

**WHATCOM COUNTY RURAL LIBRARY DISTRICT  
PUBLIC WORKS CONTRACT  
NORTH FORK LIBRARY OPERABLE PARTITION TENANT IMPROVEMENT**

**THIS CONTRACT** ("Contract" or "Agreement") is made this XX day of XX, 202X by and between, the **WHATCOM COUNTY RURAL LIBRARY DISTRICT**, a municipal corporation ("District") and **XXXXXXXXXXXX** ("Contractor") (individually a "Party" and collectively the "Parties").

In consideration of the terms and conditions set forth in this Contract, the Parties agree as follows:

**1. Contractor Services.** The Contractor shall furnish at its own cost and expense all labor, tools, materials, and equipment required to construct and complete in a good workmanlike manner, and to the satisfaction of the District, the public works project known as North Fork Library Operable Partition Tenant Improvement ("Project"). The Project is detailed in the Scope of Work and the following documents, which are attached hereto and incorporated herein by reference:

Attachment A: Plans

Attachment B: Bid

**2. Time of Completion.** The Contractor shall complete the work no later than **XX X, 202X**. The time of beginning, rate of progress and time of completion are essential conditions of this Contract.

**2.1 Liquidated Damages.** Contractor shall be required to pay the District as liquidated damages the sum of one hundred dollars (\$100) for each consecutive calendar day that it is in default after the contract deadline specified above. Liquidated damages shall be deducted from the contract by change order.

**3. Payment.**

**3.1 Payment amount and procedures.** The District shall pay the Contractor for all work and services covered by this Contract in an amount that shall not exceed \$XXXXXX.XX. This amount includes applicable sales tax. The payment amount shall exclude approved change orders, in accordance with the quantity and unit prices shown on the attached bid proposal.

The Contractor shall submit monthly invoices for work and services performed in a previous calendar month in a format acceptable to the District. The District shall pay for the portion of the work described in the invoice that has been completed by the Contractor and approved by the District. The District's payment shall not constitute a waiver of the District's right to final inspection and acceptance of the work.

The District shall make a payment to the Contractor not later than twenty (20) days after the District receives the application for payment.

**3.2 Defective or Unauthorized Work.** If during the course of the Contract, the work rendered does not meet the requirements set forth in the Contract, the Contractor shall correct or modify the required work

to comply with the requirements of the Contract. The District shall have the right to withhold payment for such work until it meets the requirements of the Contract. If the Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the District may complete the work by contract or otherwise, and the Contractor shall be liable to the District for any additional costs incurred by the District. "Additional costs" means all reasonable costs incurred by the District, including legal costs and attorneys' fees, beyond the maximum contract price under this Contract. The District further reserves the right to deduct the cost to complete the work, including any additional costs, from any amounts due or to become due to the Contractor.

**3.3 Final Payment; Waiver of Claim.** Within thirty (30) days after completion and final acceptance of the Project by the District as complying with the terms of this Contract, the District shall pay to the Contractor all sums due as provided by this Contract except those required to be withheld by law or agreed to in special contract provisions. THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT SHALL CONSTITUTE A WAIVER OF CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY THE CONTRACTOR AS UNSETTLED AT THE TIME REQUEST FOR FINAL PAYMENT IS MADE.

**3.4 Retainage.** To the extent permitted by law, WCLS waives any requirements related to retainage in connection with this work.

**4. Prevailing Wage.** The Contractor shall comply with and pay prevailing wages as required by Chapter 39.12 RCW, as it may be amended in the future. No worker, laborer, or mechanic employed in the performance of any part of this Contract shall be paid less than the prevailing rate of wage as determined by the Industrial Statistician of the Department of Labor and Industries for the State of Washington.

Following the final acceptance of services rendered, and prior to making any payment under this Contract, the Contractor must submit to the District the completed combined "Intent to Pay and Affidavit of Wages Paid" for approval. It is the Contractor's responsibility to obtain and file the Statement. The Contractor shall be responsible for all filing fees. Notice from Contractor and all subcontractors of intent to pay prevailing wages and prevailing wage rates for the Project must be posted for the benefit of the workers. Each invoice shall include a signed statement that prevailing wages have been paid by the Contractor and all subcontractors.

In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties of interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State and his/her decision therein shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060, as it may be amended in the future.

Current prevailing wage data can be obtained by the Contractor from the Industrial Statistician of the Department of Labor and Industries, Prevailing Wage Section, P.O. Box 44540, Olympia, Washington 98504-4540, (360) 902-5335, or on their website at <http://lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>.

