

**WHATCOM COUNTY
CONTRACT INFORMATION SHEET**

Whatcom County Contract Number:

Originating Department:	85 Health and Community Services
Division/Program: (i.e. Dept. Division and Program)	8530 Community Health / 53020 Healthy Children & Families
Contract or Grant Administrator:	Eric Chambers
Contractor's / Agency Name:	Ferndale School District

Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:	

Does contract require Council Approval?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If No, include WCC:
Already approved? Council Approved Date:	(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)		

Is this a grant agreement?	If yes, grantor agency contract number(s):	ALN:
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	

Is this contract grant funded?	If yes, Whatcom County grant contract number(s):
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

Is this contract the result of a RFP or Bid process?	Contract Cost Center:
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If yes, RFP and Bid number(s):	23-87
	147200

Is this agreement excluded from E-Verify?	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>
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If YES, indicate exclusion(s) below:

<input type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Goods and services provided due to an emergency.
<input type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).
<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Work related subcontract less than \$25,000.
<input type="checkbox"/> Interlocal Agreement (between Governments).	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
\$ 700,000	
This Amendment Amount:	
\$	
Total Amended Amount:	
\$	

Summary of Scope: This contract provides funding for the purchase and installation of an ADA-compliant playground at the Mountain View Learning Center.

Term of Contract:	20 Months	Expiration Date:	06/30/2026
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Contract Routing:	1. Prepared by:	EC	9/16/2024
	2. Health Budget Approval	SH	09/23/2024
	3. Attorney signoff:	Christopher Quinn	9/23/2024
	4. AS Finance reviewed:	Bbennett	09/27/2024
	5. IT reviewed (if IT related):		
	6. Contractor signed:		
	7. Executive Contract Review:		
	8. Council approved (if necessary):	AB2024-654	
	9. Executive signed:		Date:
	10. Original to Council:		Date:

**CONTRACTOR AGREEMENT BETWEEN WHATCOM COUNTY AND FERDALE SCHOOL DISTRICT
[RE: PUBLIC HEALTH AND ECONOMIC IMPACTS - THE PROVISION AND EXPANSION OF CHILDCARE SERVICES]**

This contract agreement (“Agreement” or “Contract Agreement”) is entered into as of the **7th day of November, 2024** by WHATCOM COUNTY, a municipal corporation in the state of Washington (herein referred to as “the COUNTY”) and **Ferndale School District**, (hereinafter referred to as the “Contractor”) The Contractor agrees to the terms and conditions of this Agreement to undertake the following: **to expand childcare and early learning programs through the purchase and licensing of ADA compliant playground equipment** (herein referred to as the “Program”). The Contractor shall in a satisfactory manner, to be determined in the sole and exclusive discretion of the COUNTY, perform all obligations and duties as contained in this Agreement and any/all addenda.

This Contract Agreement shall mean this agreement, any and all Exhibits hereto (including but not limited to the Program budget), and any and all loan closing documents executed in connection herewith.

Contractor:	Ferndale School District
Organization Type:	Public School District
UEID:	G223JDBSLKE7
Federal ID:	91-0882951
Mailing Address:	Ferndale School District 6041 Vista Drive PO box 698 Ferndale, WA 98248
Award Type & Amount (Grant or Loan):	Grant – \$700,000
Program Address:	Mountain View Early Learning Center 5780 Hendrickson Ave Ferndale, WA 98248
Final Funding Spend Down Date:	June 30, 2026

1. Background and Purpose

Through a competitive bidding process (RFP 23-87) Ferndale School District, (hereinafter, 'Contractor') was selected and recommended for funding in the amount of \$700,000 to be used to purchase and install an ADA-compliant playground at their Mountain View Learning Center to accommodate program growth. Recently the Ferndale School District was awarded 58 additional ECEAP slots bringing their total capacity to 151 children age 3-5, 50% of whom have Individuated Educational Programs (IEPs). At least 25% of slots will be reserved for children from families whose income is at or below 80% Area Medium Income (AMI) for the City of Bellingham.

According to the latest census¹, there are approximately 10,500 children under the age of 5 living in Whatcom County. The total current child care capacity in the County is, however, only 3,686 children enrolled in 106 programs² leaving a substantial service gap. Access to safe and affordable access to childcare is more salient among families at or below the federal poverty line: in a low income needs assessment³ conducted by the Opportunity Council, childcare access was ranked as one of the most important needs for families with children under five who also ranked it as lowest in availability across multiple needs.

2. Period of Performance

The Contractor shall commence performance of its obligations under this Contract Agreement on **November 7, 2024** and complete the Program no later than **June 30, 2036** (hereinafter referred to as the "Program Expiration Date"). The Monitoring Phase begins with the end of the Capital Phase and continues for ten (10) years – see Exhibit A (C.).

The Contractor agrees that the Program shall not commence, nor shall any costs be incurred or obligated, prior to execution of this Contract Agreement unless approved in writing by the COUNTY.

