

DESCUTES PUBLIC LIBRARY
GOODS AND SERVICES CONTRACT

BASED UPON the proposal submitted in response to the Request for Proposal (RFP) for Primary Materials, as issued and administered by Deschutes Public Library District (District), and _____ (Contractor) hereby enter into a contract for the purchase of materials and services in accordance with the specifications and proposal provided.

All terms of the following exhibits are hereby incorporated by reference into this Contract, and Contractor agrees to comply with each:

- (1) Exhibit A – Request for Proposals
- (2) Exhibit B – Contractor Proposal
- (3) Exhibit C – Oregon Public Contracting Requirements for Goods and Service Contracts

Together with this Contract, these documents comprise the “Contract Documents.” In the case of a conflict, the terms of this Contract shall prevail, followed by Exhibit C, then Exhibits A and B, in that order.

1. Term. The term of this Contract shall extend from its execution for two years and shall automatically renew for up to three one-year extensions, unless either party notifies the other of its intent to terminate at least 30 days prior to the renewal date. Notwithstanding this Term, District reserves the right to terminate this Contract as outlined in this Agreement.
2. Scope of Work. Contractor shall provide all materials and services, as specified in Exhibits A and B.
3. Compensation.
 - 3.1 Compensation. Contractor shall provide materials and services stated in the pricing and discount schedules as shown in Contractor Proposal, Exhibit B. District will pay for materials and services upon delivery and acceptance, if satisfied, in District’s sole discretion.
 - 3.2 Invoices. Payments shall be based upon Contractor’s invoices submitted to District, detailing the order’s fees and costs, as specified in Exhibits A and B.

Comment [MAW1]: Per District Rule E-7, the term of this contract shall not exceed five years, including extensions.

I have included a two-year contract with up to three one-year extensions. Feel free to modify that if you desire.

3.3 Payments.

a. District will review Contractor's invoice and within ten (10) days of receipt notify Contractor in writing if there is a disagreement or dispute with the invoice, materials or services. If there are no such disputes, District shall pay the invoice amount in full within thirty (30) days of invoice date.

b. If District fails to make any payment due Contractor for materials and services within thirty (30) days of the date on Contractor's invoice, late fees will be added to amounts due Contractor at the rate of 1.0 percent (1%) per month from original invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute.

4. Termination for Convenience.

This Contract may be terminated by mutual consent of the parties upon written notice. In addition, District may terminate all or part of this Contract upon determining that termination is in the best interest of District by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor.

5. Termination for Cause. District may terminate this Contract effective upon delivery of written notice to Contractor, or at such later date as may be established by District, under any of the following conditions:

5.1 If District funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of materials and services. The Contract may be modified to accommodate a reduction in funds.

5.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

5.3 If any license or certificate required by law or regulation to be held by Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

6. Termination for Default. Contractor may terminate this Contract in the event of a breach of the Contract by the District. Prior to such termination, Contractor shall provide District written notice of the breach and intent to terminate. If District has not entirely cured the breach within fifteen (15) days of the date of the notice, then Contractor may terminate the Contract at any time thereafter by giving a written notice of termination.

If Contractor fails to perform in the manner called for in this Contract or if Contractor fails to comply with any other provisions of the Contract, District may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Contractor setting forth the manner in which Contractor is in default. Contractor shall be paid the Contract price only for materials provided and services performed in accordance with the manner of performance as set forth in this Contract.

7. Remedies.

7.1 Upon termination under paragraph 4 and 5, Contractor shall be entitled to payment in accordance with the terms of this Contract for materials and services accepted before termination less previous amounts paid and any claim(s) District has against Contractor.

7.2 In the event of breach of this Contract, the parties shall have the following remedies:

7.2.1 If terminated under paragraph 6 by District due to a breach by Contractor, District may order materials and services from another vendor. If the cost of the materials and services from the other vendor exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to District the amount of the reasonable excess.

7.2.2 In addition to the above remedies for a breach by Contractor, District also shall be entitled to any other equitable and legal remedies that are available.

7.2.3 If District breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

7.3 District shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.

7.4 Contractor shall submit an itemized invoice for all unreimbursed materials and services provided before termination and all Contract closeout costs actually incurred by Contractor. District shall not be liable for any costs invoiced later than thirty (30) days after termination unless Contractor can show good cause beyond its control for the delay.

