

**SNO-ISLE LIBRARIES  
PUBLIC WORKS AGREEMENT  
AGREEMENT NO. 2020.11.18 – TREE TRIMMING & REMOVAL UNIT PRICE CONTRACT**

THIS AGREEMENT is entered into the date last below written between SNO-ISLE INTERCOUNTY RURAL LIBRARY DISTRICT (“Sno-Isle Libraries”) and \_\_\_\_\_ (“Contractor”); hereafter jointly referred to as “Parties”.

Contractor Name:

Address:

City, State, Zip:

Phone:

WA State UBI No:

PURPOSE

In consideration of the sums to be paid to the Contractor by Sno-Isle Libraries, the Contractor hereby covenants and agrees to furnish all labor, materials, equipment, and supervision as required to deliver tree trimming & removal emergency work, service work, and scheduled projects on an “as needed” basis to 23 Sno-Isle Libraries facilities in accordance with the specifications and plans as contained or referenced within Sno-Isle Libraries ITB Bid No. 2020.11.18 entitled: 2020 TREE TRIMMING & REMOVAL UNIT PRICE CONTRACT.

SCOPE OF WORK

The Contractor will provide services, and otherwise do all things necessary for or incidental to the performance of work, as set forth in the specifications and plans and the Contractor’s Bid Proposal dated \_\_\_\_\_, 2020 and Sno-Isle Libraries ITB Bid No. 2020.11.18.

**Exhibit A** contains the General Terms and Conditions governing work to be performed under this Agreement, the nature of the working relationship between Sno-Isle Libraries and the Contractor, and specific obligation of both parties.

**Exhibit B** contains the Contractor’s response to ITB Bid No. 2020.11.18 – 2020 TREE TRIMMING & REMOVAL UNIT PRICE CONTRACT.

**Exhibit C** contains Sno-Isle Libraries’ ITB Bid No. 2020.11.18 - 2020 TREE TRIMMING & REMOVAL UNIT PRICE CONTRACT plus Addendums (if issued).

PERIOD OF PERFORMANCE

Subject to other Agreement provisions, the period of performance under this Contract will be effective as of \_\_\_\_\_, 2020 through \_\_\_\_\_, 2021 unless sooner terminated or extended as provided herein.

Sno-Isle Libraries reserves the right to extend this agreement for one (1) additional one (1) year term or portions thereof. Such contract extensions shall be subject to mutual consent as to duration, modification of terms and price adjustments. The total contract duration, with extensions, shall not

exceed two (2) years. The Contractor shall respond within 15 calendar days following receipt of Sno-Isle Libraries' request for an extension.

#### COMPENSATION AND PAYMENT

Sno-Isle Libraries shall pay Contractor for work performed on a time and materials basis, plus applicable Washington State Sales Tax, at the labor rates quoted in Contractor's Bid Proposal dated \_\_\_\_\_, 2020. This contract in its entirety (e.g. full two one-year terms) shall not exceed ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00), including tax and administrative fees.

The Contractor's compensation for time and materials rendered shall be based on completed work. The extent of the payment (in whole or in part) is based upon unit prices multiplied by quantities of work actually performed.

In accordance with RCW 39.08.010(3), the Contractor will declare the option to waive the requirement of a one hundred percent (100%) performance / payment bond and a five percent (5%) retainage bond in lieu of allowing Sno-Isle Libraries to withhold ten percent (10%) of the total project cost, to be released: (a) as required by law; or (b) sixty (60) days after completion of all contract work if: (1) there are no claims against the retained funds, (2) the Contractor satisfied test requirements, and (3) the Contractor faithfully, timely and completely performed the Agreement. Retainage will be held within the last three - six months of the annual contract term, in relation to the projects anticipated for that remaining half of the contract term in order to withhold ten percent (10%) of the project cost.

Sno-Isle Libraries may, in its sole discretion, withhold amounts from payments otherwise due as offsets or back charges for expenses, damages, liquidated damages or costs for which the Contractor is liable. If Sno-Isle Libraries chooses not to offset or deduct any such expenses, damages, liquidated damages or costs from one or more payments or return of retainage, Sno-Isle Libraries does not waive its claim for such damages and hereby expressly reserves its right to assert a claim against the Contractor for such damages.

