

REQUEST FOR PROPOSALS
FOR
MUSEUM CAFÉ SERVICES

#09-0415RFP



THE WASHINGTON STATE HISTORICAL SOCIETY
1911 PACIFIC AVENUE
TACOMA, WA. 98402

BIDDER INSTRUCTIONS

Read the RFP in its entirety and respond completely and thoroughly. **RFP is open until filled.**

In order to be considered complete, a response must address the sections as noted in the RFP. Please number your responses so they correspond with the numeric notation in the Agreement. Sign the Agreement at the end of the RFP.

INTRODUCTION

The Washington State Historical Society (Society) at the Washington State History Museum (Museum) located in downtown Tacoma at 1911 Pacific Avenue, seeks proposals from qualified service providers to occupy its Museum Pavilion, by terms set forth in the Agreement. The Society's primary interest is to have the Pavilion occupied by a qualified food service vendor to provide the Museum and the neighboring community with Café Services. The Society is open to reviewing alternative business scenarios to have the Pavilion occupied by a qualified provider that offers a valued service to the Museum and the Union Station Business District.

DESCRIPTION OF PROPOSED FACILITIES

The Museum Pavilion provides approximately 1,000 square feet of commercial space with frontage along Pacific Avenue. The Museum Pavilion has one of each gender restrooms. The Museum has provided a commercial three-sink unit with waste disposal.

The Museum Pavilion adjoins the Museum's 3,500 square foot Outdoor Plaza, usable by any potential vendor. The plaza is downtown Tacoma's gateway to the Chihuly Bridge of Glass, and The Thea Foss Esplanade. Accordingly, the Museum Pavilion is positioned on the premier pedestrian foot traffic corridor in Tacoma.

The Outdoor Plaza may be rented and/or used in sponsorship with the Society during summer season for outside food services. Coordination with Museum's Facility Rental Services is required. The Boeing Amphitheater seats approximately 200 and may be rented and/or used in sponsorship with the Society and in coordination with Museum's Education Department and Facility Rental Program.

The coordinated use of the outdoor plaza is to ensure the exclusive catering firm has priority use over the space for scheduled facility rentals. When the outdoor plaza is not in use for Society scheduled event and/or scheduled private events, the café vendor may use the spaces as a version of "sidewalk seating."

SOCIETY PROVIDED SERVICES

The Society shall be responsible for maintaining the structural integrity of the building, provide all routine facility maintenance and general repair. Utilities, (electricity, water, and sewer) are included in the minimum leased fee as stated in the Agreement. Garbage removal shall be the responsibility of the Bidder/Vendor. Monthly garbage collection fees will be paid by the Society; however the Bidder/Vendor shall be invoiced by the Society for their portion of the City of Tacoma's monthly refuse fee. *Rates subject to change based on the City of Tacoma's fee structure.*

The Society shall provide restroom cleaning, on the same schedule as the museum property. During operating hours the Bidder/Vendor shall be responsible for cleaning restrooms, windows, eating areas, prep area, and floor. The Bidder/Vendor will bear the expense of all repairs and maintenance when the Bidder/Vendor, or his/her agents or employees have caused the damage.

BIDDER SHALL PROVIDE

The Bidder/Vendor shall provide the necessary working capital, licenses, insurance, authorized staff, equipment, wares and products to successfully operate and provide museum visitors with superior customer service.

The Bidder/Vendor shall be responsible for any loss or damage to property of the Society which results from the negligence of the Bidder/Vendor or which results from the failure on the part of the Bidder/Vendor to maintain and administer that property in accordance with sound management practices. In furtherance of this responsibility:

1. The Bidder/Vendor shall provide the Society a damage deposit in the amount of one-thousand dollars to be held in an account exclusive to this purpose by the Society during the term of the agreement.
2. The Bidder/Vendor shall provide the deposit within 30 days of the agreement start.
3. The Society shall draw upon the damage deposit should damage occur as a result of the Bidder/Vendor's actions.
4. The Society shall notify the Bidder in writing if a draw upon the damage deposit is required for repairs and/or replacement of equipment.
5. The Bidder/Vendor agrees to annually maintain the damage deposit amount of one-thousand dollars throughout the term of the agreement, replenishing the damage deposit, should amounts be drawn upon during the contract term on the anniversary date of the agreement.

OPERATING SCENARIO

The Bidder/Vendor shall provide the Society with a detailed description of their proposed operating scenario(s). The Bidder shall describe their proposed intended use for the space to include; type of services to be provided, menu items and average cost per item, atmospheric setting (e.g. music & design), potential equipment (e.g. soda fountain, self-serve beverages, espresso cart, etc.), fixed and unfixed tenant improvements, quantity of seating, expected staffing and duration of the agreement. Bidder may present multiple Operating Scenarios and/or other potential revenue generating ideas that would be mutually beneficial to the Bidder and the Society.