The Contractor agrees that the Program shall be carried out in accordance with the Program Schedule outlined in **Exhibit A** and in no event shall funds be obligated or spent after the final funding spenddown date of June 30, 2026.

3. Method of Payment

Payments will be made by the COUNTY to Contractor in the form of reimbursement for monies already spent on eligible Program costs as discussed in further detail in Section 7 of this Contract Agreement. The COUNTY will not reimburse the Contractor for any costs or expenses incurred prior to full execution of this Contract Agreement. All payments are contingent upon Contractor's continued compliance with the provisions set forth in this Contract any applicable local, state, and federal laws, and any applicable COUNTY policy memo, regulation, communication or guideline, as the same may be amended from time to time.

4. Funding

The total funding will not exceed \$700,000 unless otherwise mutually agreed upon in writing by amendment to this Contract Agreement. Termination of this Contract Agreement by the COUNTY at any time during the term, whether for default or convenience, shall not constitute breach of contract by the COUNTY.

5. Debarment and Suspension

By entering into this Agreement, Ferndale School District hereby certifies that it is not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

By entering into this Agreement, the Contractor agrees to comply and assures the compliance of each third-party contractor and Contractor at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension Non-procurement," 49 C.F.R. Part 29. The Contractor further agrees to, and assures that its third-party contractors and

¹ <https://www.census.gov/quickfacts/whatcomcountywashington>

² <https://www.oppco.org/wp-content/uploads/2023/04/ELAFS-Community-Needs-Assessment-2023.pdf>

³ https://www.oppco.org/wp-content/uploads/2021/10/Community-Needs-Assessment_09.15.21editpdf.pdf

Contractors will, review the Excluded Parties Listing System at <http://epls.arnet.gov/> before entering into any contracts.

Contractor shall obtain and provide to COUNTY written certifications from its contractors regarding debarment, suspension, ineligibility, and voluntary exclusion, including subcontractors obtained after award of the contract.

6. Public Works Requirements

Public Works is governed by RCW 39.04 and other state statutes. Public Works is defined by 39.04.010 to generally include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein.

The statute excludes “ordinary maintenance,” which is generally defined in WAC 296-127-010(7)(b)(iii) (as may be amended) as either (1) work not performed by contract and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semi-annually, but at least once per year), to service, check, or replace items that are not broken; or (2) work not performed by contract that is not regularly scheduled but is required to maintain an asset so that repair does not become necessary.

The Contractor shall conduct all work funded under this Agreement in compliance with and pursuant to the provisions of RCW 39.04, including but not limited to competitive bidding requirements, prevailing wages, retainage and performance and payment bonds.

Upon request of the County, the Contractor shall provided documentation that confirms Contractor’s compliance with the requirements of RCW 39.04 and other state statutes concerning Public Works requirements.

7. Program Description, Program Schedule, and Scope of Work

The Contractor is responsible for completing the Program in accordance with the approved Program Description, Program Schedule and Scope of Work as outlined in **Exhibit A** attached hereto and made a part hereof. In any instance where the Program Description, Program Schedule and/or Scope of Work may be in conflict with other terms of this Contract Agreement, the Contract Agreement will prevail.

If the Contractor wishes to amend the Program Description and/or Scope of Work, the Contractor shall seek approval from the COUNTY in writing prior to undertaking any actions relative to such change. Failure to do so may result in termination of this Contract Agreement at The COUNTY’s discretion.

8. Reporting/Deliverables

The Contractor shall provide quarterly reports as outlined in Exhibit A § E. The County reserves the right to change the reporting frequency as needed and request additional performance measures, output measures, or other information regarding service delivery data for the funding.

9. Program Budget

An approved budget is incorporated and made a part of this Contract Agreement as attached in **Exhibit B** (“Program Budget”). Upon request, the COUNTY may require a more detailed Program Budget breakdown from time to time. The Contractor shall provide such supplementary Program Budget information as required by and on forms provided by the COUNTY upon request.

The Contractor shall not obligate, encumber, spend or otherwise utilize funds for any activity or purpose not included or not in conformance with the Program Budget unless the Contractor has received explicit written approval from the Contract Administrator designated by the COUNTY to undertake such actions, including but not limited to, changes between Program Budget categories.

- a. For the purposes of this Contract Agreement, Program Budget categories include:
 - i. Site Preparation, Project Management, and Taxes
 - ii. Fencing, including installation and taxes

iii. Inclusive Plan Structure, including installation, project management, freight, and taxes

iv. Contingency

b. The Contractor must submit Program Budget category changes as outlined in Exhibit B.1.

The Contractor acknowledges that this section has no effect upon the Program Description and or Program Schedule. Any amendment to the Program Description and or Program Schedule must be in writing approved by the COUNTY as provided for elsewhere in this Contract Agreement.

10. Fund Disbursement

The Contractor may request reimbursement, no more than once monthly with backup documentation detailing itemized expenditures by activity and cost categories.