Contractor agrees to comply with all state and federal laws relating to the employment of labor and wage rates to be paid.

#### BILLING PROCEDURES

Contractor billings for this Unit Price Contract are to be submitted to Sno-Isle Libraries upon completion of work. An approved Affidavit of Wages Paid from Washington State L&I must accompany the final invoice(s) of the period. The Affidavit must encompass all payments made (including tax) throughout the contract period.

Payment shall be considered timely if made by Sno-Isle Libraries within thirty (30) days after receipt of properly completed invoices with supporting documents, which shall be submitted to the Facilities Specialist. Payment shall be sent to the address designated by the Contractor. Sno-Isle Libraries will delay any monthly invoice payment until all required documentation is received not to exceed sixty (60) days at which point a 10% retainage shall be held by Sno-Isle Libraries and the invoice balance remitted to the Contractor.

All Contractor invoices must include the wording, "*We certify that the prevailing wages have been paid in accordance with the pre-filed statement or statements of intent to pay prevailing wages on file with Sno-Isle Libraries.*"

Contractor agrees to alter the wages it pays its employees on an annual basis in order to recognize and follow the most recently promulgated increases in prevailing wage rates established by the State of Washington Department of Labor and Industries each year. The Contractor acknowledges that Sno-Isle Libraries has borne the cost of the increase in wages due employees under WAC 296-127-01346 for the duration of the Contract and included these increases in the original Contract amount. If the increase in wages due to employees exceed the Contract amount, the Contractor must notify Sno-Isle Libraries sixty (60) days prior to the anniversary date of the Contract in order to amend the Contract amount.

Sno-Isle Libraries may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

#### CHANGES IN WORK/CHANGE ORDERS

Any verbal approvals to changes in work/change order must be approved by the Facilities Department and subsequently documented.

Charges or credits for the work covered by the approved change will be determined by one or more of the following methods (determined by Sno-Isle Libraries):

1. Unit bid prices
2. Lump sum
3. Time and materials

In the event the vendor is directed to proceed with extra work, on a time and material basis, an itemized proposal shall be submitted including material and rental invoices and/or any other backup as requested by Sno-Isle Libraries.

Additional travel outside the projected schedule, to include return travel fees for unfinished work, without approved change order or verbal consent will not be paid.

Not to exceed (NTE) amounts will be used on any project proposal/bid and is to cover total cost.

#### WORK ORDERING PROCEDURE

*Major scheduled projects (not service work):*

Individual purchase orders will be issued for scheduled projects. There is no minimum order for services.

Competitive bids will be sought to align with procurement policy thresholds. If unable to provide a quote/proposal for any reason, the Contractor must submit a "No Quote/Proposal" response. An awarded vendor that does not respond to request for quotes/proposals on more than three (3) occasions may be subject to contract termination and/or non-renewal.

The Tree Trimming & Removal Work Order (Attachment 8.4 from the Tree Trimming & Removal UPC ITB) must be completed and included with each quotation for scheduled projects so that both can be attached to the purchase order for each project.

The Facilities department designee will:

1. Notify the awarded Contractor(s) in writing or verbally, of a planned project(s).
2. Set a pre-quote coordination timeframe (with up to 72 hours' notice) for a site visit for scheduled projects. This will allow vendors the opportunity to examine the conditions and acquire/observe in-depth knowledge on the scope of work so that a quotation can be given. During this meeting, the following will be established:
  - a. A scope of work will be established, including who is responsible (Sno-Isle Libraries or the Contractor) for project specific requirements.
  - b. A due date and time for the quotation (giving up to 72 hours).
  - c. A timeline with a start and completion date.
  - d. Answer any project specific questions.
  - e. Verification of pre-existing conditions in and damages to the grounds and/or building(s).
  - f. If available, the designee will furnish plans showing locations of work.