7.6 Upon receiving a notice of termination, and except as otherwise directed in writing by District, Contractor shall immediately cease all activities related to the materials and services under this Contract.

- 8. Shipping. Shipping and handling charges will be paid as specified in Exhibits A and B.
- 9. Notice. Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

DISTRICT:

CONTRACTOR:

Deschutes Public Library

Address _____

Phone: _____

 Phone: _____

Comment [MAW2]: Insert address and phone number where you want to receive notices.

- 10. Warranty. Contractor's warranty is as stated within Exhibit B. Contractor further warrants that all materials and services provided under this Agreement shall be fit for the purpose(s) for which intended, for merchantability, that material and equipment shall be properly packaged, that proper instructions and warnings shall be supplied, and that the Project shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by District shall not alter or affect the obligations of Contractor or the rights of District.
- 11. Indemnity. To the extent permitted by law, Contractor shall protect, defend, indemnify and hold the District harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Agreement or Contractor's violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of District.
- 12. Force Majeure. This section applies in the event that either party is unable to perform the obligations of this Agreement because of a Force Majeure event as defined herein, to the extent that the Agreement obligation must be suspended. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body which prevents

performance. Should either party suffer from a Force Majeure event and be unable to perform, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance. Upon receipt of such notice, the parties shall be excused from such performance as it is effected by the Force Majeure event for the period of such event. If such event effects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such event.

13. Independent Contractor. It is the intention and understanding of the parties that Contractor is an independent contractor and that District shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. Contractor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of Contractor shall not be deemed to convert this contract to an employment contract. It is recognized that Contractor may or will be performing work during the term for other parties and that District is not the exclusive user of the services that Contractor provides.
14. Assignment. Contractor shall not assign or subcontract any of its obligations under this Agreement without District's prior written consent, which may be granted or withheld in District's sole discretion. Any subcontract made by Contractor shall incorporate by reference all the terms of this Agreement. District's consent to any assignment or subcontract shall not release Contractor from liability under this Agreement or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.
15. Governing Law. This Agreement is to be governed by and under the laws of the State of Oregon.
16. Consent to Jurisdiction. The parties hereby consent to jurisdiction of the Deschutes County Circuit Court, Deschutes County, Oregon, over all legal matters pertaining to this Agreement, including, but not limited to, its enforcement, interpretation or rescission.
17. Public Contracting Requirements. Contractor shall comply with all federal, state and local laws and ordinances applicable to the work under this agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code including ORS 279B.020, 279B.220, 279B.230, and 279B.235, as more particularly set forth in Exhibit C, attached hereto and incorporated herein by this reference.
18. Arbitration. If any disputes, disagreements, or controversies arise between the parties pertaining to the interpretation, validity, or enforcement of this Agreement, the parties shall, upon the request of District, submit such dispute to binding arbitration under the Oregon Uniform Arbitration Act, ORS 36.600 et seq.

Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Deschutes County Circuit Court, upon the request of either party submitted in accordance with ORS 36.645, 36.310. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.

19. Attorney Fees. If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this Agreement, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for District to incur the services of an attorney to enforce any provision of this Agreement without initiating litigation, Contractor agrees to pay District's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.
20. Facsimile Signatures. The delivery of signatures to this Agreement by facsimile transmission shall be binding as original signatures.
21. Entire Agreement. This Agreement shall be the exclusive agreement between the parties for the Project. No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of both parties, except as otherwise authorized herein.
22. Signatures. This Agreement is not effective unless and until it is approved, signed and dated by an authorized representative of each party.
23. Interlocal Purchasing Statement. The District grants to any and all public serving governmental agencies, authorization to purchase equivalent product or products described herein at the same submitted unit bid prices, but only with the consent of the Contractor awarded the Contract by the District. The prices contained herein are valid to _____, 20__ and extendable at the option of Contractor. Any governmental entity purchasing pursuant to this cooperative purchasing Contract will enter into its own mutually agreeable terms and conditions and service quotation with Contractor.

DISTRICT:
DESCHUTES PUBLIC LIBRARY DISTRICT

CONTRACTOR:

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

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