**5. Indemnification and Hold Harmless.** The Contractor shall protect, defend, indemnify, and hold harmless the District, its officers, officials, employees, agents, and volunteers from any and all claims, risks, injuries, damages, losses, suits, judgments, and attorney fees or other expenses of any kind arising out of or in any way connected with the performance of this Contract, except for injuries and damages caused by the sole negligence of the District. The District's inspection or acceptance of any of the work shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the District, its officers, officials, employees, agents, and volunteers, the Contractor's liability under this section shall be only to the extent of the Contractor's negligence.

It is further specifically and expressly understood that the indemnification provided under this section constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Contract.

**6. Compliance with Laws.** The Contractor shall comply with all federal, state, and local laws and regulations applicable to the work done under this Contract. Any violation of the provisions of these applicable laws and regulations shall be considered a violation of a material provision of this Contract and shall be grounds for cancellation, termination or suspension of the Contract by the District, in whole or in part, and may result in ineligibility for further work for the District.

**7. Work Site Safety.** Contractor shall take all necessary precaution for the safety of employees on the work site and shall comply with all applicable provisions of federal, state, and local regulations, ordinances, and codes. Contractor shall erect and properly maintain, at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against known and unusual hazards.

**All workers entering the building are required to wear a facial covering that fully covers the nose and mouth. Face shields that are open at the bottom are not sufficient.**

**8. Utility Location.** Contractor is solely responsible for locating any underground utilities affected by the work and is deemed to be an "excavator" for the purposes of Chapter 19.122 RCW, as amended. Contractor shall be responsible for compliance with Chapter 19.122 RCW including utilization of the "one call" locator system, before commencing any excavation activities.

**9. Warranty and Guarantee.** Contractor shall warrant and guarantee the materials and work to be free of defects for a period of three (3) years after the District's final acceptance of the entire Project. Contractor shall be liable for any costs, losses, expenses, or damages including consequential damages suffered by

the District resulting from defects in the Contractor's work including, but not limited to, cost of materials and labor expended by the District in making emergency repairs and cost of engineering, inspection, and supervision by the District. The Contractor shall hold the District harmless from any and all claims, which may be made against the District as a result of any defective work, and the Contractor shall defend any claims at its own expense. Where materials or procedures are not specified in the Contract, the District will rely on the professional judgment of the Contractor to make the appropriate selections.

**10. Correction of Defects.** Contractor shall be responsible for correcting all defects in workmanship and/or materials discovered after the acceptance of this work. When corrections of defects are made, Contractor shall be responsible for correcting all defects in workmanship and/or materials in the corrected work for one (1) year after the acceptance of the corrections of the District. The Contractor shall start work to remedy such defects within seven (7) days of the District's mailed notice of discovery, and shall complete such work within a reasonable time agreed to by both parties. In emergencies where damage may result from delay or where loss of service may result, such corrections may be made by the District, in which case the Contractor shall pay all costs incurred by the District to perform the correction. In the event the Contractor does not accomplish corrections within the time specified, the correction work will be otherwise accomplished by the District and all costs of same shall be paid by the Contractor.

**11. Change Order/Contract Modification.**

**11.1 Amendments.** This Contract, together with attachments and/or other addenda, represents the entire and integrated Contract between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This contract may be amended, modified, or added to only by written change order properly signed by both parties.

**11.2 Change orders.** The District may issue a written change order for any change in the work during the performance of this Contract. If the Contractor determines, for any reason, that a change order is necessary, the Contractor must submit a written change order request to the District within fourteen (14) calendar days of the date the Contractor knew or should have known of the facts and events giving rise to the requested change. If the District determines that the change increases or decreases the Contractor's costs or time for performance, the District will make an equitable adjustment. The District will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. If the parties are unable to agree, the District will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving the written change order. If the Contractor fails to require a change order within the time frame allowed the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided below.

**11.3 Procedure and Protest by Contractor.** If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the District, including any direction, instruction, interpretation, or determination by the District, the Contractor shall, within fourteen (14) calendar days, provide a signed written notice of protest to the District that states the date of the notice of the protest,

the nature and circumstances that caused the protest, the provisions of the Contract that support the protest, the estimated dollar cost, if any, of the protested work and how the estimate was determined, and an analysis of the progress schedule showing the schedule change or disruption, if applicable. The Contractor shall keep complete records of extra costs and time incurred as a result of the protested work. The District shall have access to any of the Contractor's records needed to evaluate the protest. If the District determines that a protest is valid, the District will adjust the payment for work or time by an equitable adjustment.

**11.4 Failure to Protest or Follow Procedures Constitutes Waiver.** By not protesting or failing to follow procedures as this section provides, the Contractor waives any additional entitlement or claims for protested work, and accepts from the District any written or oral order (including directions, instructions, interpretations, and determinations).