The Contractor will:

1. Be responsible to take all of their own measurements.
2. Be responsible for obtaining all required trade permits as determined by local code.
3. If permits are required, inspection will be scheduled by the Contractor.
4. Be responsible to close permit upon completion of project.
5. For a given project, the quote submitted will be a "Not to exceed" estimate. Pricing for units of labor, materials, or equipment, which are not specifically listed will be subject to Sno-Isle Libraries' approval. The total of all lines, including additional negotiated items, will be added together to establish an estimated total project cost.
6. Include these items on the invoice:
  - a. Purchase Order number
  - b. Invoice number
  - c. Prevailing Wage Statement
  - d. Appropriate units of labor, materials, and equipment based on the not to exceed quote on the Work Order form
7. Call before you dig: Call 811 or access [callbeforeyoudig.org](http://callbeforeyoudig.org) for below grade work, and as required.
8. If awarded, confine its apparatus, storage of materials and operations of workmen to the limits indicated by Sno-Isle Libraries.
9. If awarded, the Contractor will be required by State Law and Sno-Isle Libraries policy to report to the person in charge and sign in as a visitor to that building each day.
10. Coordinate with the Facilities Specialist before starting the project.
11. Immediately report to the Facilities Specialist any error, inconsistency or omission which they discover.

12. If awarded, be responsible to remove all trash and debris while maintaining a clean work area throughout the duration of work. Supplies and tools will be stored in a safe manner. At the completion of the work, and before final payment is made, Contractor will remove all tools and surplus materials from the building. In case of dispute, Sno-Isle Libraries may remove the rubbish and/or repair property and charge such costs to the Contractor.

#### INSPECTION/CORRECTION OF WORK

All work, materials, processes of manufacture, and all methods of construction will be subject to the inspection of Sno-Isle Libraries at any time and location. Sno-Isle Libraries will be the sole judge of the quality and suitability. Should any fail to meet the standard, they will be made good, replaced/covered, as the case may be, by the Contractor at their expense. Rejected material will be removed immediately from the site. Sno-Isle Libraries may find it is undesirable to replace any defective or damaged materials, or to reconstruct or correct any portion of the work. As such, the compensation to be paid to the Contractor shall be reduced by such amount that Sno-Isle Libraries finds equitable.

The Contractor will give Sno-Isle Libraries timely notice of its readiness for observations to be tested, inspected or approved by laws governing the work completed. If the inspection is by another authority, the Contractor will notify Sno-Isle Libraries of the date fixed for such inspection and shall use the required Certificate of Inspection.

Sno-Isle Libraries may order re-examination of completed work and the Contractor must uncover the work at their expense. If it is found not to be in accordance with the Contract, the Contractor will pay all costs to correct the work, to the satisfaction of Sno-Isle Libraries. If another Contractor employed by Sno-Isle Libraries caused the defect in the work, Sno-Isle Libraries shall pay such cost and recover the charges from the other Contractor.

#### PROJECT MANAGEMENT

The Project Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Agreement.

Contractor Project Manager	Sno-Isle Libraries Facilities Specialist
Name	Tom Kreinbring
Company	Sno-Isle Libraries' Service Center
Address	7312 35 <sup>th</sup> Ave NE
City, State, Zip Code	Marysville, WA 98271
Phone:	Phone: (360) 651-7093
Email address:	Email address: TKreinbring@sno-isle.org

For questions regarding this Agreement, please contact the Procurement Specialist, Karen Kramer, at [KKramer@sno-isle.org](mailto:KKramer@sno-isle.org).

INSURANCE

The Contractor shall provide, as applicable, insurance coverage as set forth in the *General Terms and Conditions*. The intent of the required insurance is to protect Sno-Isle Libraries should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Agreement.

The Contractor shall submit to Sno-Isle Libraries within ten (10) days of the Agreement effective date, a certificate of insurance which outlines the coverage and limits defined in the *Insurance Coverage* section. The Contractor shall submit renewal certificates as appropriate during the term of the Agreement.

Failure to maintain such insurance shall be a material breach of the Agreement. Sno-Isle Libraries shall be entitled to damages for such a breach that include, but are not limited to, any loss (including, but not limited to, third party litigation expenses and professional fees) suffered by Sno-Isle Libraries if Sno-Isle Libraries is determined to be solely or concurrently negligent, and if Sno-Isle Libraries suffers any loss or must pay or defend against any such claim, suit, demand or damage as a result of such breach.

