



Parks and Rec.

CONTRACT

31-2318

SWW FAIRGROUNDS AND PARK WATER SYSTEM REHABILITATION

Lewis County



PARKS AND REC.

Effective Date: Wednesday, July 31, 2024

Project: SWW Fairgrounds and Park Water System Rehabilitation, 31-2318

Contract Price (with accepted alternates); \$754,560.00

Agreement

KCL Excavating, Inc., hereinafter called CONTRACTOR, and LEWIS COUNTY, hereinafter called COUNTY, agree as set forth in this Agreement, including: Scope of Work, Specifications, Compensation, Bid Response forms, and General and Special Conditions, copies of which are attached hereto and incorporated herein by this reference as fully as if set forth herein.

The term of this Agreement shall commence upon the effective date as shown above.

CONTRACTOR acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 5, 7, 14, 15, 16, 21, 22, and 25, are totally and fully part of this contract and have been mutually negotiated by the parties and COUNTY would not have entered into agreement without said provisions.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, _____.

CONTRACTOR:

LEWIS COUNTY

Title of Signatory
Authorized by the firm By Laws

BJ Kuykendall
Lewis County Parks and Rec Administrator

Mailing Address:

Approved as to Form Only:
Jonathan Meyer, Prosecuting Attorney

By: _____

Deputy Prosecuting Attorney

1.1. General Conditions

This contract for purchase of services, including all attachments, exhibits and other documents referenced in Section 3 (hereafter, "Agreement" or "Contract") is the entire agreement of the parties and supersedes any and all oral contracts and negotiations between the parties.

1.2. Term and Effective Date

This contract shall become effective upon execution by the Board of County Commissioners, on behalf of the County, unless another effective date is specified in the attachment(s) incorporated in Section 3, however in no case shall work commence before execution by the County. The term of this contract shall be from Wednesday, July 31, 2024, to Wednesday, July 30, 2025.

1.3. ASSIGNABILITY/SUBCONTRACTING

Contractor shall not assign nor subcontract any interest of obligation under this contract without the County's prior written approval. All the services required hereunder will be performed by the Contractor and employees of the Contractor.

1.4. DESIGNATED REPRESENTATIVE

1. Contractor designates _____ as contract agent with primary responsibility for the performance of this contract. In case this contract agent is replaced by another for any reason, the Contractor will designate another contract agent within seven (7) calendar days of the time the first terminates his or her employment or responsibility using the procedure set for in Section O, Notices.

2. In the event of the death, disability, removal or resignation of the person designated above as the contract agent, the County may accept another person as the contract agent or may terminate this agreement, at its option.

1.5. PROSECUTION AND PROGRESS

1. Services under this agreement shall commence upon written order from the County to the contractor. This order will constitute authorization to proceed.

2. The Contractor shall complete the services under this agreement within the time for completion specified in the Scope of Work, including any amendments. The Contractor's services are completed when the County notifies the Contractor in writing that the services are complete and are acceptable. The time for completion shall not be extended because of any delay attributable to the Contractor but may be extended by the County in the event of a delay attributable to the County, or extraordinary circumstances beyond the control of the Contractor. If at any time the Contractor believes that the time for completion of the work should be

extended because of delay caused by an unexpected event, or because of a delay attributable to the County, the Contractor shall notify the County as soon as possible, but not later than seven (7) calendar days after such an event. Such notice shall include any justification for an extension of time and shall identify the amount of time claimed to be necessary to complete the work.

3. Services by the Contractor shall proceed continuously and expeditiously through completion of each phase of the work.

4. Progress reports documenting the extent of completed services shall be prepared by the Contractor and submitted to the County with each invoice, and at such other times as the County may specify.

5. The Contractor shall notify the County in writing when the Contractor has determined that the services under this agreement have been completed. When the County determines that the services are complete and are acceptable, the County will provide written notification to the Contractor, acknowledging formal acceptance of the completed services.

