



**WHATCOM COUNTY:**

**Recommended for Approval:**

By: [Signature] 3/11/19  
Jon Hutchings  
Director Date

**Approved as to form:**

By: [Signature] 3/14/19  
Christopher Quinn  
Senior Deputy Prosecuting Attorney Date

**Approved:**

Accepted for Whatcom County:

By: \_\_\_\_\_  
Jack Louws  
Whatcom County Executive Date

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_.

**CONTRACTOR INFORMATION:**

Reisner Distributor, Inc

Dan Averill, Vice-President

Address:  
1922 Front Street  
Lynden, Washington 98264

Mailing Address:  
P.O. Box 673  
Lynden, Washington 98264-0673

Contact Name: Dan Averil \_\_\_\_\_  
Contact Phone: (360) 354-2169 \_\_\_\_\_  
Contact FAX: (360) 354-4768 \_\_\_\_\_  
Contact Email: daverill@reisnerdistributor.com \_\_\_\_\_

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## GENERAL CONDITIONS

### **Series 00-09: Provisions Related to Scope and Nature of Services**

#### 0.1 Scope of Services:

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

### **Series 10-19: Provisions Related to Term and Termination**

#### 10.1 Term:

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

#### 10.2 Extension:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

#### 11.1 Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

#### 11.2 Termination for Reduction in Funding:

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

#### 11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

### **Series 20-29: Provisions Related to Consideration and Payments**

#### 20.1 Accounting and Payment for Contractor Services:

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Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

**Series 30-39: Provisions Related to Administration of Agreement**

30.1 Independent Contractor:



The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 Patent/Copyright Infringement:

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.

B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

32.1 Confidentiality:

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

33.1 Right to Review:

This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual,



agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Proof of Insurance:

The Contractor shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:

Property Damage per occurrence - \$500,000.00 (this amount may vary with circumstances)

General Liability & Property Damage for bodily injury- \$1,000,000.00 (this amount may vary with circumstances)

A Certificate of insurance, that also identifies the County as an additional insured, is attached hereto as Exhibit "C". This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.

a. Professional Liability - \$1,000,000 per occurrence:

If the professional liability insurance is a claims made policy, and should the contractor discontinue coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

Professional Liability - \$1,000,000. per occurrence (this amount may vary with circumstances)

34.2 Industrial Insurance Waiver:

With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this agreement.

34.3 Defense & Indemnity Agreement:

The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County or its appointed or elected officials or employees. In case of damages caused by the concurrent negligence of Contractor, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the County, its appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Contractor, its agents, or its employees.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

35.1 Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all



solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition:

Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Insert here (name, job title, work address)

37.2 Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County's Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the "Contractor Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

38.1 Certification of Public Works Contractor's Status under State Law:

Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:



The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "Excluded Parties List System in the System for Award Management (SAM) website is available to research this information at WWW.SAM.GOV. Contractor shall immediately notify Whatcom County if, during the term of this Contract, Contractor becomes debarred.

38.3 E-Verify:

The E-Verify contractor program for Whatcom County applies to contracts of \$100,000 or more and sub contracts for \$25,000 or more if the primary contract is for \$100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: [www.uscis.gov](http://www.uscis.gov)

**Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes**

40.1 Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations:

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

41.1 Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

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- a. **General:**  
Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.
- b. **Notice of Potential Claims:**  
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.
- c. **Detailed Claim:**  
The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.
- d. **Arbitration:**  
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

**EXHIBIT "A"**  
(SCOPE OF WORK)

**A. PUMP LOCATIONS**

There are over 1,000 Pacific Pride pump locations throughout Washington, Oregon and California allowing for convenient access for vehicles operated by law enforcement, road maintenance crews, building inspectors, parks personnel, etc. Pump locations are open and easily accessible to user's 24-hours a day, seven days a week and are within easy driving reach of County facilities in downtown Bellingham and at Smith and Northwest Roads. Whatcom County sites are conveniently located at:

- Bellingham:
  1. 500 Kentucky Street (Grant and Kentucky Street)  
Bellingham, WA 98225  
Products: Diesel, Gas, Air, Water, Office on Site
  2. 2800 Roeder Avenue  
Bellingham, WA 98225  
Products: Diesel, Gas, Non-ethanol, Air, Water
  3. 5927 Guide Meridian  
Bellingham, WA 98226  
Products: Diesel, Gas, Air, Water
- Ferndale:
  1. 6045 Portal Way (I-5 Exit 263)  
Ferndale, WA 98248  
Products: Diesel, Gas, Bulk DEF, Air, Water
- Lynden:
  1. 1920 Front Street (19<sup>th</sup> and Front Street; 1 block from Guide Meridian)  
Lynden, WA 98264  
Products: Diesel, Gas, Office on Site, Air Water
- Nooksack:
  1. 204 Nooksack Avenue  
Everson, WA 98247  
Products: Diesel, Off Road Diesel, Gas, Air, Water

Each pump location has at least two grades of fuel, including 87 octane unleaded regular gasoline and Ultra Low Sulfur #2 Diesel fuel, along with air and water service.

