

**Board of Trustees Special Meeting**  
Tuesday, December 14, 2021, 6:30pm  
Zoom Video Conference

**PANDEMIC RESPONSE**

Governor Inslee issued Proclamation [20-28.15](#) on January 19, 2021, waiving and suspending any in-person requirements in the Open Public Meetings Act (OPMA) and the Public Records Act (PRA) during the public health emergency. The proclamation is intended to reduce unnecessary person-to-person contact to slow the spread of COVID-19.

In accordance with Proclamation 20-28.15, Trustees and Staff will participate remotely by teleconference. Members of the public may participate by phoning or linking in, using the instructions available prior to the meeting at [www.nols.org/board-administration/](http://www.nols.org/board-administration/).

**PUBLIC COMMENTS**

Any person or group desiring to bring an item to the attention of the Library Board may do so by addressing the Board at meetings. Individuals having comments specifically related to agenda topics should raise their hand at the appropriate point on the agenda to indicate a wish to speak. Public comments on items not on the agenda, but within the jurisdiction of the North Olympic Library System Board of Trustees, are heard at the beginning of the meeting and at the end; individuals may choose to speak at either point. When time constraints require, the Chair may limit public remarks during meetings to less than three minutes. The Board will not discuss or take action on items raised during Public Comment, but may choose to add items to a future meeting agenda. Public comments may also be sent to: Library Board of Trustees, North Olympic Library System, 2210 South Peabody Street, Port Angeles, WA 98362 or [LibraryBoard@nols.org](mailto:LibraryBoard@nols.org).

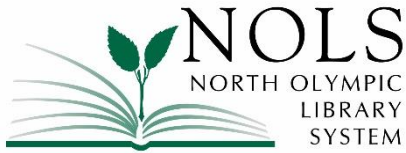
**LAND ACKNOWLEDGEMENT**

The North Olympic Library System acknowledges that the lands on which we live and gather are the appropriated homelands of Indigenous Peoples. We want to express our deepest respect to those peoples past and present, including the [Hoh Tribe](#), [Jamestown S'Klallam Tribe](#), [Lower Elwha Klallam Tribe](#), [Makah Indian Tribe](#), [Quileute Tribe](#), [Quinault Indian Nation](#), [Port Gamble S'Klallam Tribe](#) and the [Skokomish Tribe](#), for their care of these lands throughout the generations. Let us learn more about the histories, cultures, and traditions of Indigenous Peoples. Let us strengthen relationships with sovereign tribal nations to provide an inclusive space fostering innovation and collaboration at the Library.

## AGENDA

1. Call to order, roll call and introductions
2. Approval of Agenda
3. New Business
  - N.1. Approval of contract between NOLS and ByWater Solutions to purchase a discovery tool
4. Adjournment





## Staff Report

Meeting Date: December 14, 2021  
To: Library Board of Trustees  
From: Erin Shield, Collection Services Manager  
Subject: Approval of contract between NOLS and ByWater Solutions to purchase a discovery tool

Attachments: Contract between NOLS and ByWater Solutions

**Topic/Issue:** Approval of contract between NOLS and ByWater Solutions.

**Background:** NOLS strives to make the patron experience better at all levels of library service. The purchase of a discovery tool that overlays the infrastructure of the online catalog is the next step in this direction. It will assist patrons in more easily finding material they are looking for, improve the browsing experience, as well as allowing staff to direct patrons to lesser-known and underutilized resources. An enhanced catalog will provide improved user experience through streamlined results, better relevancy ranking, and a more intuitive approach for patrons. Staff will be able to create and share curated lists with patrons to assist in reader's advisory. Overall, a discovery tool will improve accessibility.

**Discussion:** In October 2021, NOLS solicited bids for the purchase of a discovery tool. A total of four bids were received. All of the bid documents are available on the NOLS website at [www.nols.org/bids-requests](http://www.nols.org/bids-requests). The Collection Services Manager, IT Manager, Public Services Director and Executive Director reviewed and rated the bids.

The lowest responsible bidder is ByWater Solutions, LLC. The ByWater Solutions bid amount is \$35,100 for the first three years. Tax is not included in the contract price. The library is tax exempt for this product for providing free access to the software by patrons.

The following table is a summary of the total contract price.

Item	Price
Base Bid for implementation	\$ 20,100
Annual maintenance (years 2 & 3)	\$ 15,000
Total Contract Price	\$ 35,100

The table below summarizes the first year cost to NOLS for the purchase of the discovery tool. The first year costs include all implementation, any maintenance, and staff training associated with the discovery tool.