1.6. AMENDMENT

This contract shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any other change in any provision of this contract may only be made by a written amendment, signed by the duly authorized agent or agents who executed this contract.

1.7. NO WAIVER

No failure to exercise and no delay in exercising any right, power, or remedy hereunder on the part of the County or Contractor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the County or Contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

1.8. NON-DISCRIMINATION

In the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment regardless of age, ancestry, arrest and conviction record, color, creed, disability, genetic testing, honest testing, marital status, membership in the National Guard, State Defense Force or any reserve component of the military forces of the United States or this state, national origin, pregnancy or childbirth, race, religion, sex (including sexual harassment), sexual orientation, and use or nonuse of lawful products off of the employer's premises during nonworking hours.

1.9. SEVERABILITY

It is mutually agreed that in case any provision of this contract is determined by any court of law to be unconstitutional, illegal, or unenforceable, it is the intention of the parties that all other provisions of this contract remain in full force and effect.

1.10. NOTICES

All notices to be given under the terms of this contract shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties listed below:

FOR THE COUNTY:

[Insert Name]

[Insert Address]

FOR THE CONTRACTOR:

[Insert Name]

[Insert Address]

1.11. STATUS OF CONTRACTOR/INDEPENDENT/TAX FILING

It is agreed that the Contractor is an independent Contractor and not an employee of the County, and that any persons who the Contractor utilizes and provides services under this contract are employees of the Contractor and are not employees of the County.

Contractor shall provide its taxpayer identification number (or social security number) to the County, prior to payment. The Contractor is informed that as an independent contractor, s/he may have a responsibility to make estimated tax returns, file tax returns, and pay income taxes and make social security payments on the amounts received under this contract and that no amounts will be withheld from payments made to this Contractor for these purposes and that payment of taxes and making social security payments are solely the responsibility and obligation of the Contractor. The Contractor is further informed that s/he may be subject to civil and/or criminal penalties if s/he fails to properly report income and pay taxes and social security taxes on the amount received under this contract.

1.12. Safety; Familiarity with Site

Contractor understands that safety is a high priority. Prior to the commencement of work or providing services, Contractor will, at its own expense and to the extent it determines is necessary to safeguard itself and its employees and agents, become familiar with the Site, its operations, and any safety rules or guidelines. In addition, Contractor will meet all OSHA, WISHA, and other applicable Federal and State requirements regarding safety. County shall not

be responsible for the manner in which Contractor (1) provides and completes its work; and (2) analyzes the need for and implements safety procedures. County delegates to Contractor, and Contractor agrees to assume, any duty County has to exercise reasonable care to make the premises and work area safe, and Contractor agrees to: abide by all applicable laws, be solely responsible for health and safety of all persons providing service, and create and post a site-specific worker safety plan in advance of gaining access to the work area. Contractor represents that it is a professional company with the knowledge and experience to reasonably assume such a delegation and to work in the presence of any known or obvious dangers by taking appropriate precautions and by using and providing proper equipment for itself and its employees

1.13. THIRD PARTY RIGHTS

This contract is intended to be solely between the parties hereto. No part of this contract shall be construed to add, supplement, amend, abridge, or repeal existing rights, benefits, or privileges of any third party or parties, including but not limited to employees of either of the parties.

1.14. AUDIT AND RETAINING OF DOCUMENTS

The Contractor agrees to provide all reports requested by the County including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) to be included in this contract. Any other reports or documents shall be provided within five (5) working days after the Contractor receives the County's written requests, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of service under the terms of this contract shall be retained by the Contractor for a period of three (3) years after completion of all work under this contract, in order to be available for audit by the County or its designee.

1.15. APPLICABLE LAW

The Contractor shall become familiar with and shall always comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the Contractor and its agents and employees.

A. This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue for any action hereunder shall be in the Superior Court for Lewis County, WA.

B. Contractor agrees to comply with the requirements of section 603 of the Act, the Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. Contractor also agrees to comply with all other applicable federal laws, regulations, and executive orders, and Contractor shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this Contract.