**11.5 Contractor's Duty to Complete Protested Work.** In spite of any protest, the Contractor shall proceed to promptly complete work that the District has ordered.

**11.6 Contractor's Acceptance of Changes.** The Contractor accepts all requirements of a change order by: (1) endorsing the change order; (2) writing a separate acceptance; or (3) not protesting in the manner this section provides. A change order that is accepted by the Contractor as provided herein shall constitute full payment and final settlement of all claims for contract time and for direct, indirect, and consequential costs, including costs of delays related to any work, either covered or affected by the change.

**12. Claims.** The Contractor shall give written notice to the District of all claims other than change orders within thirty (30) days of the occurrence of events giving rise to the claim, but in no event later than the time of approval by the District for final payment. Any claim for damages, additional payment for any reason, or extension of time shall be conclusively deemed to have been waived by Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Contract. At a minimum, a Contractor's written claim must include the information required in 11.3 regarding protests.

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM IN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM.

The Contractor must, in any event, file any claim or bring any suit arising from or connected to this Contract within 120 calendar days from the date the work is completed. Contractor, upon making application for the final payment, shall be deemed to have waived its right to claim for any other damages for which application has not been made, unless such claim for final payment includes notice of additional claim and fully describes such claim.

**13. Contractor's Risk of Loss.** It is understood that the whole of the work under this Contract is to be done at the Contractor's risk, and that he/she has familiarized himself/herself with all existing conditions and other contingencies likely to affect the work, and has made his/her bid accordingly, and that Contractor

shall assume the responsibility and risk of all loss or damage to materials or work which may arise from any cause whatsoever prior to completion.

**14. Insurance and Liability.** The Contractor shall procure and maintain during the life of this contract such insurance as shall protect him and any subcontractor performing work covered by this contract from claims or damages for bodily injury, including death resulting therefrom as well as from claims for property damage, which may arise from operations under this contract, whether such operations are performed by himself or by any subcontractor or by anyone directly employed by either of them.

Insurance must be placed with commercial insurance companies licensed to do business in the State of Washington and which possess minimum financial standards of A.M. Best Company, A-:VI or better. Certificates of Insurance for all insurance shall be filed with WCLS naming WCLS, its officers, employees, board, and volunteers as Additional Insured. The policy amount shall be \$1,000,000 combined single limit.

Upon request, Contractor shall furnish the District with a copy of the Certificate of Insurance evidencing policies required above and evidencing policies of insurance for subcontractors, if applicable. The Contractor shall also furnish the District with an endorsement specifically stating that the insurance company or companies issuing the insurance policies contained in the Certificate of Insurance shall give the District at least forty-five (45) days' written notice in the event of cancellation of or material change in any of the applicable policies. The endorsement shall give a brief description of the work being performed under the Contract Documents and shall name the District as co-insureds.

**15. Contract Security.** To the extent permitted by law, WCLS will waive any requirements related to a performance and payment bond in connection with this work.

**16. Termination.** This Contract shall terminate upon satisfactory completion of the work described in the Scope of Work and final payment by the District. The District may terminate the Contract and take possession of the premises and all materials thereon and finish the work by whatever methods it may deem expedient, by giving ten (10) days written notice to the Contractor.

In the event this Contract is terminated by the District, Contractor shall not be entitled to receive any further amounts due under this Contract until the work specified in the Scope of Work is satisfactorily completed, as scheduled, up to the date of termination. At such time, if the unpaid balance of the amount to be paid under the Contract exceeds the expense incurred by the District in finishing the work, and all damages sustained by the District or which may be sustained by the District or which may be sustained by the reason of such refusal, neglect, failure or discontinuance of employment, such excess shall be paid by the District to the Contractor. If the District's expense and damages exceed the unpaid balance, Contractor and his surety shall be jointly and severally liable therefore to the District and shall pay such difference to the District. Such expense and damages shall include all legal costs incurred by the District to protect the rights and interests of the District under the Contract, provided such legal costs shall be reasonable.

**17. Attorney's Fees and Costs.** If any legal proceeding is brought for the enforcement of this agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

**18. General Administration.** The Director of Finance and Administration of the District shall have primary responsibility for the District under this Contract to review and process all contract documents, to oversee and approve all work performed as well as all financial invoices.

**19. Ownership of Documents.** On payment to the Contractor by the District of all compensation due under this Contract, all finished or unfinished documents and material prepared by the Contractor with funds paid by the District under this Contract shall become the property of the District and shall be forwarded to the District upon its request. Any records, reports, information, data, or other documents or materials given to or prepared or assembled by the Contractor under this Contract will be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the District or by court order.