The Contractor waives any right of contribution against Sno-Isle Libraries. It is agreed and mutually negotiated that in any and all claims against Sno-Isle Libraries, its agents or employees, the Contractor, a Subcontractor, anyone directly or indirectly employed by the Contractor or Subcontractor, or anyone for whose acts any of them may be liable, the defense and indemnification obligations hereunder shall not be limited in any way by any limitation on the amount of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under industrial worker's compensation acts, disability benefit acts, or other employees' benefit acts.

The Contractor's and Sno-Isle Libraries' initials hereto indicate specific waiver of the Contractor's industrial insurance immunity in order to fulfill this indemnity. Solely for the purpose of the Indemnification and defense as provided in this Contract, the Contractor specifically waives any immunity under the State of Industrial Insurance Law, Title 51 RCW. The Contractor expressly acknowledges that this waiver of immunity under Title 51 RCW was the subject of mutual negotiation and was specifically entered into pursuant to the provisions of RCW 4.24.115.

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Contractor (initial here)

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Sno-Isle Libraries (initial here)

The Contractor agrees to repair and replace all property of Sno-Isle Libraries and all property of other damaged by it, its employees, subcontractors, suppliers, and agents.

ASSURANCES

Sno-Isle Libraries and the Contractor agree that all activity pursuant to this Contract will be in accordance with all the applicable current deferral, state and local laws, rules and regulations. Without

limited the foregoing, the Contractor shall: (1) pay prevailing wages and comply with the requirements set forth in Chapter 39.12 RCW; (2) comply with the excavation safety requirements specified in RCW 39.04.180; (3) provide and submit all information as required by RCW 39.04.370.

#### ORDER OF PRECEDENCE

Each of the exhibits and documents 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
- Terms and Conditions as contained in this Contract instrument
- **Exhibit A-** General Terms and Conditions
- Invitation To Bid
  - o Bidder Instructions/ Information
  - o Conditions and Requirements
  - o Scope of Work and Specifications
  - o Addenda (if any)
- Contractor's Proposal dated \_\_\_\_\_, 2020.
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

#### ENTIRE AGREEMENT

This Agreement including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

#### CONFORMANCE

If any provision of this Contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

#### APPROVAL

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

THIS AGREEMENT is executed by the persons signing below who warrant that they have the authority to execute the Agreement.

Contractor

Sno-Isle Libraries

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

SAMPLE



GENERAL TERMS AND CONDITIONS

## INVITATION TO BID &amp; PURCHASE ORDER CONTRACT

THE PURCHASE ORDER CONTRACT INCLUDES THE FOLLOWING TERMS AND CONDITIONS AND INCLUDES, BUT IS NOT LIMITED TO THE INVITATION TO BID, REQUEST FOR QUOTATION, SPECIFICATIONS, PLANS, AND PUBLISHED RULES AND POLICIES OF SNO-ISLE LIBRARIES AND THE LAWS OF THE STATE OF WASHINGTON, WHICH ARE HEREBY INCORPORATED BY REFERENCE.

ADVANCE PAYMENTS PROHIBITED - No payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by Sno-Isle Libraries.

AMENDMENTS - This Contract may be amended 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.

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.

ASSIGNMENT - Neither this Contract, nor shall any claim arising under this Contract, be transferred or assigned by the Contractor without prior written consent of Sno-Isle Libraries.

ATTORNEYS' 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.

CERTIFIED PAYROLL REQUIREMENT – Contractor will submit Certified Payroll to Labor & Industries monthly per RCW 39.12.120.

CHANGES - No alterations in any of the terms, conditions, delivery price, quality, quantities, or specification of this order will be effective without written consent of the Procurement Specialist or appropriate Buyer.

COMMITMENT OF FUNDS – No cost chargeable to the proposed Contract may be incurred before receipt of a fully executed Contract.

COMPLIANCE WITH LAWS AND PERMITS – The Contractor shall comply with and give notices required by all laws, ordinances, codes, rules, regulations, and permits relating to the conduct of their work. Except as specifically otherwise provided herein, the Contractor shall obtain and pay for all permits and licenses necessary to conduct the work. The Contractor shall comply with RCW 49.28, Hours of Labor.