First Year Price	\$ 20,100
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**Policy Considerations:** NOLS Privacy Policy 5.1 and Computer Security Policy 5.3 were considered when discovery tool bids were reviewed.

Purchasing Policy 5.5 has been followed.

NOLS' legal counsel reviewed a draft contract and suggested several changes to reduce risk to NOLS. The changes were agreed to by ByWater Solutions and are in the final contract.

**Fiscal Considerations:** The approved 2021 Capital Budget includes \$38,000 for the procurement of a discovery tool. The lowest responsible bid is \$20,100 which is \$17,900 under budget.

The annual maintenance fee will need to be included in the 2023 Operating Budget.

**Recommendation:** That the Library Board approve the contract with ByWater Solutions, LLC for the purchase of a discovery tool.



## ***CONTRACT FOR SERVICES***

This Contract for Services ("Contract") is made effective as of 12/13/2021, by and between the North Olympic Library System of Port Angeles, WA 98362 ("Client"), and ByWater Solutions LLC, of Santa Barbara, California 93102 ("ByWater").

1. TERM. Client has a projected go live date of 4/18/2022 and the service term shall be effective from 1/18, 2022 to 1/18 2024. Upon completion of this initial term, the Contract will renew for additional two-year terms. Either party must notify the other in writing sixty (60) days prior to the end of the then-current Term of their intention to modify or discontinue the Contract. Renewal Contract will reflect no more than a 3% increase to annual support and hosting costs. This contract will expire if not executed within 60 days of the effective date listed above.

2. DESCRIPTION OF SERVICES. ByWater will provide the Client the following services (collectively, the "Services"):

- (a) Installation and Implementation of the Aspen Discovery System ("Aspen"), including the customization and configuration of the public interface to meet the Client's style guidelines.
  - (1) Implementation will include the integration with existing API connections for third-party systems free of charge
  - (2) Data extraction (if applicable) from current system is the responsibility of the Client.
  - (3) Testing of initial installation is the responsibility of the Client.
  - (4) Aspen enables the application of Client logos, preferred fonts and colors interface.
  - (5) Database size increases by more than 50% throughout the life of this Contract will result in pricing increases.
- (b) Terms regarding technical support for the Client are as follows:
  - (1) Critical support will be available (24) hours per day, 7 days per week. Critical support includes system failure or complete loss of access to the Aspen system. Other support calls during hours in which the Client's facility is closed will be addressed by level of importance; i.e. system failure dictates immediate response time, training questions will be addressed within 24 hours;
  - (2) The support package will also cover software updates and Aspen enhancements that may be applicable to the Client.
- (c) Hosting for the Client's data will be located in a remote cloud, and Service providers may change at any time, at the absolute and sole discretion of ByWater. ByWater will not be responsible for force majeure events including

natural disasters and communication line failures that may cause data corruption.

- (d) Training is required and will be provided via live webinar. Additional training will be provided upon request of Client. Clients not previously using Aspen as the library's Discovery must receive training.

3. PAYMENT FOR SERVICES. In exchange for the Services the Client will pay ByWater according to the following schedule:

- (a) Installation/Configuration: \$10,000.00 payment invoiced upon signing of this Contract.
- (b) Annual support and hosting fee year one: \$7,500.00, payment invoiced upon signing of this Contract.
- (c) Ongoing annual support and hosting fee: \$7,500.00, due on or before 1/24 of each year, beginning on 1/24, 2023.
- (d) Webinar Training: \$2,600.00. Payment invoiced upon signing of this Contract.

Payments not received within 60 days of the due date will result in termination of support services until receipt of payment. Payment not received within 90 days of due date shall result in termination of hosting services until receipt of payment. Payments may be made via check and direct deposits (ACH). Alternate payment methods will result in a convenience fee based on a sliding scale. For avoidance of doubt, any delay in implementation of the Software requested or caused by the Client shall not be grounds for the Client to likewise delay payment of any fees then due and owing.

4. WORK PRODUCT OWNERSHIP. Any copyrightable works, ideas, discoveries, inventions, patents, products, or other information (collectively the "Work Product") developed in whole or in part by ByWater solely in connection with the Services will be the exclusive property of the Client. Upon request, ByWater will execute all documents necessary to confirm or perfect the ownership of the Client to the Work Product. All such Work Product developed on behalf of the Client will be made available under the terms of the open source license in effect for Aspen at the time the code is written (currently GPL v2). Upon request, a copy of the code will be given to the Client even though the code may be hosted. Upon expiration or termination of this Contract, ByWater will: (a) return to the Client all records, notes, documentation and other items owned by the Client that were used, created, or controlled by ByWater during the term of this Contract; and (b) assist Client in exporting data from ByWater's data cloud to Client, at no additional charge.