No funds may be disbursed until all required reports and supporting documentation are submitted. The COUNTY reserves the right to request additional compliance documentation before disbursing funds.

The Contractor shall not request disbursement of funds until funds are needed for reimbursement of eligible costs. The amount of each request must be limited to the amount needed and the proposed use of the funds must be documented and in accordance with the Program Budget, and all funding regulations/guidance.

In the event the Contractor fails to pay contractors, subcontractors, vendors or others with claims against the Program, the COUNTY reserves the right to withhold all remaining program funds until payments and/or all conflicts/liens are resolved. The Contractor pledges to undertake contracts and subcontracts and manage payments using mechanisms that protect the interests of the Contractor and the COUNTY, such as retaining portions of contracts until completion and requiring bonds, warranties and insurance as appropriate.

The Contractor will obtain competitive pricing quotes or bids for all services, contracts or purchases..

11. Insurance & Bonding

The Contractor shall carry sufficient insurance coverage to protect Contract Agreement assets from loss due to theft, fraud, and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the COUNTY. The Contractor shall provide the COUNTY with proof of Commercial General Liability insurance in the amount of one million dollars (\$1,000,000) for each occurrence and One Million Dollars (\$1,000,000) in the aggregate for bodily injury and property damage, naming the COUNTY, its departments, employees, and/or agents, as additional insureds.

12. The COUNTY Recognition

The Contractor agrees to recognize the role of the COUNTY in providing assistance pursuant to this Contract Agreement by referencing the support provided in all publications and media efforts that relate to this Program. All activities, facilities and items utilized pursuant to this Contract Agreement shall be prominently labeled as to this funding source.

13. Equal Employment Opportunity

During the performance of this Contract Agreement, the Contractor must ensure that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subject to discrimination based on race, color, national origin, sex, age, handicap, religion, or religious preference, under any program or activity funded under this Contract Agreement, as required by Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 USC §§ 3601-29) and all implementing regulations, and the Age Discrimination Act of 1975, and all implementing regulations. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, sexual orientation (including gender identity), age, marital status, disability, veteran status, or national origin. Such action shall include but not be limited to: 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. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

14. Right to Monitor

The COUNTY shall have the right to monitor Contractor's compliance with all applicable funding requirements by whatever means the COUNTY deems appropriate. This right shall continue throughout the term of this contract agreement and for a 10-year period following the execution of this Contract Agreement, whichever period is longer in duration.

15. Right to Inspect

The COUNTY, its agents and designees, shall have the right, from time to time, to inspect the Program site for purposes of ensuring compliance with the terms and conditions of this Contract Agreement.

Contractor agrees to permit the COUNTY, its agents and designees (i) to have reasonable access to the assisted program meetings or events, and (ii) to examine its books and records, including all financial statements and records, from time to time, insofar as the same may apply to Contractor's use of the awarded funds. The Contractor further agrees to furnish such other information to the COUNTY, as and when requested, for the purpose of determining Contractor's compliance with this Contract Agreement.

16. Record Retention and Access to Records

Contractor agrees that the COUNTY, or any of their authorized representatives, has the right to access the Program and any books, documents, papers or other records of Contractor or the Program, which are pertinent to this Contract Agreement in order to make audits, examinations, excerpts or transcripts. Contractor will maintain all books and records pertaining to this Contract Agreement throughout the term of this Contract Agreement for a 10-year period following the execution of this Contract Agreement, whichever period is longer in duration.

17. Limitation of Liability

Contractor acknowledges that COUNTY shall not be liable to Contractor for the completion of, or the failure to complete, any activities, which are a part of the Program contemplated by this Contract Agreement. Contractor acknowledges that should the COUNTY find a material default or noncompliance with this Contract Agreement, as determined by the COUNTY in its sole discretion and, as a result thereof, cease disbursement of awarded funds, the COUNTY shall incur no liability to the Contractor.

18. Indemnification Generally

The Contractor shall defend, hold harmless and indemnify the COUNTY, its agents and assigns, from and against any and all claims, losses, expenses, costs, and/or damages (including, without limitation, out-of-pocket expenses, reasonable attorneys' fees and costs, and other related expenses) arising out of, in connection with, or resulting from the performance contemplated by this Agreement, including but not limited to (i) any injury or damage to persons or property that may occur as a result of work performed in connection with this Contract Agreement, (ii) any third party, including without limitation, development professionals and contractors who may be engaged by Contractor; and (iii) any third party claiming that a third party beneficiary relationship has been established between the COUNTY and such third party, it being the intention of the parties hereto that no such relationships be created or established.

Contractor's indemnification of the COUNTY shall survive the disbursement of any funds hereunder and the termination of this Contract Agreement.

19. No Delegation of Duties

Contractor shall remain fully obligated under the provisions of this Contract Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Program. Any party or parties so designated shall also be obligated to perform such duties under the same restrictions and requirements as if Contractor were performing them.