**B. VOLUME**

Approximately 90,000 gallons of unleaded regular gasoline and approximately 15,000 gallons of Ultra Low Sulfur #2 Diesel fuel are purchased through the card lock fuel system during a 12-month period. The volume purchased may or may not vary each year. The majority of our diesel fuel is fueled in-house; therefore, we do not utilize the card lock fuel system as much for these vehicles.

Currently the County has purchased cards for each of the approximately 600 cars, trucks and pieces of heavy equipment, of which 325 use diesel fuel and 275 use unleaded gasoline.

Fuel is also provided at the Whatcom County Central Shop fueling station, located at 901 West Smith Road, Bellingham WA 98226-9610. The contract for fuel delivered by truck and trailer loads and stored at the Whatcom County Central Shop is awarded through a separate bidding process.

**C. MAGNETIC CARD READER**

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There is a magnetic card reader installed at the Whatcom County Central Shop fuel pumps.

The vendor's equipment must be able to feed fueling data from all of their card lock locations automatically into the County Fleet Management Program (RTA), accommodating the County's fleet management database that includes each piece of equipment and name of each authorized driver. Any necessary conversion of the database must be accomplished with a minimum expenditure of the County's time and money.

The County currently is using the Petrovend System 2 Integrated Fueling Management (FSC Version 21.01C) software, which feeds fueling data automatically from the vendor card lock pump locations into the County Fleet Management Program (RTA).

**D. TRANSACTION REPORTS**

Automatically, provide fueling data from vendor card lock pump locations into the County Fleet Management Program (RTA) no less than two-week intervals. This data shall be formatted to automatically download into the County's Fleet Fuel Management Program (RTA) and shall include the following information for each transaction: date, time, transaction number, driver card number, vehicle card number, type of fuel and odometer reading.

**E. SERVICE CHANGES**

If the service offered changes, deteriorates or diminishes materially after contract award, the County may cancel the contract by providing written notice, and purchase service from another vendor. During the contract period, if the supplier cannot supply product or service due to problems beyond its control, Whatcom County reserves the right to purchase from another vendor.

**F. ANALYZE FUEL**

Whatcom County reserves the right to analyze fuel at any time during the contract period. If fuel is found to be substandard, the County may cancel the contract by providing written notice and purchase service from another vendor.

**EXHIBIT "B"**  
(COMPENSATION)

Compensation will be made for fuel purchased at card lock facilities outside of the Whatcom County Central Shop and for the issuance of additional cards, not including those replaced at no charge due to normal wear and tear.

**A. PAYMENT TERMS**

Whatcom County intends to take advantage of prompt payment terms offered. Prompt payment discounts of 20 calendar days or more after receipt of correct material and invoice will be considered. Payments will be processed in accordance with Whatcom County's established policies and procedures.

**B. OPTICAL CARD PRICE**

The County has previously purchased fuel cards for each piece of equipment and authorized driver. Cards damaged by normal wear and tear will be replaced free of charge. Any additional Pacific Pride fuel cards will be provided by the vendor to the County at a rate of: \$5.00 for 1-5 cards; \$10.00 for 6-10 cards; \$15.00 for 11-15 cards, etc.

**C. PRICE OF PRODUCT**

The following fuel price offered is for the period February 1, 2014 through January 31, 2015. Prices are based on supplier rack pricing as of January 22, 2014 and may change commensurate with changes in the supplier rack price. The price per gallon offered includes supplier rack price and handling charge, **excluding all taxes**.

FUEL	OCTANE RATING	SUPPLIER RACK PRICE	HANDLING CHARGE	PRICE PER GALLON
Unleaded Regular Gasoline	87	\$ 1.5050	\$ .080	\$ 1.5850
Ultra Low Sulfur #2 Diesel	N/A	\$ 1.7825	\$ .080	\$ 1.8625

Upon receipt of valid invoice, Whatcom County will pay applicable Washington State sales tax on diesel, state excise (road) tax on gasoline, and required environmental taxes.