C. Federal regulations applicable to this award include, without limitation, the following:

D. EXHIBIT A to this agreement, 2 C.F.R. Part 200 Appendix II requirements

E. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, including the following:

- i. Subpart A, Acronyms and Definitions;
- ii. Subpart B, General Provisions;
- iii. Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards;
- iv. Subpart D, Post-Federal Award Requirements;
- v. Subpart E, Cost Principles; and
- vi. Subpart F, Audit Requirements. (Single audit not required if for-profit subrecipient or contractor)

F. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

G. OMB (Office of Management and Budget) Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

H. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

I. Government-wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

J. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

K. Generally applicable federal environmental laws and regulations.

L. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's Implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination based on disability under any program or activity receiving federal financial assistance;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination based on age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto;

vi. Hatch Act. Contractor agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limits certain political activities of federal employees, as well as certain other employees who work in connection with federally funded programs.

M. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY (2 CFR 183)

i. The Contractor must exercise due diligence to ensure that none of the funds, including supplies and services, received under this Contract are provided directly or indirectly (including through subcontracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities. The Contractor must terminate or void in whole or part any subcontract with a person or entity listed in the System Award Management Exclusions (SAM) as a prohibited or restricted sources pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subcontract.

ii. The Federal awarding agency has the authority to terminate or void this Contract, in whole or in part, if the Federal awarding agency becomes aware that the Contractor failed to exercise due diligence as required by paragraph A of this clause or if the Federal awarding agency becomes aware that any funds received under this Contract have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

iii. In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the Contractor and its Subcontracts to the extent necessary to ensure that funds, including supplies and services, available under this Contract are not provided, directly or indirectly, to a person or entity that is actively engaged in hostilities.

iv. The Contract must include the substance of this clause, including paragraph, in subcontracting agreements that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

1.16. CONFLICT OF INTEREST

1. Contractor understands and agrees it must maintain a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict-of-interest policy is applicable to each activity funded under this award. Contractor and subrecipients must disclose in writing any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

2. Entering into this Contract with the County requires that the Contractor agree to abide by certain provisions of the Lewis County Employee Code of Ethics or other applicable County Policies, including those relating to conflicts of interest and the employment of current or former County employees.

3. The Contractor warrants that it and its agents and employees have no public or private

interest and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this Agreement.

4. The Contractor shall not employ or contract with any person currently employed by the County for any services included under the provisions of this Agreement.

1.17. COMPENSATION

It is expressly understood and agreed that in no event will the total compensation for services under this contract exceed expressed in exhibit B.

1.18. BASIS FOR PAYMENT

1. GENERAL

- 1) The County will pay the Contractor for the completed and accepted services rendered under this contract on the basis and at the contract price set forth in Section V of this contract.
- 2) The Contractor shall submit invoices, in the form or format approved by the County, specified in the Exhibit B of this contract. The County will pay the Contractor in accordance with the schedule set forth in the Scope of Services. The final invoice shall be submitted to the County within three months of completion of services under this Agreement.
- 3) Should this Agreement contain more than one service, a separate invoice and a separate final statement shall be submitted for each individual service.
- 4) Payment shall not be construed as County acceptance of unsatisfactory or defective services or improper materials.
- 5) Final payment of any balance due the Contractor will be made upon acceptance by the County of the services under the Agreement and upon receipt by the County of documents required to be returned or to be furnished by the Contractor under this Agreement.
- 6) The County has the equitable right to set off against any sum due and payable to the Contractor under this Agreement, any amount the County determines the Contractor owes the County, whether arising under this Agreement or under any other Agreement or otherwise.
- 7) Compensation in excess of the total Contract price will not be allowed unless authorized by an amendment under Section H, AMENDMENT.
- 8) The County will not compensate for unsatisfactory performance by the Contractor.