CONFIDENTIALITY/ SAFEGUARDING OF INFORMATION - The Contractor shall not use or disclose any information concerning Sno-Isle Libraries, or information which may be classified as confidential, for any purpose not directly connected with the administration of this Contract, except with prior written consent of Sno-Isle Libraries, or as may be required by law.

**CONTRACTOR CONDUCT** – Sno-Isle Libraries’ reserves the right to direct the Contractor to remove from the project site, any employee of the Contractor for misconduct, violations of the provisions of the Contract, or for any inappropriate interactions with customers or staff of Sno-Isle Libraries. Such removal may, at the option of Sno-Isle Libraries, be for the duration of the Contract and shall occur at no increase to Sno-Isle Libraries.

**COPYRIGHT PROVISIONS** - Unless otherwise provided, all Materials produced under this Contract shall be considered “works for hire” as defined by the U.S. Copyright Act and shall be owned by Sno-Isle Libraries. Sno-Isle Libraries shall be considered the author of such Materials. In the event the Materials are not considered “works for hire” under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all Intellectual property rights, to Sno-Isle Libraries effective from the moment of creation of such Materials.

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

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, Contractor hereby grants to Sno-Isle Libraries a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, Including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to Sno-Isle Libraries.

The Contractor shall exert all reasonable effort to advise Sno-Isle Libraries, at the time of delivery of Materials furnished under this Contract, of all known or potential Invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. Sno-Isle Libraries 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. Sno-Isle Libraries shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

**COVENANT AGAINST CONTINGENT FEES** - The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. Sno-Isle Libraries shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

**DELIVERY** – For any exception to the delivery date as may be specified on this order, Contractor shall give prior notification and obtain written approval thereto from the Procurement Specialist with respect to delivery under this order. Time is of the essence and the order is subject to termination for failure to deliver as specified and/or appropriate damages. The acceptance of Sno-Isle Libraries of late performance with or without objection or reservation shall not waive the right to claim damage for such

breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

DISPUTES - Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing.

1. The request for a dispute hearing must:
  - a. Be in writing;
  - b. State the disputed issue(s);
  - c. State the relative positions of the Parties;
  - d. State the Contractor's name, address, and Contract number; and
  - e. Be mailed to the other party's (respondent's) Contract manager within three (3) working days after the Parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requestor's statement to the requestor within five (5) working days.
3. The Parties agree that this dispute process shall precede any action in a Judicial or quasi-Judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above. Any dispute In connection with this public works Contract which the parties cannot resolve among themselves shall be referred to the Director of Washington State Labor and Industries for arbitration, and the Director's decision shall be final, conclusive and binding on all parties to the dispute.

GOVERNING LAW - This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Snohomish County.

INDEPENDENT CAPACITY OF THE CONTRACTOR - The parties intend that an independent Contractor relationship will be created by this Contract, the Contractor and his or her employees or agents performing under this Contract are not employees or agents of Sno-Isle Libraries. The Contractor will not hold himself/herself out as or claim to be an officer or employee of Sno-Isle Libraries or of Sno-Isle Libraries by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

INSURANCE CONVERAGE - The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Sno-Isle Libraries may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. Sno-Isle Libraries may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by Sno-Isle Libraries under this Contract, and transmit the deducted amount to the Department of Labor and Industries. (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor. The requirements for the Insurance coverage are:

### Commercial General Liability Insurance

Contractor shall procure and keep in force during the term of this Contract, Commercial General Liability (CGL) Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to premises/operations (including off-site operations), blanket contractual liability and broad form property damage. Prior to the Contractor performing any work under this Contract, Contractor shall provide Sno-Isle Libraries with a Certificate of Insurance evidencing the insurance required and by endorsement to the Contractor's liability policy, naming Sno-Isle Libraries, its officer, employees and agents as Additional Insureds.

### Workers' Compensation Coverage

All Contractors and Subcontractors are required to pay industrial insurance for all employees involved in the performance of the work described herein. Failure to pay will be a breach and justify a demand on the Performance Bond. This obligation survives final acceptance.

LICENSING, ACCREDITATION AND REGISTRATION - The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract.

LIENS, CLAIMS AND ENCUMBRANCES - Contractor warrants and represents that all the goods and materials ordered herein are free and clear of all liens, claims, or encumbrances of any kind.