20. Conflicts of Interest

The Contractor must maintain a written conflict of interest policy governing the performance of all persons engaged in the award and administration of contracts. No person, employee, agent, consultant, officer, director or elected official or appointed official of Contractor who exercises or has exercised any function or responsibilities with respect to activities assisted with the awarded funds or who is in a position to participate in a decision-making

process or to gain inside information with regard to these activities, may obtain a financial interest or benefit from this Contract Agreement, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter. Contractor must provide a copy of its written conflict of interest policy to the COUNTY upon its request.

The Contractor covenants that its employees have no interest and will not acquire an interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of services hereunder. The Contractor further covenants that in the performance of this Contract Agreement, no person having such interest will be employed.

21. Privacy Protection

Contractor must establish and adhere to a written policy for the protection of non-public personal information collected in the course of Contractor's activities under this Contract Agreement. The COUNTY shall have the right to review this policy and to require additional measures to ensure adequate protection of such private information. Review shall be strictly limited to whether such policy complies with the COUNTY requirements. In no event may any statement by the COUNTY be construed as an opinion on whether a privacy policy complies with the requirements of any law, regulation, institution, government or court. Nor may any statement by the COUNTY be used by Contractor for any purpose whatsoever, except as necessary to correct or improve Contractor's practices, without the COUNTY's prior written consent.

22. Minority/Women's Business Enterprises

Contractor agrees to develop and implement an outreach program for minority and women business enterprises. Furthermore, the Contractor will maintain the records of such outreach program, including the data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract to be paid with these awarded, as well as additional details regarding the amount of the contract, subcontract, and documentation of Contractor's steps to assure that minority business and women's business enterprises have an equal opportunity to compete for contracts and subcontracts as sources of supplies, equipment, construction and services.

23. Religious Organizations

The Contractor shall not, in carrying out this Contract Agreement, discriminate against a potential client or tenant or vendor on the basis of religion or religious belief. If the Contractor engages in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, the Contractor must perform such activities and offer such services outside of any part of this Program and separately, in time and location, from the activities funded under this Contract Agreement.

24. Programmatic Changes

Any program changes not expressly contemplated by this Agreement must be executed through a written Contract Amendment.

25. Contractor Reporting, Audit, and Record Keeping Requirements

The Contractor must retain certain records and must submit to the COUNTY quarterly, or at such other intervals as requested, any information, documents or certifications requested by the COUNTY which the COUNTY deems reasonably necessary to substantiate Contractor's continuing compliance with the provisions of all applicable guidelines, criteria, and regulations. Reports must be submitted in such format as prescribed by the COUNTY. The COUNTY shall retain the right to change reporting requirements from time to time as it deems necessary.

The Contractor must maintain records for inspection by the COUNTY. These include, but are not limited to:

- a. Records of all account transactions including deposits, disbursements, and balances performed with the funds awarded through this contract.
- b. Records supporting requests for payment and disbursement of funds.
- c. Records indicating the source and amount of any repayment, interest and other return on investment of the funds awarded through this contract.
- d. Records of all written agreements and contracts pertaining to this contract.
- e. Records supporting a competitive bid process of procurement

- f. Audits and resolution of audit findings.
- g. Any program fees or program income collected.
- h. Efforts to recruit MBEs and WBEs.

The following records and reports must be submitted to the COUNTY:

- a. Monthly programmatic narrative updates and expense reports with supporting documentation of program expenses.
- b. Close out reports shall be submitted no later than 15 days following the final drawdown of funds on forms provided by the COUNTY.
- c. Staff payroll and benefit reports and timesheets, if applicable
- d. Financial documents, terms of agreement, and contracts upon request.
- e. Records of all transactions
- f. Any other program information as requested by the COUNTY from time to time.

26. Close-out

The Contractor's obligation to the COUNTY shall not end until all close-out requirements are completed. Activities during this close-out period shall include but are not limited to:

- a. Making final payments;
- b. Disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the COUNTY; and
- c. Determining custodianship of records.

Notwithstanding the foregoing, the terms of this Contract Agreement shall remain in effect during any period that the Contractor has control over the funds awarded through this contract, including program income.

27. Financial Management System

The Contractor will establish and maintain a financial management system that will provide for a) accurate, current, and complete disclosure of the financial results of the functions and services performed under this Contract Agreement; and b) record and identify the source and application of funds for the activities, functions and services performed pursuant to this Contract Agreement. These records will contain information pertaining to federal and state funds received, and assets, liabilities, expenditures, and income; c) effective control over and accountability for all funds, property, and other assets. The Contractor will safeguard all such assets and will assure that they are used solely for authorized purposes as provided in this Contract Agreement; and d) accounting records that are supported by source documentation.