2. SERVICE ORDERS, EXTRA SERVICE, OR DECREASED SERVICE

- 1) Written orders regarding the services, including extra services or decreased services, will be given by the County, using the procedure set forth in Section L, NOTICES.
- 2) The County shall review the Contractor's submittal and respond in writing, either authorizing the Contractor to perform the extra service, or refusing to authorize it. The Contractor shall not receive additional compensation or time unless the extra compensation is authorized by the County in writing.

1.19. DEFAULT/TERMINATION

1. In the event the Contractor shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unresolved for a period of ten (10) days after written notice thereof to Contractor, the County may, at its option and in addition to all other rights and remedies which it may have at law or in equity against contractor, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this contract and all rights of Contractor under this contract.

2. Notwithstanding paragraph A., above, the County may in its sole discretion and without any reason terminate this Agreement at any time by furnishing the Contractor within ten (10) days' written notice of termination. In the event of termination under this subsection, the County will pay for all work completed by the Contractor and accepted by the County.

1.20. INDEMNIFICATION

To the fullest extent allowable by law, Contractor hereby indemnifies and shall defend and hold harmless the County, its elected and appointed officials, officers, employees, or authorized representatives or volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature whether arising before, during, or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of Contractor or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement regardless if liability without fault is sought to be imposed on the County. Contractor's previously mentioned indemnity and hold harmless agreement shall not be applicable to any liability caused by the sole fault, sole negligence, or willful misconduct of the County, its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

In any and all claims against the County, or any of its directors, officers, employees, or authorized representatives or volunteers by an employee of the Consultant, any subcontractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant or any subcontractor under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit acts.

No provision of this Indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this Indemnity clause shall be construed to negate, abridge, or otherwise reduce and other right or obligation of indemnity that would otherwise exist as to the County under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict or ambiguity arising between any indemnity provisions in this Agreement shall be construed in

favor of indemnified parties except when such interpretation would violate the laws of the state in which the job site is located.

Contractor shall reimburse the County, its elected and appointed officials, officers, employees, or authorized representatives or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the County, or any of its elected and appointed officials, officers, employees or authorized representatives or volunteers.

1.21. INSURANCE

INSURANCE REQUIREMENTS

Without limiting Contractor's indemnification of County, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to County.

General Liability Insurance, using a standard ISO CG 00 01 occurrence form, including premises, operations, products and completed operations, contractual liability with limits not less than \$1,000,000. per occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products–Completed Operations Aggregate for bodily injury, personal injury, and property damage. Coverage shall include Employers Liability (stop gap).

The Commercial General Liability Coverage shall include the following endorsements:

The County, its Board, officers, agents and employees shall be included as Additional Insureds either by specific endorsement naming these parties or a blanket additional insured endorsement applicable “when required by written contract or agreement”

Primary, Non-contributory endorsement, both in favor of the County, its Board, officers, agents and employees or a blanket waiver of subrogation endorsement applicable “when required by written contract or agreement”.

The Commercial General Liability Coverage shall not include the following endorsements:

- i) Amendment of Contractual Liability
- ii) Total Pollution Exclusion
- iii) Cross Suits Liability Exclusion

Automobile liability insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Umbrella or excess liability insurance. Contractor shall obtain and maintain an umbrella or excess liability insurance policy with limits of not less than \$4,000,000 that will provide bodily

injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond in the event that any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrence of effective dates with primary policies; and
- Policies shall "follow form" to the underlying primary policies.
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Workers' compensation insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000) for Contractor's employees in accordance with the laws of the State of Washington. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of Washington for all of the subcontractor's employees.

Contractor shall submit to County, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of County, its officers, agents, employees and volunteers.

Pollution liability insurance. [See chapter on Environmental Issues]

Builder's risk insurance. Upon commencement of construction and with approval of County, Contractor shall obtain and maintain builder's risk insurance as specified below.

The named insureds shall be Contractor, all Subcontractors (excluding those solely responsible for design Work) of any tier, suppliers, and County and its officers, officials, employees, and agents. Contractor shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to County.

Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, Nonconforming Work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to County to ensure adequacy of terms and sublimits.

Proof of insurance. Contractor shall provide certificates of insurance to County as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by County's risk manager prior to commencement of performance. Current certification of insurance shall be

kept on file with County at all times during the term of this contract. County reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Contractor, his agents, representatives, employees or subcontractors. Contractor must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. County and its officers, officials, employees, and agents shall continue as additional insureds under such policies.

County's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, County has the right but not the duty to obtain the insurance it deems necessary and any premium paid by County will be promptly reimbursed by Contractor or County will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, County may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of Washington, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the County's risk manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against County, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against County, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the County to inform Contractor of non-compliance with any requirement imposes no additional obligations on the County nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

Notice of cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide to County with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that County and its officers, officials, employees, and agents shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

County's right to revise requirements. The County reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor a ninety (90)-day advance written notice of such change. If such change results in substantial additional cost to the Contractor, the County and Contractor may renegotiate Contractor's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by County. County reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by County.

Timely notice of claims. Contractor shall give County prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

1.22. OWNERSHIP OF CONTRACT PRODUCT

All of the work product, including, but not limited to, documents, materials, files, reports, data, including magnetic tapes, disks of computer-aided designs or other electronically stored data or information (the "Documents"), which the Contractor prepares pursuant to the terms and conditions of this contract are the sole property of the County. The Contractor will not publish any such materials or use them for any research or publication, other than as expressly required or permitted by this contract, without the prior written permission of the County. The grant or denial of such permission shall be at the County's sole discretion.

The Contractor intends that the copyright to the Documents shall be owned by the County, whether as author (as a Work Made for Hire), or by assignment from Contractor to County. The parties expressly agree that the Documents shall be considered a Work Made for Hire as defined by Title 17, United States Code, Section 101(2).

As further consideration for the County entering into this contract, the Contractor hereby assigns to the County all of the Contractor's rights, title, interest and ownership in the Documents, including the right to procure the copyright therein and the right to secure any renewals, reissues and extensions of any such copyright in any foreign country. The County shall be entitled to the sole and exclusive benefit of the Documents, including the copyright thereto, and whenever required by the County, the Contractor shall at no additional compensation, execute all documents of assignment of the full and exclusive benefit and copyright thereof to the County. Any subcontractors and other independent Contractors who prepare portions of the Documents

shall be required by the Contractor to execute an assignment of ownership in favor of the County before commencing work.

1.23. PUBLIC RECORD LAW COMPLIANCE

It is the intention of County to maintain an open and public process in the solicitation, submission, review, and approval of contacts.

1. The parties acknowledge that County is a municipal corporation legally bound to comply with Ch. 42.56 RCW. It is further agreed to that neither party will take any action to obstruct the operation of these laws. To comply with any request under said Public Record Law, the provider/contractor herein shall produce copies of all materials, gathered or produced or modified pursuant to this Contract to the County, in their original (i.e., electronic or digital, etc.) format at actual cost of reproduction, without profit.
2. Any Public Records Law request received directly by a contractor related to this Contract with County shall immediately be reported to the County.

1.24. Public Records Law and Records Maintenance

The Contractor shall assist the County in timely and fully fulfilling all of County's obligations under the Washington Public Records Act and/or any other authority by timely and fully responding and providing documents and records in response to County's request for the same. In the event that Contractor fails to fully fulfill its obligations pursuant to this section and should a court impose a fine, penalty, sanction, and/or judgment against County for violation of said law, Contractor shall indemnify the County for the same, immediately pay County to satisfy the same together with all costs and attorney's fees incurred by County. The obligations created by this section shall survive the termination of this agreement.

The Contractor shall keep and maintain all books, records, documents, data, 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 ("Records"). Contractor shall permit County to review the Records at Contractor's place of business during normal working hours. Contractor shall retain such Records for a period of seven (7) years following the date of final payment.