Bidder shall provide a compensatory component in their proposal including monthly lease fee, monthly payments based on a percentage of gross sales, a combination thereof, or other compensatory devices payable to the Society. However, all compensatory proposals shall not be less than the guaranteed monthly minimum amount as stated in the attached Agreement.

Preference may be given to Bidders who incorporate “Green Products or Services.” All “green” components shall be explained in detail.

Note: Public open hours or employees assigned to the Pavilion café are limited to those hours when museum site security staff is on duty. When the museum property is closed, the café must also be closed.

MUSEUM HOURS

Monday through Sunday 7:00 am to 6:00pm

3rd Thursday of each month 5:00 pm to 8:00 pm

The Museum is usually **CLOSED** on the following holidays:

- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas Day

The Museum is usually **OPEN** on the following holidays:

- New Years Day
- Martin Luther King’s Birthday
- President's Day
- Veteran's Day

The Museum is also **OPEN** on Easter Sunday, which is a commonly recognized, but not a legal holiday.

Days and hours are subject to change at the Agency’s discretion.

CONTRACT #09-0415A

**AGREEMENT FOR THE PROVISION OF MUSEUM CAFÉ SERVICES AT
THE WASHINGTON STATE HISTORY MUSEUM**

This Agreement for the Provision of Museum Pavilion Services at the Washington State History Museum located at 1911 Pacific Avenue, Tacoma, WA (“Agreement”) is made and entered into by and between the Washington State Historical Society, a non-profit State agency (WSHS or Agency or Society) and _____ (Contractor), effective _____

This Agreement is made with reference to the following facts:

- A. WSHS issued a Request for Proposals (RFP) for vendors to provide Museum Pavilion Services.
- B. Contractor is the successful bidder on the (RFP) and wishes to enter into this Agreement with WSHS to provide Museum Pavilion Services.
- C. WSHS wishes to retain Contractor to operate services at the Washington State History Museum in accordance with the terms and conditions of the RFP, this Agreement and contractor’s response.

NOW, THEREFORE, the parties agree as follows:

1. SCOPE OF WORK

The Contractor will provide services and staff as set forth in this Agreement; the Request for Proposal, and the Contractor’s Proposal dated _____, 20____.

2. PERIOD OF PERFORMANCE

Subject to other contract provisions, the period of performance under this contract will be from _____ unless terminated sooner as provided herein. The Agency reserves the right to extend the agreement by mutual agreement of the Contractor and the Society. The terms shall be agreed upon between the Society and the Contractor.

3. COMPENSATION

The Contractor shall be responsible for submitting monthly use payment to the Society in the amount of \$1,000.00 on or before the 1st of every month for the ensuing month of operation. Payments are to commence on _____. The Society may charge The Contractor a late penalty on the owing amount of 1.5 % per day for each day over the 15th of the month.

The Contractor agrees that any extensions of the Period of Performance after the initial term may be subject to a minimum 3% annual increase in the monthly compensation for each subsequent extension. The Contractor agrees that parking for their staff shall be billed at the Society’s staff rate of \$20.00 per permit per month.

The Contractor shall be responsible for their portion of monthly solid waste charge resulting from Museum Pavilion Services. Solid waste charges will be itemized on monthly lease invoice at the rate established by the City of Tacoma and subject to change with or without notice based on rates established by the City of Tacoma.

4. INSURANCE

A. PUBLIC LIABILITY INSURANCE

The Contractor shall at all times during the term of this Agreement, at its cost and expense, carry and maintain general public liability insurance, including contractual liability, against claims for bodily injury, personal injury, death or property damage occurring or arising out of services provided under this Agreement. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or servants. The limits of liability insurance, which may be increased from time to time as deemed necessary by Society, with the approval of the Contractor (which shall not be unreasonably withheld), shall not be less than as follows:

Each Occurrence	\$1,000,000.
General Aggregate Limits (other than products completed operations)	\$2,000,000.
Products Completed Operations Limits	\$2,000,000.
Personal and Advertising Injury Limit	\$1,000,000.
Fire Damage Limit (any one)	\$50,000.
Medical Expense Limit (any one person)	\$5,000.