28. Repayment of Investment, Time Limits for Performance,

In the event that the Program is not completed in compliance with the requirements of this Contract Agreement, whether voluntarily or otherwise, an amount equal to the funds disbursed for the Program must be repaid to the COUNTY. Any Program assisted with these funds that does not meet the objective as outlined on page 1 of this Contract Agreement and as outlined in the Scope of Work will require repayment in full of the funds disbursed for that Program to the COUNTY.

29. Contractor's Covenants and Agreements

The Contractor covenants and agrees with the COUNTY as follows:

- a. All funds shall be allocated to units to be occupied by persons or families meeting the income qualifications required by the County;
- b. To complete the program by the program expiration date;
- c. To comply with the COUNTY's guidance, as amended from time to time.

30. Contractor's Representations.

Contractor represents to the COUNTY as follows:

- a. It has no knowledge of any notices or violations of federal or state statutes or regulations or municipal ordinances or orders, or requirements of any governmental body or authority to whose jurisdiction any of the real estate making up the Program is subject;
- b. Its execution, delivery and carrying out of the terms and conditions of the Application and this Contract Agreement have been duly authorized by an officer with the ability to obligate Contractor to this Agreement and will not conflict with or result in a breach of its Articles of Incorporation or by-laws, or any vote of members or directors or of the terms or provisions of any existing law, regulation or order of any court or government body or authority or agreement to which it is a party or by which it is bound;
- c. There has been no material adverse change in its financial condition since the filing of its Application;
- d. The representations, warranties and statements of fact of Contractor as set forth in the Application and this Contract Agreement are true, accurate and complete in all material respects as of the date hereof;
- e. It has not failed to provide the COUNTY with any material information necessary to make the representations, warranties, and statements contained herein; and are not misleading, in light of the circumstances under which they were made;
- f. The Contractor has duly authorized the officer executing this Contract Agreement to execute, in its name and on its behalf, this Contract Agreement and all such other documents and instruments as the COUNTY may request in connection therewith; and
- g. The Contractor has no knowledge of any existing, threatened or pending actions by any person or governmental authority against it which would have a material adverse effect on its ability to acquire and complete any necessary construction or renovations to the proposed activity.

31. Survival of Agreements

All agreements, covenants, representations, and warranties made in the Contractor's Application and this Contract Agreement including Exhibits hereto shall survive the making of any loan hereunder and the termination of this Contract Agreement.

32. Events of Default and Pursuit of Remedies

The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

- a. Any breach or non-compliance by Contractor with the conditions, provisions, obligations, duties, agreements, covenants, representations and warranties made and set forth in this Contract Agreement and any/all accompanying closing documents, , any applicable local, state, and federal laws, and any applicable COUNTY policy memo, regulation, communication or guideline as the same may be amended from time to time, as determined by the COUNTY in its sole discretion; or
- b. Any representation or warranty made herein or in any/all the Contractor applications, accompanying closing documents, addenda, exhibits, amendment, binder, and/or other instrument executed in connection with this Contract Agreement is proven to be false or misleading in any respect, whether through commission or omission.

Upon the occurrence of an Event of Default, the COUNTY may, at its option, send Contractor a Notice of Default stating that Contractor has thirty (30) days to cure said default. In the event Contractor fails to cure said default within thirty days, the COUNTY may, upon ten (10) business days' notice, terminate or suspend this Contract Agreement and declare the entire outstanding balance, plus any interest accruing from the date hereof, to be immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Contractor. The Contractor agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by the COUNTY in collection of the moneys due hereunder or in the exercise or defense of its rights and powers under this Contract Agreement. In addition, the COUNTY may pursue any other remedies, legal or equitable, available to it in the event of the Contractor's default, fraud or misrepresentation, whether through commission or omission.

33. Termination

This Contract Agreement shall remain in effect for the period defined on page two (2), Section 2. Period of Performance, of this Contract Agreement.

The COUNTY may suspend or terminate this Contract Agreement if the Contractor materially fails to comply with any terms of this Contract Agreement, which include (but are not limited to) the following:

- a. Failure to comply with COUNTY guidance and any of the rules, regulations or provisions referred to herein, or such statues, regulations, executive orders, or guidelines, policies or directives as may become applicable at any time;
- b. Failure, for any reason, of the Contractor to fulfill in a timely and proper manner its obligations under this Contract Agreement;
- c. Ineffective or improper use of funds provided under this Contract Agreement; or
- d. Submission by the Contractor to the COUNTY of reports that are incorrect or incomplete in any material respect.

The COUNTY may terminate this Contract 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.

The COUNTY may also terminate this Contract Agreement 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 Contract Agreement, and prior to its normal completion. The COUNTY may summarily terminate this Contract Agreement as to the funds withdrawn, reduced, or limited, 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 (which includes electronic mailing), whichever occurs first.

34. No Waiver

No delay or omission by the COUNTY to exercise any of its rights hereunder shall constitute an assent or waiver by it to or of Contractor's breach of or noncompliance with the terms of this Contract Agreement, whether The COUNTY has knowledge of such breach or noncompliance, and no other assent or waiver, express or implied, by the COUNTY to or of any such breach or noncompliance shall be deemed as assent or waiver of any other or succeeding breach or noncompliance.

