days, the Contract may be terminated. The Superintendent reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Superintendent

to terminate the Contract. In the event of termination, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. The termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Superintendent provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

42. Termination Due to Funding Limitations or Contract Renegotiation, Suspension. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion of this Contract, with the notice specified below and without liability for damages:

- a. At Superintendent's discretion, the Superintendent may give written notice of intent to renegotiate the Contract under the revised funding conditions.
- b. At Superintendent's discretion, the Superintendent may give written notice to Contractor to suspend performance when Superintendent determines there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed.
 - (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
 - (2) When Superintendent determines that the funding insufficiency is resolved, it will give the Contractor written notice to resume performance, and Contractor shall resume performance.
 - (3) Upon the receipt of notice under b. (2), if Contractor is unable to resume performance of this Contract or if the Contractor's proposed resumption date is not acceptable to Superintendent and an acceptable date cannot be negotiated, Superintendent may terminate the Contract by giving written notice to the Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. Superintendent shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.
- c. Superintendent may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice. Superintendent shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to Superintendent in the event the termination option in this section is exercised.
- d. For purposes of this section, "written notice" may include email.

43. Termination Procedure. Upon termination of this Contract the Superintendent, in addition to other rights provided in this Contract, may require the Contractor to deliver to the

Superintendent any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Superintendent shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Superintendent and the amount agreed upon by the Contractor and the Superintendent for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services which are accepted by the Superintendent, and (d) the protection and preservation of the property, unless the termination is for default, in which case the Superintendent shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause for this Contract. The Superintendent may withhold from any amounts due to the Contractor such sum as the Superintendent determines to be necessary to protect the Superintendent against potential loss or liability.

The rights and remedies of the Superintendent provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law under this Contract.

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

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

44. Treatment of Assets. Except as otherwise provided for in the Contract, the ownership and title to all real property and all personal property purchased by the Contractor in the course of performing this Contract with moneys paid by the Superintendent shall vest in the Superintendent, except for supplies consumed in performing this Contract. The Contractor shall (1) maintain a current inventory of all the real and personal property; (2) label all the property "State of Washington, Superintendent of Public Instruction"; and, (3) surrender property and title to the Superintendent without charge prior to settlement upon completion, termination or cancellation of this Contract.

Any property of the Superintendent furnished to the Contractor shall, unless otherwise provided herein, or approved by the Superintendent, be used only for the performance of the Contract.

The Contractor shall be responsible for any loss or damage to property of the Superintendent which results from the negligence of the Contractor which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

If any property is lost, destroyed, or damaged, the Contractor shall notify the Superintendent and take all reasonable steps to protect the property from further damage.

All reference to the Contractor under this clause shall include Contractor's employees, agents and subcontractors.

45. Waiver. A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this agreement. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.