If any litigation, claim, or audit is commenced, Contractor shall cooperate with County and assist in the production of all such Records. If any litigation, claim, or audit is started before the expiration of the seven- (7) year period, Contractor shall retain the Records for a period of seven (7) years after all litigation, claims, or audit findings involving the Records have been finally resolved.

For purposes of this AGREEMENT, Records includes every writing or record of every type and description including electronically stored information ("ESI") that is in Contractor's possession, control, or custody, including, without limitation, any and all correspondences, contracts, agreements, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks,

logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbles, recordings, visual displays, photographs, minutes of meetings, telephone conversations, and any and all other taped, recorded, written, printed, or typed matters of any kind or description; and every copy of the foregoing whether or not the original is in Contractor's possession, custody, or control, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

For purposes of this AGREEMENT, "ESI" means any and all computer data or electronic recorded media of any kind, including "Native Files", that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as: Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the Contractor may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops, or any other electronic device that Contractor uses in the performance of its work or services hereunder, including any personal devices used by the Contractor or any sub-consultant at home.

"Native files" are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified.

Contractor shall include this section "Records Maintenance" in every subcontract it enters into in relation to this Agreement and bind the sub-contract to its terms.

1.25. Prevailing Wages

Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wage rates for the locality or localities of the Work, is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate.

Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the pre-filed statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

In compliance with chapter 296-127 WAC, Contractor shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.

1.26. AUTHORITY

Contractor represents that it has the authority to enter into this contract. If the Contractor is not an individual, the person signing on behalf of the Contractor represents and warrants that s/he has been duly authorized to bind the Contractor and sign this contract on the Contractor's behalf.

1.27. Special Conditions

SPECIAL CONDITIONS

A. Definitions

The COUNTY is the recipient of CONTRACTOR'S services, and at all times acts through its Board of County Commissioners. The Contracting Officer of the COUNTY will be the Capital Manager or his designee.

Contractor Registration

The CONTRACTOR agrees and covenants to furnish unto the COUNTY proper evidence that the CONTRACTOR has fully complied with the State Licensing Law.

CONTRACTOR shall include contractor's license number in the space provided on the front page of this Agreement.

C. Non-Discrimination (Lewis County Funds)

The CONTRACTOR should be aware that public funds are being used to assist in this project. During the performance of this contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.
2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.
3. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under Section 202 or Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in a conspicuous place available to employees and applicants for employment.

4. The CONTRACTOR will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books and records for purposes of investigation to ascertain compliance with such rules, regulations and orders
6. In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contract may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONTRACTOR will include the provisions of Paragraphs (1) through (7) in every sub-contract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each sub-contract or vendor. The CONTRACTOR will take such action with respect to any sub-contract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with litigation with a sub-contractor or vendor as a result of such direction by the contracting agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.

D. Original Specifications

It is hereby expressly agreed by and between the parties involved that in any matter, dispute, suit, or proceedings arising or in any way growing out of this contract in which it may be necessary to introduce into evidence the original of such specifications, that a printed copy thereof may be used in lieu thereof with like force and effect as though the original was produced.

E. Eight Hour Law and Payment for Labor

The CONTRACTOR agrees to comply with RCW chapter 49.28 providing that no laborer, workman or mechanic in the employ of the CONTRACTOR, sub-contractor, or other person doing or contracting to do the whole or any part of the work contemplated by this contract, shall be permitted or required to work more than eight (8) hours in any one calendar day, provided that, in cases of extraordinary emergency, such danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight (8) hours of each calendar day shall not be less than one and one-half times the rate allowed for this same amount of time during eight (8) hours' service. Any work necessary to be performed after regular working hours, or Sunday or legal holidays shall be performed without additional expense to the COUNTY.

Notwithstanding the above provisions, a CONTRACTOR may enter into an agreement approved by the employees in which the employees may work up to ten (10) hours in a calendar day for not more than four (4) calendar days in a week.

CONTRACTOR further agrees that said contract is terminable in case the CONTRACTOR violates the provisions of such act.

