

CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 02/07/2024

Contract/Lease Control #: C21-3062-LIB

Procurement#: ITB LIB 18-21

Contract/Lease Type: AGREEMENT

Award To/Lessee: BYWATER SOLUTIONS, LLC.

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 04/06/2021

Expiration Date: 08/31/2024 W(2) 1 YR RENEWALS

Description of: PROVIDE A KOHA & ASPEN OPEN SOURCE INTEGRATED LIBRARY SYSTEM

Department: LIB

Department Monitor: STEVER

Monitor's Telephone #: 850-609-5102

Monitor's FAX # or E-mail: VSTEVER@MYOKALOOSA.COM

Closed: _____

CC: BCC RECORDS



CONTRACT: C21-3062-LIB
ByWater Solutions, LLC
 Koha & Aspen Open Source Integrated Lib System
 EXPIRES:08/31/2024 w/2 1 yr renewals

FIRST AMENDMENT TO THE AGREEMENT BETWEEN OKALOOSA COUNTY, FLORIDA AND BYWATER SOLUTIONS, LLC.
CONTRACT NO. C21-3062-LIB

This First Amendment to the Agreement between Okaloosa County, a political subdivision of the State of Florida (the "County"), and Bywater Solutions, LLC. ("Contractor"), executed this 6th day of February, 2024, is made a part of the original Agreement dated April 6, 2021, Contract No. C21-3062-LIB (the "original Agreement"), incorporated herein by reference. The County and Contractor hereby agree as follows:

1. **AMENDMENT.** The County and Contractor would like to amend Section 2 of the original Agreement to update the beginning and end date of the agreement in order to align with the maintenance portion of the agreement. The term shall be updated as follows: September 1, 2021 and will expire August 31, 2024 with renewals.
2. **INSURANCE.** The County and Contractor would like to amend Attachment "B" of the original Agreement and replace with "Exhibit A" attached hereto and made a part of the original Agreement.
3. **OTHER PROVISIONS REMAIN IN EFFECT.** Except as specifically modified herein, all terms and conditions of the original Agreement between the parties, dated April 6, 2021 and any amendments thereto, shall remain in full force and effect.
4. **CONFLICTING PROVISIONS.** The terms, statements, requirements, or provisions contained in this Amendment shall prevail and be given superior effect and priority over any conflicting or inconsistent terms, statements, requirements or provisions contained in any other document or attachment.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day and year first written above.

BYWATER SOLUTIONS, LLC.

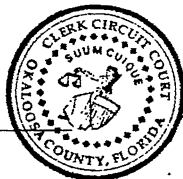
 Signature

TITLE: Chief Revenue Officer

Nathan A Curulla
 Print Name

ATTEST:

 BY:
 J.D. PEACOCK, II, CLERK



OKALOOSA COUNTY, FLORIDA

BY: _____
 Paul Mixon, Chairman





Exhibit "A"

GENERAL SERVICES INSURANCE REQUIREMENTS

CONTRACTORS INSURANCE

1. The Contractor shall not commence any work in connection with this Agreement until he has obtained all required insurance and the certificate of insurance has been approved by the Okaloosa County Risk Manager or designee.
2. All insurance policies shall be with insurers authorized to do business in the State of Florida and having a minimum rating of A, Class X in the Best Key Rating Guide published by A.M. Best & Co. Inc.
3. All insurance shall include the interest of all entities named and their respective officials, employees & volunteers of each and all other interests as may be reasonably required by Okaloosa County. The coverage afforded the Additional Insured under this policy shall be primary insurance. If the Additional Insured have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the company's liability under this policy shall not be reduced by the existence of such other insurance.
4. With the exception of Workers' Compensation policies, the County shall be shown as an Additional Insured with Endorsement for each policy on the Certificate of Insurance.
5. The County shall retain the right to reject all insurance policies that do not meet the requirement of this Agreement. Further, the County reserves the right to change these insurance requirements with 60-day notice to the Contractor.
6. The County reserves the right at any time to require the Contractor to provide copies (redacted if necessary) of any insurance policies to document the insurance coverage specified in this Agreement.
7. Any subsidiaries used shall also be required to obtain and maintain the same insurance requirements as are being required herein of the Contractor
8. Any exclusions or provisions in the insurance maintained by the Contractor that excludes coverage for work contemplated in this agreement shall be deemed unacceptable and shall be considered breach of contract.



WORKERS' COMPENSATION INSURANCE

1. The Contractor shall secure and maintain during the life of this Agreement Workers' Compensation insurance for all of his employees employed for the project or any site connected with the work, including supervision, administration or management, of this project and in case any work is sublet, with the approval of the County, the Contractor shall require the Subcontractor similarly to provide Workers' Compensation insurance for all employees employed at the site of the project, and such evidence of insurance shall be furnished to the County not less than ten (10) days prior to the commencement of any and all sub-contractual Agreements which have been approved by the County.
2. Contractor must be in compliance with all applicable State and Federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act or Jones Act, if applicable.
3. No class of employee, including the Contractor himself, shall be excluded from the Workers' Compensation insurance coverage. The Workers' Compensation insurance shall also include Employer's Liability coverage and a Waiver of Subrogation in favor of the County on the Certificate of Insurance. If there is an existing approved State of Florida Exemption for Workers' Compensation it must be provided to Okaloosa County.

BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage. If the contractor does not own vehicles, the contractor shall maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Policy. Contractor must maintain this insurance coverage throughout the life of this Agreement.

COMMERCIAL GENERAL LIABILITY INSURANCE

1. The Contractor shall carry Commercial General Liability insurance against all claims for Bodily Injury, Property Damage and Personal and Advertising Injury liability caused by the Contractor.
2. Commercial General Liability coverage shall include the following:
 - 1.) Premises & Operations Liability
 - 2.) Bodily Injury and Property Damage Liability
 - 3.) Independent Contractors Liability
 - 4.) Contractual Liability
 - 5.) Products and Completed Operations Liability



3. Contractor shall agree to keep in continuous force Commercial General Liability coverage for the length of the contract.

INSURANCE LIMITS OF LIABILITY

The insurance required shall be written for not less than the following, or greater if required by law and shall include Employer's liability with limits as prescribed in this contract:

	<u>LIMIT</u>
1. Workers' Compensation	
1.) State	Statutory
2.) Employer's Liability	\$500,000 each accident
2. Business Automobile	\$1M each accident (A combined single limit)
3. Commercial General Liability	\$1M each occurrence for Bodily Injury & Property Damage \$1M each occurrence Products and completed operations
4. Personal and Advertising Injury	\$1M each occurrence

NOTICE OF CLAIMS OR LITIGATION

The Contractor agrees to report any incident or claim that results from performance of this Agreement. The County representative shall receive written notice in the form of a detailed written report describing the incident or claim within ten (10) days of the Contractor's knowledge. In the event such incident or claim involves injury and/or property damage to a third party, verbal notification shall be given the same day the Contractor becomes aware of the incident or claim followed by a written detailed report within ten (10) days of verbal notification.

INDEMNIFICATION & HOLD HARMLESS

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the County, its officers and employees from liabilities, damages, losses, and costs including but not limited to reasonable attorney fees, to the extent caused by the negligence, recklessness, or wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of this contract.



CERTIFICATE OF INSURANCE

1. Certificates of Insurance indicating the project name, number, and evidencing all required coverage and if applicable any State of Florida approved Workers' Compensation Exemption must be submitted not less than 10 days prior to the commencement of any of the work. The certificate holder(s) shall be as follows: Okaloosa County BCC, 5479A Old Bethel Road, Crestview, Florida, 32536.
2. The contractor shall provide a Certificate of Insurance to the County with a thirty (30) day prior written notice of cancellation; ten (10 days' prior written notice if cancellation is for nonpayment of premium).
3. In the event that the insurer is unable to accommodate the cancellation notice Requirement, it shall be the responsibility of the contractor to provide the proper notice. Such notification shall be in writing by registered mail, return receipt requested, and Addressed to the Okaloosa County Purchasing Department at 5479-A Old Bethel Road, Crestview, FL 32536.
4. In the event the contract term goes beyond the expiration date of the insurance policy, the contractor shall provide the County with an updated Certificate of insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The County reserves the right to suspend the contract until this requirement is met.
5. The certificate shall indicate if coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the certificate will show a retroactive date, which should be the same date of the initial contract or prior.
6. All certificates shall be subject to Okaloosa County's approval of adequacy of protection.
7. All deductibles or SIRs, whether approved by Okaloosa County or not, shall be the Contractor's full responsibility.
8. In no way will the entities listed as Additional Insured be responsible for, pay for, be damaged by, or limited to coverage required by this schedule due to the existence of a deductible or SIR.

GENERAL TERMS

Any type of insurance or increase of limits of liability not described above which, the Contractor required for its own protection or on account of statute shall be its own responsibility and at its own expense.



Any exclusions or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in this contract shall be deemed unacceptable and shall be considered breach of contract.

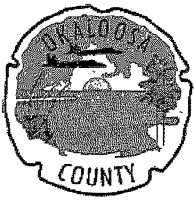
The carrying of the insurance described shall in no way be interpreted as relieving the Contractor of any responsibility under this contract.

Should the Contractor engage a subcontractor or sub-subcontractor, the same conditions will apply under this Agreement to each subcontractor and sub-subcontractor.

The Contractor hereby waives all rights of subrogation against Okaloosa County and its employees under all the foregoing policies of insurance.

EXCESS/UMBRELLA INSURANCE

The Contractor shall have the right to meet the liability insurance requirements with the purchase of an EXCESS/UMBRELLA insurance policy. In all instances, the combination of primary and EXCESS/UMBRELLA liability coverage must equal or exceed the minimum liability insurance limits stated in this Agreement.