**20. Subletting or Assigning of Contracts.** Neither the District nor the Contractor shall assign, transfer, or encumber any rights, duties, or interests accruing from this Contract without the prior written consent of the other. If subcontract work is needed, prior to approval by the District, the Contractor must verify that their first tier subcontractors meet the bidder responsibility criteria as written in Chapter 39.04.350 RCW.

**21. Relationship of Parties.** The parties intend that an independent contractor - client relationship will be created by this Contract. As Contractor is customarily engaged in an independently established trade which encompasses the specific service provided to the District hereunder, no agent, employee, representative or subcontractor of Contractor shall be or shall be deemed to be the employee, agent, representative or subcontractor of the District. None of the benefits provided by the District to its employees, including, but not limited to, compensation, insurance, and unemployment insurance, are available from the District to the Contractor or his employees, agents, representatives, or subcontractors. Contractor will be solely and entirely responsible for his acts and for the acts of Contractor's agents, employees, representatives and subcontractors during the performance of this Agreement. The District may, during the term of this Contract, engage other independent contractors to perform the same or similar work that Contractor performs hereunder

**22. Non-Waiver of Breach.** The failure of the District to insist upon strict performance of any of the terms and rights contained in this Contract, or to exercise any option contained in this Contract in one or more instances, shall not be construed to be a waiver or relinquishment of those terms and rights and such terms and rights shall remain in full force and effect.

**23. Written Notice.** All communications regarding this Contract shall be sent to the Parties at the addresses listed below in the Contact information, unless otherwise notified. Any written notice shall become effective on delivery, but in any event on three (3) calendar days after the date of mailing by

registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract.

**24. Discrimination.** The Contractor agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

**25. Term.** This Contract shall be effective from the date of Contract execution through expiration of the warranty period as described in section 9.

**IN WITNESS WHEREOF,** the Parties have executed this Contract on the day and year above written.

<b>WHATCOM COUNTY RURAL LIBRARY DISTRICT:</b>	<b>CONTRACTOR: XXXXXXXXXXXXXXXXXXXX</b>
Signature: _____ Executive Director	Signature: _____
Print Name: Christine Perkins	Print Name:

**Contact Information:**

Whatcom County Rural Library District:  
Ryan Cullup, Facilities Services Manager  
360-305-3603  
5205 Northwest Dr.  
Bellingham, WA 98226  
ryan.cullup@wcls.org

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## **Scope of Work**

Install a new panelized, sliding and stacking operable partition in the existing space. The scope includes selective demolition and salvage, structural modifications, new wall and ceiling construction and finishes. Electrical work will also be required where demolition and alterations to the building affect existing electrical systems.

Work will involve walling off and isolating the area of construction by installing temporary barriers so that ongoing demolition and construction activities minimally impact the regular daily operations of the library.

### **A. Project Scope Elements:**

The selected Contractor will perform the following but not limited to:

- Coordinate all work with Project Manager/Owner's Representative/Utility Provider
- Procure all necessary materials to complete the scope of work.
- Apply for necessary permits to modify electrical infrastructure.
- Install temporary walls to isolate the area of construction work.
- Salvage and/or protect existing building materials and systems to remain or be reinstalled.
- Install new structural elements to support operable partition.
- Install new walls and ceilings and finish to match adjacent finishes with matching paint and trim.
- Minimally modify (remove and reinstall) lighting and other electrical components to accommodate the building alterations.
- Install new operable partition in accordance with the manufacturer's requirements.

## ***Demolition***

1. Install temporary walls to isolate the area of construction work.
2. Remove portions of existing walls and salvage door and trim for reinstallation.
3. Remove ceiling at area of room framing to receive structural
4. Remove and salvage water treatment system for reinstallation.
5. Salvage and/or protect existing building materials and systems to remain or be reinstalled.
6. Remove electrical components at areas of work and reinstall at temporary location as necessary for building's electrical systems to remain fully operational.

## ***Construction***

1. Install new post pier blocks and floor support structure as indicated in the Structural Drawings.
2. Install new wood columns as indicated in the Structural Drawings.
3. Install new wood beams and bracing to roof structure as indicated in the Structural Drawings.
4. Construct new walls and reinstall existing door as indicated on the Architectural Drawings.
5. Construct new soffit as indicated on the Architectural Drawings.
6. Install new operable partition in accordance with the manufacturer's requirements.
7. Paint and finish space so that finishes are consistent and seamless where the line between new and existing work is not visible.

***Electrical***

1. Relocate existing salvaged ceiling lights
2. Reinstall electrical systems/components at wall of storage room.