LIMITATION OF AUTHORITY- Only the Agent or Agent'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 or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Agent.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS - In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with Sno-Isle Libraries. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION - During the performance of this Contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

OVERPAYMENTS AND ASSERTION OF LIEN - In the event that Sno-Isle Libraries establishes overpayments or erroneous payments made to the Contractor under this Contract, Sno-Isle Libraries may secure repayment, plus interest, if any, through the filing of a lien against the Contractor's real property or by requiring the posting of a bond, assignment of deposit or some other form of security acceptable to Sno-Isle Libraries or by doing both.

PREVAILING WAGES - Pursuant to RCW Chapter 39.12 and WAC 296-127, the Contractor shall pay not less than the prevailing rate determined by the State of Washington. Contractor shall pay the wage rates in effect at the date of Contract execution. See Snohomish and Island County rates at <https://secure.lni.wa.gov/wagelookup/>. A copy of such prevailing rates and per diem wages shall be posted by the Contractor at the work site or local office. Sno-Isle Libraries will provide a hardcopy of applicable prevailing rate of wages upon request.

The Director of the Washington State Department of Labor and Industries shall arbitrate all disputes of the prevailing rate of wage.

To be considered for awarding, the business must have completed or be "exempt" from the new Labor & Industries Prevailing Wage required training effective July 1, 2019.

PRIVACY - Personal information collected, used or acquired in connection with this Contract shall be used solely for the purposes of this Contract. Contractor and Its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of Sno-Isle Libraries or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

Sno-Isle Libraries reserves the rights to monitor, audit or investigate the use of personal information collected, used or acquired by the Contractor through this Contract. The monitoring, auditing or investigating may include but is not limited to "salting" by Sno-Isle Libraries. Contractor shall certify the return or destruction of all personal information upon expiration of this Contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the Contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless Sno-Isle Libraries for any damages related to the Contractor's unauthorized use of personal information.

PUBLICITY - The Contractor agrees to submit to Sno-Isle Libraries all advertising and publicity matters relating to this Contract wherein Sno-Isle Libraries' name is mentioned or language used from which the connection of Sno-Isle Libraries' name may, in Sno-Isle Libraries' Judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of Sno-Isle Libraries.

RECORDS MAINTENANCE - The Contractor shall maintain 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 Sno-Isle Libraries, personnel duly authorized by Sno-Isle Libraries, 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.

**REGISTRATION WITH DEPARTMENT OF REVENUE** - The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

**RIGHT OF INSPECTION** - The Contractor shall provide right of access to its facilities to Sno-Isle Libraries, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

The Contractor shall make available information necessary for Sno-Isle Libraries to comply with the client's right to access, amend, and receive an accounting of disclosures of their Personal Information according to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The Contractor's internal policies and procedures, books, and records relating to the safeguarding, use, and disclosure of Personal Information obtained or used as a result of this Contract shall be made available to Sno-Isle Libraries and the U.S. Secretary of the Department of Health & Human Services, upon request.

**RISK OF LOSS** - Regardless of FOB point, Contractor agrees to bear all risks of loss, injury or destruction of goods and materials ordered herein which occur prior to delivery. Such loss, injury or destruction shall not release Contractor from any obligation hereunder.

**SAFEGUARDING OF INFORMATION** - The Contractor shall not use or disclose Personal Information in any manner that would constitute a violation of federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The Contractor agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of all Personal Information.

The Contractor shall protect Personal Information collected, used, or acquired in connection with this Contract, against unauthorized use, disclosure, modification or loss. The Contractor shall ensure its directors, officers, employees, subcontractors or agents use it solely for the purposes of accomplishing the services set forth in this agreement. The Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make it known to unauthorized persons without the express written consent of Sno-Isle Libraries or as otherwise required by law. The Contractor agrees to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure of data in any form. The Contractor shall make the Personal Information available to amend as directed by Sno-Isle Libraries and incorporate any amendments into all the copies maintained by the Contractor or its Subcontractors.

The Contractor shall certify its return or destruction upon expiration or termination of this Contract and the Contractor shall retain no copies. If the Contractor and Sno-Isle Libraries mutually determine that

return or destruction is not feasible, the Contractor shall not use the Personal Information in a manner other than those permitted or required by state and federal laws.