BOARD OF COUNTY COMMISSIONERS AGENDA REQUEST

DATE: February 6, 2024
TO: Honorable Chairman and Distinguished Members of the Board
FROM: Vicky Stever
SUBJECT: Request approval of the Contract Amendment with ByWater Solutions
(C21-3062-LIB)
DEPARTMENT: Library Cooperative
BCC DISTRICT: All

STATEMENT OF ISSUE: Request approval of Contract Amendment with ByWater Solutions, Inc. (C21-3062-LIB)

BACKGROUND: On April 6, 2021, the Library Cooperative signed a contract with ByWater Solutions, Inc. for software support and hosting services. The start date of the contract reflects the multi-month window of configuration and implementation of the new software package. Included in the contract is the maintenance/support service, which did not begin until the Cooperative went live with the software in September 2021. The annual maintenance term runs September-August but the contract renewal date is in April. The proposed Amendment, attached, will adjust the contract renewal date to align with the annual maintenance agreement term by extending the contract expiration date to August 31, 2024. Subsequent contract renewals will follow the September-August term.

FUNDING SOURCE, (If Applicable):

Department # 0171
Account # 546900
Amount \$24,000 annually

OPTIONS: Approve/Deny

RECOMMENDATIONS: Request approval of Contract Amendment with ByWater Solutions, Inc. (C21-3062-LIB)



Vicky Stever, Library Cooperative Coordinator

1/26/2024

RECOMMENDED BY:



John Hofstad, County Administrator

1/31/2024

APPROVED BY:

**PROCUREMENT/CONTRACT/LEASE
INTERNAL COORDINATION SHEET**

Procurement/Contract/Lease Number: C21-3062-LIB Tracking Number: 5046-24
Procurement/Contractor/Lessee Name: Bywater Grant Funded: YES ___ NO X
Purpose: Amendment #1
Date/Term: 8-31-24 1. GREATER THAN \$100,000
Department #: 0171 2. GREATER THAN \$50,000
Account #: 546900 3. \$50,000 OR LESS
Amount: 24,0000
Department: LIB Dept. Monitor Name: Shreec

Purchasing Review

Procurement or Contract/Lease requirements are met: DeRita Mason Date: 1-5-21
Purchasing Manager or designee: _____ DeRita Mason, Erin Poole, Amber Hammonds

2CFR Compliance Review (if required)

Approved as written: no federal funds in amendment Grant Name: amendment
Grants Coordinator: _____ Suzanne Ulloa Date: _____

Risk Management Review

Approved as written: see email attached Date: 1-5-21
Risk Manager or designee: _____ Lydia Garcia

County Attorney Review

Approved as written: see email attached Date: 1-17-21
County Attorney: _____ Lynn Hoshihara, Kerry Parsons or Designee

Department Funding Review

Approved as written: _____ Date: _____

IT Review (if applicable)

Approved as written: _____ Date: _____

DeRita Mason

From: Odessa Cooper-Pool
Sent: Friday, January 5, 2024 3:27 PM
To: DeRita Mason
Cc: Kerry Parsons; Lynn Hoshihara
Subject: RE: C21-3062-LIB-1st amendment
Attachments: C21-3062-LIB 1st amendment.docx

Hello DeRita,

The 1st Amendment for C21-3062-LIB has been reviewed and is approved by Risk Management for insurance purposes.

Thank you,

Odessa Cooper-Pool

Public Records & Contracts Specialist | Risk Management
Okaloosa County BCC
302 N. Wilson Street, Crestview, FL 32536
Office: 1-850-689-4111



“And, when you want something, all the universe conspires in helping you to achieve it.”— Paulo Coelho, *The Alchemist*

Please note: Due to Florida's very broad public records laws, most written communications to or from County employees regarding County business are public records, available to the public and media upon request. Therefore, this written e-mail communication, including your e-mail address, may be subject to public disclosure.

From: DeRita Mason <dmason@myokaloosa.com>
Sent: Friday, January 5, 2024 2:43 PM
To: Odessa Cooper-Pool <ocooperpool@myokaloosa.com>
Cc: Kerry Parsons <kparsons@ngn-tally.com>; Lynn Hoshihara <lhoshihara@myokaloosa.com>
Subject: RE: C21-3062-LIB-1st amendment

See updated.

DeRita Mason

DeRita Mason

From: Lynn Hoshihara
Sent: Wednesday, January 17, 2024 3:10 PM
To: DeRita Mason
Cc: Kerry Parsons; Odessa Cooper-Pool; Jacqueline Matichuk
Subject: Re: C21-3062-LIB-1st amendment
Attachments: C21-3062-LIB 1st amendment 1.17.24.docx

DeRita,

With the attached changes, this is approved.

Lynn

Lynn M. Hoshihara
County Attorney
Okaloosa County, Florida

Please note: Due to Florida's very broad public records laws, most written communications to or from County employees regarding County business are public records, available to the public and media upon request. Therefore, this written e-mail communication, including your e-mail address, may be subject to public disclosure.

From: DeRita Mason
Sent: Friday, January 5, 2024 10:11 AM
To: Lynn Hoshihara
Cc: Kerry Parsons; Odessa Cooper-Pool; Jacqueline Matichuk
Subject: C21-3062-LIB-1st amendment

Good morning,
Please review and approve the attached.
Thank you,

DeRita Mason



DeRita Mason, CPPO, CPPB, NIGP-CPP
Purchasing Manager
Okaloosa County Purchasing Department