35. Benefit

This Contract Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that no assignment by Contractor of its rights under this Contract Agreement shall be of any effect unless the prior written consent of the COUNTY to such assignment has been first obtained.

36. Severability; Survivability

If any provision of this Contract Agreement shall be deemed unenforceable or invalid, such provision shall not affect, impair or invalidate any other provision of this Contract Agreement. Any provision of this Contract Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable. The terms of this Contract Agreement shall survive the closing of any loan or grant contemplated by this Contract Agreement.

37. Governing Law

This Contract Agreement is being executed and delivered in the State of Washington and shall in all respects be governed, construed, applied and enforced in accordance with the laws of said State, irrespective of its conflict of law provisions.

38. Section Headings and Subheadings

The section headings and subheadings contained in this Contract Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Contract Agreement.

39. Notices

All notices to be given pursuant to this Contract Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

To the COUNTY:

Eric Chambers, Special Projects Manager
509 Girard Street
Bellingham, WA 98225
ekchambe@co.whatcom.wa.us

To the CONTRACTOR:

Dr. Kristi Dominquez, Superintendent
Ferndale School District
6041 Vista Drive
PO Box 698
Ferndale, WA 98229
360.383.9200

40. Changes to the Agreement

The terms of the Contract Agreement may be changed by executing an amendment or new agreement at the sole discretion of the COUNTY. Certain terms of the Contract Agreement, such as the Program Budget line items or Program Schedule, may be changed by written approval by the COUNTY or as provided herein.

Amendments shall make specific reference to this Contract Agreement, will be executed in writing, and signed by duly authorized representatives of each party. Such amendments shall not invalidate this Contract Agreement, nor relieve or release the COUNTY or the Contractor from its obligations under this Contract Agreement.

The COUNTY may, in its discretion, amend this Contract Agreement to conform with federal, state, or local governmental guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change in the funding, Scope of Work, or Program Schedule of the activities to be undertaken as part of this Contract Agreement, such modifications will be incorporated only by written amendment signed by both the COUNTY and the Contractor.

41. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall be deemed to be one and the same instrument.

42. List of Exhibits

Exhibit A: Program Description, Program Schedule, and Scope of Work

Exhibit B: Program Budget

Exhibit C: Certificate of Insurance

Exhibit D: Covenant

[SIGNATURE PAGE FOLLOWS]

Exhibit “A”
(PROGRAM DESCRIPTION, PROGRAM SCHEDULE AND SCOPE OF WORK)

A. Program Description:

The Contractor will use the funds purchase and install accessible playground equipment to support an increase in enrollment secondary to receiving 58 additional [Early Childhood Education and Assistance Program](#) (ECEAP) slots bringing their total capacity to 151 children age 3-5, 50% of whom have Individualized Educational Programs (IEPs).

B. Program Schedule:

Date	Activity	Milestone
November 2024	Project Kickoff	Project kick off meeting
November 2024	Planning and Design Approval	Approved designs
January 2025	Procurement	Procurement documents
March 2025	Installation	Installation completed
May 2025	Inspection and testing	Inspection reports
June 2025	Project Closeout	Close out meeting
July 2025	Monitoring	Quarterly reports; annual visit.

C. Scope of Work:

The Contractor will purchase and install playground equipment at Mountain View Learning Center. The Contractor will be reimbursed for associated costs for professional planning services, site preparation, and purchase and install the equipment, as outlined in Exhibit B. Project implementation will occur in two phases: Capital and Monitoring. The Capital Phase begins with the receipt of a fully executed contract between Whatcom County and the Contractor and will conclude with the equipment installed and inspected. The Monitoring Phase begins with the end of the Capital Phase and continues for ten (10) years.

1. During the Capital Phase, the Contractor will:

- a. Attend a “Kickoff” meeting with Whatcom County Staff.
- b. Pre the site and purchase and install the playground equipment.
- c. Complete all required inspections and correct any deficiencies noted.
- d. Attend a transition meeting with Whatcom County Staff, including site inspection.

2. During the Monitoring Phase, the Contractor will:

- a. Operate as a licensed early learning facility for a period of at least ten (10) years.
- b. Report any licensing inspections that result in an adverse finding including, but not limited to, compliance action, enforcement action, facility licensing compliance agreements, or loss of license within fourteen (14) days of notification.
- c. Provide a minimum 125 ECEAP slots as outlined below. For the purposes of compliance, a slot is defined as either a part-time slot, a full-time slot, or a working day slot. A part-time slot is at least 3 hours per day and less than 5.5 hours a day and is the equivalent to 0.5 slots. A full-time slot is at least 5.5 hours to 9.5 hours and is the equivalent to 1.0 slots. A working day slot is 10 hours per day and is equivalent to 1.5 slots. To meet the requirements below, any combination of part-time, full-time, or working day slots may be used.
- d. Collect, at a minimum, the following demographic information for each child at intake: age and income status for those filling low income slots.