B. WORKERS' COMPENSATION COVERAGE

The Contractor will at all times comply with all applicable workers' compensation, occupational, disease and occupational health and safety laws, statutes, and regulations to the full extent applicable. Such workers compensation and occupational disease requirements shall include coverage for all employees of the Contractor suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of the Agreement. Satisfaction of these requirements shall include, but shall not be limited to:

- 1) Full participation in any required governmental occupational injury and/or disease insurance program, to the extent participation in such program is mandatory in any jurisdiction,
- 2) Purchase of worker's compensation and occupational disease insurance providing benefits to employees in full compliance with all applicable laws, statutes, and regulations, but only to the extent such coverage is not provided under a mandatory government program as in above and/or,
- 3) Maintenance of a legally permitted and governmental approved program of self-insurance for worker's compensation and occupational disease.
- 4) Except to the extent prohibited by law, the program of Contractor's compliance with worker's compensation and occupational disease laws, statutes, and regulations above shall provide for a full waiver of rights of subrogation against WSHS, its directors, officers, and employees.
- 5) If Contractor, or any subcontractor retained by Contractor, fails to effect and maintain a program of compliance with applicable worker's compensation and occupational disease laws, statutes, and regulations and WSHS incurs fines or is required by law to provide benefits to such employees or to obtain coverage for such employees, Contractor will indemnify WSHS for such fines, payments of benefits to Contractor or subcontractor employees or their heirs or legal representatives, and/or the cost of effecting coverage on behalf of such employees. Any amount owed to WSHS by Contractor pursuant to the indemnity may be deducted from any payments owed by WSHS to Contractor for the performance of this Agreement.

- 6) Employers Liability Insurance – Contractor, in addition to complying with the provisions of Worker’s Compensation section above, will maintain coverage for employer’s liability with a policy limit of not less than \$1,000,000 per accident.

C. AUTOMOBILE LIABILITY

In the event that services delivered pursuant to this contract involve the use of vehicles or transportation of clients, automobile liability insurance shall be required. If Contractor-owned personal vehicles are used, a Business Automobile Policy covering at a minimum Code 2 “owned autos only” must be secured. If Contractor employee’s vehicles are used, the Contractor must also include under the Business Automobile Policy Code 9, coverage for “non-owned autos.” The minimum limits for automobile liability is:

\$1,000,000. Per Occurrence, using a Combined Single Limit for bodily injury and property damage.

D. PROOF OF INSURANCE

Certificates or other evidence satisfactory to the Society confirming the existence, terms and conditions of all insurance required above shall be delivered to the Society within a minimum of five (5) days prior to the Contract Start Date. The policy (ies) of insurance are required to be maintained in accordance with this Agreement shall not be canceled or given notice of non-renewal nor shall the terms or conditions thereof be altered or amended without forty-five (45) days prior written notice being given to the Society.

E. ADDITIONAL INSURED

The Society shall be specifically named as an additional insured on all policies, and all policies shall be primary to any other valid and collectable insurance. At its option, WSHS may waive this requirement where insurance carriers will not under any circumstances extend secondary insured coverage for physicians’ professional liability, or Architects’ and Engineers’ insurance. WSHS may also waive this requirement where insurance carriers will not under any circumstances extend secondary fidelity bonding coverage for private nonprofit organizations.

5. SECURITY COORDINATION

Contractor understands and agrees that access to the Museum Pavilion may be limited in order to maintain security. The Security Services Department of the Society will have absolute authority with respect to matters relating to security over Contractor and its employees while they are on the Society’s premises. The Security Services Department may regulate access times to the Museum Pavilion and locations for access including merchandise delivery.

6. HOURS OF OPERATION

The Contractor is expected at a minimum to keep hours of operation concurrent with the Museum’s public open hours as stated within the Operating Scenario.

7. LIMITATION ON LIABILITY OF WSHS

Notwithstanding any other term or provision of this Agreement, in no event shall Contractor, its successors or assigns have any recourse whatsoever under this Agreement or otherwise to the artifact collection, endowment, archives or other property of WSHS or to WSHS’s officers or trustees for any debt or obligation or liability created by this agreement.

8. LIMITATION OF RESPONSIBILITY OF WSHS FOR CONTRACTOR’S PROPERTY

The Society will not, under any circumstances, be responsible for property belonging to the Contractor whether in use or stored on site.

9. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties to this Agreement shall be subject to and governed by the RFP with its Attachments A & B, and the Terms and Conditions contained in the text of this Agreement and the General Terms and Conditions attached hereto as Attachment B, and the Contractor's response and each are incorporated herein by reference. In the event of any inconsistency in terms, the inconsistency shall be resolved by giving precedence in the following order: (1) The request for proposals, (2) the Agreement (Attachment A to RFP); (3) General Terms and Conditions (Attachment B to RFP); (4) the contractor's response to the RFP.

Executed as of this _____ day of _____, 20____

“The undersigned hereby offers to enter into the Agreement attached as the Agreement for the Museum Facility Rental Program Management and Catering Services at the Washington State History Museum.”