As submitted with the bid response form, the description of taxes that will be included for all purchases includes the following:

- Federal LUST Tax – .001 cpg
- WA State Fuel Tax – .494 cpg
- WA State Hazardous Substance Tax – .7% cost
- WA Petroleum Product Tax – .3% cost
- Federal Oil Spill Recovery Fee Gas 10% Ethanol – .00193 cpg
- Federal Oil Spill Recovery Fee Gas Non-Ethanol & Diesel – .00214 cpg
- B&O Other Fee – .00484% cost
- Diesel Additive Fee – .02 cpg

Federal excise tax of will be exempt due to the County's exempt status.

**D. PRODUCT PRICE ADJUSTMENT**

Whatcom County reserves the right to negotiate an acceptable method of product price adjustment at any time during the contract period. Provisions or conditions for product price adjustment during the contract period must have been supplied in a statement accompanying the bid proposal. Whatcom County also reserves the right to inspect relevant documentation at the vendor's place of business at any time during the contract period.

Price will be adjusted weekly on Tuesdays to reflect current refiners rack price charged to the vendor.



Product price adjustments (up or down) will be based only on refiner rack price changes to the Contractor. The refiner rack price charged to the Contractor must be clearly documented, and must be easy to verify by the County.

The Contractor will notify the County of product price adjustments during the contract period by fax or email within 24-hours after receipt of Contractor's notice received from the refiner. Contractor will provide the County's current price with the notice. Notice will also be sent to the following:

Whatcom County Public Works  
Equipment Services Financial Accountant  
322 North Commercial Street, Suite 210  
Bellingham WA 98225

Vendor handling charge or margin must be firm for the period February 1, 2014 through January 31, 2015 and shall be stated per gallon.

**E. INVOICE**

Invoices submitted for fuel service must identify at a minimum the following for each transaction: user's card number, vehicle number of description, vehicle card number, odometer reading, date and time, product, gallons, cost per gallon, total cost of draw per transaction, location of transaction and total cost of each vehicle per invoice. The above information must be provided once a month.

Upon receipt of invoice, the County will pay applicable: 1) Washington State sales tax on diesel; 2) state excise (road) tax on gasoline; and 3) required environmental taxes.

**EXHIBIT "C"**  
**(CERTIFICATE OF INSURANCE)**



**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
01/15/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


<b>PRODUCER</b> FEDERATED MUTUAL INSURANCE COMPANY HOME OFFICE: P.O. BOX 328 OWATONNA, MN 55060		<b>CONTACT NAME:</b> CLIENT CONTACT CENTER <b>PHONE (A/C, No, Ext):</b> 888-333-4949 <b>FAX (A/C, No):</b> 507-446-4664 <b>E-MAIL ADDRESS:</b> CLIENTCONTACTCENTER@FEDINS.COM	
<b>INSURED</b> REISNER DISTRIBUTOR INC PO BOX 409 ANACORTES, WA 98221-0409		300-108-8	<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: FEDERATED SERVICE INSURANCE COMPANY      NAIC # 28304 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

**COVERAGES**      **CERTIFICATE NUMBER: 23**      **REVISION NUMBER: 6**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	9085430	07/01/2018	07/01/2019	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000
							MED EXP (Any one person)	EXCLUDED
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMPI/OP AGG	\$2,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	9085430	07/01/2018	07/01/2019	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION	N	N	9085431	07/01/2018	07/01/2019	EACH OCCURRENCE	\$5,000,000
							AGGREGATE	\$5,000,000
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N	N / A	9085430	07/01/2018	07/01/2019	PER STATUTE	OTH-ER
							E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$1,000,000
							E.L. DISEASE - POLICY LIMIT	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
**SEE ATTACHED PAGE**

<b>CERTIFICATE HOLDER</b> 300-108-8 WHATCOM COUNTY PUBLIC WORKS 901 W SMITH RD BELLINGHAM, WA 98226-9610	23 6 <b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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ACORD 25 (2016/03)

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AGENCY CUSTOMER ID: 300-108-8

LOC #: \_\_\_\_\_

### ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY FEDERATED MUTUAL INSURANCE COMPANY		NAMED INSURED REISNER DISTRIBUTOR INC PO BOX 409 ANACORTES, WA 98221-0409	
POLICY NUMBER SEE CERTIFICATE # 23.6		EFFECTIVE DATE: SEE CERTIFICATE # 23.6	
CARRIER SEE CERTIFICATE # 23.6	NAIC CODE		