- e. Provide a minimum of 25% of all slots for children from households that have income 80% or lower than the current area median income (AMI) for the City of Bellingham. Families that qualify for assistance through the Working Connections Child Care Program are also eligible. For the purposes of compliance with this requirement the County will update the Contractor each year, on or about January 1, with the most current AMI.

3. During both the Capital and Monitoring Phases, the Contractor will:

- a. Maintain site control of the playground.
- b. Maintain books, records, documents, and other evidence directly related to the performance of the work in accordance to Generally Acceptable Accounting Principles (GAAP) when applicable, in which Whatcom County, or any of its duly authorized representatives, shall have access to for inspection and audit for a period of five years beyond the last date of service. The last date of service, as described in Section II, is ten (10) years after the end of the Capital Phase. Specifically,
 - 1. Records used to determine financial eligibility of families.
 - 2. Invoices and supporting documentation, including procurement records, for all reimbursable expenses.
 - 3. Any applicable Whatcom County playground inspection and modifications.
 - 4. Permits and inspection reports for the playground.
 - 5. Document and make available, information regarding their acquisition activities, service delivery model, and experience working with the County.

4. Reporting and Monitoring:

Clear communication during the **Capital Phase** is essential to project success. During the Capital Phase the Contractor is responsible for providing the following information to the County Designee.

- a. Monthly progress reports, due on the first of each month. Progress reports must include, at a minimum, the following:
 - 1. Progress including any milestones achieved
 - 2. Outline of a plan for the coming month
 - 3. Any problems experience, including delays.

5. During the Monitoring Phase, the Contractor is responsible for providing the following information to the County Designee.

- a. Quarterly Utilization Reports, due on the 15th of the month following the completion of the previous quarter. Quarters are defined as follows:
 - 1. First Quarter: January 1 through March 31
 - 2. Second Quarter: April 1 through June 30
 - 3. Third Quarter: July 1 through September 30
 - 4. Fourth Quarter: October 1 through December 31
- b. Quarterly reports must include the following:
 - 1. Average # of part-time, full-time, and work-time slots filled.
 - 2. Average # of part-time, full-time, and work-time slots filled with qualifying child.
 - 3. Average # of toddlers, preschool-aged, and school-age children. Following WAC 100-300-0005, a "toddler means a child 12 months through 29 months," a preschool-aged child is '30 months

through 6 years of age not attending kindergarten or elementary school” and a school aged child is one “who is five years of age through 12 years of age and is attending a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.”

- c. A qualifying child is one that resides with a family whose income is 80% or lower than the current area median income (AMI) for the City of Bellingham or that qualify for assistance through the Working Connections Child Care Program.

The County reserves the right to request additional related documentation, including but not limited to; contracts and lower-tier Contractor agreements, permits, environmental assessments, Whatcom County inspection reports, inspection reports.

During both the Capital and Covenant Phases, when an event of unusual and significant nature occurs, whether or not directly related to the project, the Contractor is responsible for notifying the County Designee as soon as reasonably possible with the chain of events, persons participating, response, and other pertinent information.

6. Project Closeout:

Project closure occurs when the following conditions have been met:

- a. The County has satisfied their financial commitment to the Contractor.
- b. The Contractor has operated a licensed child care center with the additional slots for a period of ten (10) years beyond the Capital Phase.
- c. The Contractor has resolved all monitoring and compliance issues, if any, with the County.
- d. The Contractor has participated in an exit interview with the County designee.

7. Inconsistencies:

In the event inconsistencies or disputes among this contract, the initiating RFP, the Contractor’s response, or other documents, the following order of precedence shall prevail in descending order of priority:

- a. Applicable Federal, Washington State, and Whatcom County statutes, codes, regulations, ordinances and the like.
- b. This Contract Agreement.
- c. The revised preliminary award letter signed by Ann Beck, MSW, signed on April 17, 2024.
- d. Request for Proposal # 23-87 including all addenda, issued by Whatcom County.
- e. The Contractors response to RFP #23-87.

EXHIBIT "B"
(PROGRAM BUDGET)

1. The Contractor will purchase and install ADA compliant playground equipment at their Mountain View Learning Center. The Contractor will be reimbursed for associated costs to prepare the site, install fencing, and install purchase and install the playground equipment.
2. **Funding for this contract may not exceed \$700,000.** Funding is provided by the Community Priorities Fund and will be disbursed on a reimbursement basis to the Contractor subject to the terms and conditions outlined in Exhibit B1 and B2.
3. In addition to any relevant documentation requirements described in Exhibit B, B.1, and B.2, invoices must include the following:
 - a. An invoice number generated by the Contractor;
 - b. Contract number assigned by the County;
 - c. The current date(s) of service or work performed;
 - d. Vendor name and DBA, if applicable;
 - e. Itemized list of all goods and services if not clearly listed on the subcontractor's documentation; and
 - f. The signature of the Contractor or designee. Electronic signatures are acceptable.
4. In addition to the Contractor-generated invoice, the Contractor must provide sufficient backup documentation to demonstrate that the expenses are allowable under the terms of this contract. Backup documents must include paid invoices and receipts provided by subcontractors. In addition, the first time the Contractor submits an invoice for a new product or service, invoices must include the following:
 - The Vendor's intent to pay prevailing wage ID number, issued by the Washington State Labor and Industry upon filing the "Statement Intent to Pay Prevailing Wages", when applicable; and
 - Procurement documentation.
5. Approved goods and services include:

Cost Description	*Budget
Site Preparation, project management, and taxes	\$100,000
Fencing, including installation and taxes	\$45,000
Inclusive Plan Structure, including installation, project management, freight, and taxes	\$544,409
Contingency	\$10,591
Total Budget:	\$700,000

Contractor's Invoicing Contact Information:	
Name	
Phone	
Email	

Refer to Exhibits B.1 and B.2 for additional invoicing requirements and information.

EXHIBIT "B.1" – Invoicing – General Requirements

1. When applicable, the contractor may transfer funds among budget line items in an amount not to exceed 10% of the total budget. Line item changes that exceed 10% must be pre-approved by the County Contract Administrator, prior to invoicing.
2. When applicable, indirect costs and fringe benefit cost rates may not exceed the amount indicated in Exhibit B or the Contractor's federally approved indirect cost rate.
3. The Contractor shall submit invoices indicating the County-assigned contract number to:
HL-BusinessOffice@co.whatcom.wa.us and EKChambe@co.whatcom.wa.us
4. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County and by the 15th of the month, following the month of service, except for January and July where the same is due by the 10th of the month.
5. When applicable, the Contractor will utilize grant funding sources in the order of their expiration date as indicated by the County, prior to spending local funding sources, when no funding restrictions prevent doing so.
6. The contractor shall submit the required invoice documentation identified in Exhibit B.
 - a. The County reserves the right to request additional documentation in order to determine eligible costs. Additional documentation must be received within 10 business days of the County's request.
 - b. When applicable, if GL reports for personnel reimbursement do not specify position titles, additional documentation must be provided that includes staff name and position title.
 - c. When applicable, mileage will be reimbursed at the current GSA rate (www.gsa.gov). Reimbursement requests for mileage must include:
 1. Name of staff member
 2. Date of travel
 3. Starting address (including zip code) and ending address (including zip code)
 4. Number of miles traveled
 - d. When applicable, travel and/or training expenses will be reimbursed as follows:
 1. Lodging and meal costs for training are not to exceed the current GSA rate (www.gsa.gov), specific to location.
 2. Ground transportation, coach airfare and ferries will be reimbursed at cost when accompanied by receipts.
 3. Reimbursement requests for allowable travel and/or training must include:
 - a. Name of staff member
 - b. Dates of travel
 - c. Starting point and destination
 - d. Brief description of purpose
 - e. Receipts for registration fees or other documentation of professional training expenses.
 - f. Receipts for meals are not required.
7. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from the Contractor.
8. The County may withhold payment of an invoice if the Contractor submits it or the required invoice documentation, more than 30 days after the month of services performed and/or the expiration of this contract.
9. Invoices must include the following statement, with an authorized signature and date: **I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.**
10. Duplication of billed costs or payments for service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

EXHIBIT "B.2" – Invoice Preparation Checklist for Vendors

The County intends to pay you promptly. Below is a checklist to ensure your payment will be processed quickly. Provide this to the best person in your company for ensuring invoice quality control.

Send the invoices to the correct address:

HL-BusinessOffice@co.whatcom.wa.us and EKChambe@co.whatcom.wa.us

Submit invoices monthly, or as otherwise indicated in your contract.

Verify that:

the time period for services performed is clearly stated and within the contract term beginning and end dates. Also verify any other dates identified in the contract, such as annual funding allocations;

invoice items have not been previously billed or paid, given the time period for which services were performed;

enough money remains on the contract and any amendments to pay the invoice;

the invoice is organized by task and budget line item as shown in Exhibit B;

the Overhead or Indirect Rate costs match the most current approved rate sheet;

the direct charges on the invoice are allowable by contract. Eliminate unallowable costs.

personnel named are explicitly allowed for within the contract and the Labor Rates match the most current approved rate sheet;

back-up documentation matches what is required as stated in Exhibit B and B.1;

contract number is referenced on the invoice;

any pre-authorizations or relevant communication with the County Contract Administrator is included; and

Check the math.

Whatcom County will not reimburse for:

- Alcohol or tobacco products;
- Traveling Business or First Class; or
- Indirect expenses exceeding 10% except as approved in an indirect or overhead rate agreement.

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)

Prior to the release of funds under this agreement, the Contractor must provide evidence of insurance out outlined in Section 13. of this Contract Agreement.