Washington State Historical Society

Contractor (Bidder)

By: _____
David L. Nicandri

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to form:

Assistant Attorney General

Dates: _____

General Terms and Conditions

DEFINITIONS -- As used throughout this contract, the following terms shall have the meaning set forth below:

"Society" shall mean the Washington State Historical Society of the state of Washington, any division, section, office, unit or other entity of the Society, or any of the officers or other officials lawfully representing that Agency. "Society " shall also mean the Director, Washington State Historical Society and/or the delegate authorized in writing to act on the Director's behalf.

"Contractor" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the Contractor. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) in any tier.

ACCESS TO DATA -- In compliance with chapter 39.29 RCW, the Contractor shall provide access to data generated under this contract to Society, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

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 the Society.

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 – The work to be provided under this contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

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.

CONFIDENTIALITY / SAFEGUARDING OF INFORMATION -- The Contractor shall not use or disclose any information concerning the Society, 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 the Society, or as may be required by law.

CONFLICT OF INTEREST – Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Society may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agency that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or services under this contract.

In the event this contract is terminated as provided above, the Society shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Society provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the “Disputes” clause of this contract.

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 the Society. The Society 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 the Society 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 the Society 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 the Agency.

The Contractor shall exert all reasonable effort to advise the Society, 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. The Society shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this contract. The Society 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. The Society 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.

DISPUTES – Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved, either party may request a dispute hearing with the Director of the Washington State Historical Society or designee (Agent). Disputes shall be resolved as quickly as possible.

The request for a dispute hearing must:

Be in writing;

State the disputed issue(s);

State the relative positions of the parties;

State the Contractor's name, address, and contract number; and

Be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working days.

The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Society and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this contract which are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.

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 Thurston County.

INDEMNIFICATION – To the fullest extent permitted by law, the Contractor shall

indemnify, defend, and hold harmless the State of Washington, the Society, and all officials, agents and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

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

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 the Agency. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the Society or of the State of Washington 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.

INDUSTRIAL INSURANCE COVERAGE – The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. Prior to performing work under this contract, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51RCW during the course of this contract. 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, the Society may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Society may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

Industrial insurance coverage through the Department of Labor & Industries is optional for sole proprietors, partners, corporate officers and others, per RCW 51.12.020.

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.

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 noncompliance 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 the Society. 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.

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 the agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Agency reserves the right to monitor, audits 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 the Society. Contractor shall certify 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 the Society for any damages related to the Contractor's unauthorized use of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

PUBLICITY -- The Contractor agrees to submit to the Society all advertising and publicity matters relating to this Contract, which in the Society's judgment, Society name can be

implied or is specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Society.

RECORDS MAINTENANCE -- The Contractor shall maintain complete financial records relating to this contract and the services rendered including all books, records, documents, magnetic media, receipts, invoices and other evidence relating to this contract and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records including materials generated under the contract shall be subject at all reasonable times to inspection, review, or audit by the Society, the Office of the State Auditor, and federal and state officials so authorized by law, rule, 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 the Society, 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.

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, the Society may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at the Society's 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 Society premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security 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 the Society.

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

TERMINATION FOR CAUSE – In the event the Society determines the Contractor has failed to comply with the conditions of this contract in a timely manner, the Society has the right to suspend or terminate this Contract. This Society shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 3 days, the contract may be terminated. The Society reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Society to terminate the contract.

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

TERMINATION FOR CONVENIENCE -- Except as otherwise provided in this contract, the Society may, by 10 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, the Society 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, the Society, in addition to any other rights provided in this contract, may require the Contractor to deliver to the Society any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

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

the Society against potential loss or liability.

The rights and remedies of the Society 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, and except as otherwise directed by the Agent, 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 the Society, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Society 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 Society to the extent Society may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the Society and deliver in the manner, at the times, and to the extent directed by the Society any property which, if the contract had been completed, would have been required to be furnished to the Society;
6. Complete performance of such part of the work as shall not have been terminated by the Society; and
7. Take such action as may be necessary, or as the Society may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor, and in which the Society has or may acquire an interest.

TREATMENT OF ASSETS –

Title to all property furnished by the Society shall remain in the Society. Titles 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 vest in the Society 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 the Society 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 the Society in whole or in part, whichever first occurs. Fixed tenant improvements shall become the property of the Museum. If the contract period is less than five years, tenant shall be reimbursed by the Society for the appraised depreciated value of such fixed tenant improvements.

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

The Contractor shall be responsible for any loss or damage to property of the Society 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.

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

The Contractor shall surrender to the Society all property of the Society prior to settlement upon completion, termination or cancellation of this contract.

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 the Society.