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

STOP-GAP (EMPLOYER'S LIABILITY) COVERED STATE(S) WA

CERTIFICATEHOLDER IS AN ADDITIONAL INSURED FOR GENERAL LIABILITY AND BUSINESS AUTO LIABILITY. INSURANCE PROVIDED BY THE GENERAL LIABILITY COVERAGE IS PRIMARY AND NONCONTRIBUTORY OVER OTHER INSURANCE. GENERAL LIABILITY CONTAINS A WAIVER OF SUBROGATION IN FAVOR OF THE CERTIFICATE HOLDER SUBJECT TO THE CONDITIONS OF THE BLANKET WAIVER OF TRANSFER OF RIGHTS OF RECOVERY ENDORSEMENT. BUSINESS AUTO LIABILITY CONTAINS A WAIVER OF SUBROGATION IN FAVOR OF THE CERTIFICATE HOLDER SUBJECT TO THE CONDITIONS OF THE BLANKET WAIVER OF TRANSFER OF RIGHTS OF RECOVERY ENDORSEMENT. INSURANCE PROVIDED BY THE BUSINESS AUTO LIABILITY IS PRIMARY AND NONCONTRIBUTORY OVER OTHER INSURANCE.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**PRIMARY AND NONCONTRIBUTORY -  
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.



FEDERATED INSURANCE COMPANIES

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BLANKET WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST  
OTHERS TO US**

This endorsement modifies insurance provided under the following.

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to Paragraph 8, **Transfer Of Rights Of Recovery Against Others To Us of Section IV -  
Conditions:**

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard", except when the payments result from the sole negligence of that person or organization. We waive this right only when you are required to do so by written contract or agreement with that person or organization, executed by you prior to the occurrence of any loss.

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CG-F-81 (04-13)

Policy Number: 8085430

Transaction Effective Date: 11-26-2018

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS - SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organizations:	Location(s) Of Covered Operations
WHATCOM COUNTY PUBLIC WORKS 901 W SMITH RD BELLINGHAM WA 98226	ANY COVERAGE PROVIDED BY THIS ENDORSEMENT IS LIMITED TO THE DELIVERY OF FUEL
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II - Who is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

REISNER DISTRIBUTOR INC  
PO BOX 409  
ANACORTES WA 98221



FEDERATED INSURANCE COMPANIES

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE PART

INSURED:

REISNER DISTRIBUTOR INC  
PO BOX 409  
ANACORTES WA 98221

1. WHO IS AN INSURED for "bodily injury" and "property damage" liability is amended to include the Additional Insured specified below but only with respect to liability arising out of your operations or premises owned by or rented to you.
2. The insurance does not apply to "bodily injury" or "property damage" liability arising out of the sole negligence of the Additional Insured named below.
3. We agree to notify the Additional Insured named below at the address stated below of any cancellation of, or material change to, this policy.

Relationship of the Additional Insured to the Insured:

ANY COVERAGE PROVIDED BY THIS ENDORSEMENT IS LIMITED TO THE DELIVERY OF FUEL.

Additional Insured Name and Address:

WHATCOM COUNTY PUBLIC WORKS  
901 W SMITH RD  
BELLINGHAM WA 98226

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CA-F-75 (10-13)

Policy Number: 9085430

Transaction Effective Date: 11-26-2018

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**BLANKET WAIVER OF TRANSFER OF RIGHTS OF RECOVERY**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE PART**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

In the event of any payment for a loss under this Business Auto Coverage Part arising out of your ongoing operations, we agree to waive our rights under the TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US condition against any person or organization, its subsidiaries, directors, agents or employees, for which you have agreed by written contract, prior to the occurrence of any loss, to waive such rights, except when the payment results from the sole negligence of that person or organization, its subsidiaries, directors, agents or employees.

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CA-F-128 (03-03)

Policy Number: 9085430

Transaction Effective Date:11-26-2018



FEDERATED INSURANCE COMPANIES

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NON-CONTRIBUTORY CLAUSE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

It is agreed that the insurance provided by any additional insured endorsement is primary when primary coverage is required in a written contract. We will not seek contribution from any insurer when insurance on a non-contributing basis is required in a written contract. For coverage to apply, the written contract must have been executed prior to the occurrence of "loss".

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CA-F-129 (10-13) Policy Number: 9085430 Transaction Effective Date: 11-26-2018