Sno-Isle Libraries reserves the right to monitor, audit, or investigate the use of Personal Information collected, used or acquired by the Contractor throughout this Contract. The monitoring, auditing, or investigating may include, but is not limited to, "salting" by Sno-Isle Libraries. Salting is the act of introducing data containing unique but false information that can be used later to identify inappropriate disclosure of data.

The Contractor shall notify Sno-Isle Libraries In writing within five (5) working days of becoming aware of any unauthorized access, use or disclosure. The Contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to sanctioning employees, notifying subjects, and taking steps necessary to stop further unauthorized access. The Contractor agrees to indemnify and hold harmless Sno-Isle Libraries for any damages related to unauthorized use or disclosure by the Contractor, its officers, directors, and employees, Subcontractors or agents.

Any breach of this clause may result in termination of the Contract and the demand for return of all Personal Information.

SAVINGS - 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, Sno-Isle Libraries may terminate the Contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at Sno-Isle Libraries' discretion under those new funding limitations and conditions.

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

SITE SECURITY - While on Sno-Isle Libraries premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

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

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

TAXES -All payments accrued on account of payroll taxes, unemployment contributions, State of Washington sales or use tax, any other taxes, Insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

TERMINATION FOR CAUSE - In the event Sno-Isle Libraries determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, Sno-Isle Libraries has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, Sno-Isle Libraries shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within sixty (60) days, the Contract may be terminated or suspended. In the event of termination or suspension, 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. Sno-Isle Libraries 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 Sno-Isle Libraries to terminate the Contract. A 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 Sno-Isle Libraries provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law. In the event the Contractor determines that Sno-Isle Libraries has failed to comply with the condition of this Contract in a timely manner, the Contractor has the right to suspend or terminate this contract. Before suspending or terminating the Contract, the Contractor shall notify Sno-Isle Libraries in writing of the need to take corrective action. If corrective action is not taken within 30 days, the Contract may be terminated or suspended.

TERMINATION FOR CONVENIENCE - Except as otherwise provided in this Contract, Sno-Isle Libraries or the Contractor may, by 60 days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, Sno-Isle Libraries shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES - Upon termination of this Contract, Sno-Isle Libraries, in addition to any other rights provided in this Contract, may require the Contractor to deliver to Sno-Isle Libraries 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.

Sno-Isle Libraries shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by Sno-Isle Libraries, and the amount agreed upon by the Contractor and Sno-Isle Libraries for (i) completed work and services for which no separate price is slated, (ii) partially completed work and services, (iii) other property or services which are accepted by Sno-Isle Libraries, and (iv) the protection and preservation of property, unless the termination is for default, in which case if the Parties cannot agree on the amount, such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract. Sno-Isle Libraries may withhold from any amounts due the



Contractor such sum as determined to be necessary to protect Sno-Isle Libraries against potential loss or liability.

The rights and remedies of Sno-Isle Libraries provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

After receipt of a notice of termination, the Contractor shall:

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

#### TREATMENT OF ASSETS

- A. Title to all property furnished by Sno-Isle Libraries shall remain in Sno-Isle Libraries. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vests in Sno-Isle Libraries upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in Sno-Isle Libraries upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by Sno-Isle Libraries in whole or in part, whichever first occurs.
- B. Any property of Sno-Isle Libraries furnished to the Contractor shall, unless otherwise provided herein or approved by Sno-Isle Libraries, be used only for the performance of this Contract.
- C. The Contractor shall be responsible for any loss or damage to property of Sno-Isle Libraries which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

D. If any Sno-Isle Libraries property is lost, destroyed or damaged, the Contractor shall immediately notify Sno-Isle Libraries and shall take all reasonable steps to protect the property from further damage.

E. The Contractor shall surrender to Sno-Isle Libraries all property of Sno-Isle Libraries prior to settlement upon completion, termination or cancellation of this Contract.

F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

WAIVER - Waiver of any default or breach shall not be deemed 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 Contract unless stated to be such in writing and signed by authorized representative of Sno-Isle Libraries.

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