5. CONFIDENTIALITY. ByWater, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of ByWater, or divulge, disclose, or communicate in any manner, any information that is proprietary to the Client, except (a) if and to the extent the information is already a matter of public knowledge; (b) such disclosures as may be necessary to ByWater's attorney or accountant (collectively, "Permitted Confidants"); or (c) such disclosures as are required by law or by any litigation between the parties hereto with respect to this Contract. ByWater shall also timely require each of its Permitted Confidants to keep that information confidential. Before making any disclosure required by law, ByWater, or the Permitted Confidant, as the case may be, shall give Client as much notice thereof as is legally permitted, along with a copy of the proposed disclosure. The foregoing duties of confidentiality shall survive the termination of this Contract.

6. RELATIONSHIP OF PARTIES. Client and ByWater agree that the status of ByWater is that of independent contractor, and not that of employee, principal, agent or joint venture partner of Client. Neither party has authority to enter into contracts or assume any obligations for or on behalf of the other party or to make any warranties or representations for or on behalf of the other party.

7. WARRANTY. ByWater shall provide the Services and meet its obligations under this Contract in a timely and competent manner, using knowledge and recommendations for performing the Services which meet generally accepted standards in ByWater's industry. Aside from the express warranties stated in this Contract, ByWater hereby disclaims any and all other warranties related to the products and services offered under this Contract, including but not limited to warranties of non-infringement, merchantability or fitness for a particular purpose, and whether such warranties are oral or written, express or implied. ByWater does not in any way warrant that Aspen will operate without interruption or be error free. ByWater shall have no liability for damages resulting from the following, including, but not limited to: hosting inoperability, interruption due to product or delivered software malfunction (provided that regular daily backups are conducted by ByWater), loss of profits, goodwill, damage or loss of data, or any other indirect, special or consequential damages suffered by Client.

8. REMEDIES. If Client or ByWater fails to perform its obligations under this Contract, the non-breaching party shall have the right to terminate the Contract and to seek whatever remedy may be available to it, either in law or in equity. In the event that a claim or cause of action arises out of the interpretation, performance, or breach of this contract, the prevailing party shall be entitled to a reasonable attorney's fee in addition to costs of suit. The parties hereto hereby consent to the personal jurisdiction and venue of the State of Washington with respect to any claim or cause of action arising from this Contract, and hereby waive any objection to such venue based upon the doctrine of forum non conveniens.

9. ENTIRE AGREEMENT. This Contract contains the entire agreement of the parties, and there are no other promises or conditions in any other Contract whether oral or written concerning the

subject matter of this Contract. This Contract supersedes any prior written or oral Contracts between the parties.

10. SEVERABILITY. If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable, provided that no party is, as a result thereof, deprived of its substantial benefits under this Contract. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

11. AMENDMENT. This Contract may only be changed, modified, amended or discharged by a Contract in writing executed by the parties hereto.

12. GOVERNING LAW. This Contract shall be construed in accordance with the laws of the State of Washington.

13. NOTICE. Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

14. ASSIGNMENT. The Client may not assign or transfer this Contract without the prior written consent of ByWater.

15. BINDING EFFECT. This Contract shall inure to the benefit of and be binding upon the parties named herein and their respective heirs, successors and assigns.

16. EXECUTION. This Contract may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original hereof.

17. INDEMNIFICATION. The parties hereto shall fully indemnify, hold harmless and defend one another from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to reasonable attorney’s fees and costs) (collectively, “Claims”) which arise out of or relate to (1) any breach of any representation or warranty of a party hereto contained in this Contract, (2) any breach or violation of any covenant or other obligation or duty of a party hereto under this Contract or under applicable law, in each case whether or not caused by the negligence of a party hereto and whether or not the relevant Claim has merit. Neither ByWater or Client shall be liable to the other for loss, damage, or delay in the work caused by war, riot, the act or order of any



competent civil or military authority, strikes, unauthorized work stoppage or by rain, fire, flood, act of God, epidemic, and CDC recognized pandemic or by any cause which is unavoidable and beyond its reasonable control. In addition, ByWater is not liable for loss or damage suffered by the Client or any third party not caused by the employees, agents or equipment of ByWater.

NORTH OLYMPIC LIBRARY SYSTEM

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

BYWATER SOLUTIONS LLC

By: \_\_\_\_\_

Name: Brendan Gallagher

Title: Chief Executive Officer

Duly Authorized

Date: \_\_\_\_\_