The CONTRACTOR, and sub-contractors shall further verify that:

1. Contractor had not employed or retained any company or person (other than a full time bona fide employee working solely for the offeror) to solicit or receive this contract; and
2. Contractor has not paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offeror) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and
3. Contractor has not been asked or otherwise coerced, whether expressed or implied, into contributing funds, for any purpose as a condition to doing business with the COUNTY.

It is further agreed that in case any dispute arises as to what are the prevailing wages for the work of a similar nature and such dispute cannot be adjusted by the parties involved, the matter shall be referred for arbitration to the Director of the Department of Labor & Industries of the State and his decision therein shall be final, binding, and conclusive on all parties.

To the extent applicable, the parties agree that this agreement and CONTRACTOR'S work does not create or imply a license agreement for the use of software, code, or a computer program. CONTRACTOR agrees that COUNTY shall have the sole and exclusive ownership of all rights, title, and interest in all software, written code, computer programs created or written by CONTRACTOR and that COUNTY has the right of unlimited use of the software, code and programs, including reproduction, modification and sale. CONTRACTOR denies any proprietary rights, including copyrights, trademarks, trade secrets, or intellectual property rights, to any software, code or program.

To the extent applicable, Contractor warrants that the computer code, software, or computer program installed by CONTRACTOR is not patented or copyrighted. CONTRACTOR will defend and indemnify the COUNTY from any claim, cause or demand brought against the COUNTY based upon copyright or patent of the software, computer code, or computer program installed by CONTRACTOR.

Contractor represents and warrants that, as of the execution of this Contract, neither Contractor nor any subcontractor or sub-consultant performing work under this Contract (at any tier) is included on the federally debarred bidder's list listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." If at any point during Contract's term Contractor or any subcontractor or sub-consultant performing work at any tier is included on the federally debarred bidder's list, Contractor shall notify the County immediately. Contractor's

completed Vendor Debarment Certification is attached hereto and incorporated herein.

1.28. Federal Funding

This contract is being funded using federal funds and is subject to certain Uniform guidance requirements.

Per 2 C.F.R. 200.101(b), the LATCF program is not subject to many Uniform Guidance provisions, such as the provisions regarding program income, interest advances, equipment and real property management, procurement requirements, or subrecipient monitoring and reporting requirements. LATCF recipients are subject to the following provisions of 2 C.F.R. Part 200:

2 C.F.R. Subpart A (Acronyms and Definitions);

2 C.F.R. 200.100-110 (certain General Provisions);

2 C.F.R. 200.203 (public notice of Federal financial assistance programs);

2 C.F.R. 200.303 (internal controls); and

Single Audit Act and its implementing regulations at 2 C.F.R. Part 200 Subpart F.

2. Scope and Specifications

2.1. Exhibit A Scope of Work/Specifications

The scope of the project entails the following.

Install of new water main and distribution piping as per the plans and specifications by TerraVista Engineers, LLC and attached hereto.

Successful contractor will need to abide by any operational restrictions on ground disturbance activities identified in the Archaeological Monitoring Plan, Tribal Representatives or Department of Archaeology and Historic Preservation.

Safety of Fairgrounds users will be paramount. All areas of work shall be identified with cones, barricades, flagging and signage indicating construction areas and no admittance to unauthorized personnel.

Upon completion, paved areas shall be repaired to spec and grass areas shall be backfilled, compacted, topped per spec and re-seeded.

Work will be inspected by City of Centralia Engineering Department prior to covering.

2.2. Exhibit B Compensation

Compensation will be made in the amount of \$TBD plus Washington State Sales Tax upon completion of contract. Progress payments may be made at County's discretion upon County's approval of Contractor's invoices, to the extent that said invoices reflect the completion of project milestones by the Contractor (milestones are points at which significant components of

the project have been completed and at which tangible project deliverables of material value have been received by the County).

3. Grant Information

3.1. Grant Contract Number

ARPA