


| WHATCOM COUNTY | | | | Whatcom County Contract Number: | | |
|---|--|---|---|---------------------------------|-----------------------------|------------|
| CONTRACT INFORMATION SHEET | | | | 202411026 | | |
| 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: | | | Bellingham and Whatcom County Housing Authority | | | |
| 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: | | 147200 | | |
| Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | If yes, RFP and Bid number(s): | 23-87 | | | |
| Is this agreement excluded from E-Verify? | | No <input type="checkbox"/> | Yes <input checked="" type="checkbox"/> | | | |
| 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 checked="" type="checkbox"/> Interlocal Agreement (between Governments). | | <input checked="" 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: | | | | |
| \$ | 1,093,637 | 1. Exercising an option contained in a contract previously approved by the council. | | | | |
| This Amendment Amount: | | 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. | | | | |
| Total Amended Amount: | | 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. | | | | |
| Summary of Scope: This contract provides funding for construction of an early learning child care facility. | | | | | | |
| Term of Contract: | | 24 Months | | Expiration Date: 09/30/2036 | | |
| Contract Routing: | 1. Prepared by: | JT | | | Date: | 10/01/2024 |
| | 2. Health Budget Approval | SH | | | Date: | 10/02/2024 |
| | 3. Attorney signoff: | Christopher Quinn | | | Date: | 10/02/2024 |
| | 4. AS Finance reviewed: | Bbennett | | | Date: | 10/08/2024 |
| | 5. IT reviewed (if IT related): | | | | Date: | |
| | 6. Contractor signed: |  | | | Date: | |
| | 7. Executive Contract Review: | AB2024-682 | | | Date: | 11/19/2024 |
| | 8. Council approved (if necessary): | | | | Date: | 11/06/2024 |
| | 9. Executive signed: | | | | Date: | 11/19/2024 |
| | 10. Original to Council: | | | | Date: | |



Memorandum

TO: Satpal Sidhu, County Executive
FROM: Erika Lautenbach, Director
RE: Bellingham and Whatcom County Housing Authorities (BWCHA) – Samish Commons Early Learning Child Care Center Contract
DATE: **NOVEMBER 13, 2024**

Attached is a contract between Whatcom County and BWCHA for your review and signature.

▪ **Background and Purpose**

Through a competitive bidding process (RFP 23-87), the Bellingham and Whatcom County Housing Authority (BWCHA) was selected and recommended for a contract that partially funds the development of a licensed child care facility in the affordable housing complex known as Samish Commons, located at 301 N Samish Way in Bellingham. Upon completion, this project will create forty (40) additional child care slots for children ages 1 week to 2.5 years. At least 20% of all slots will be reserved for children from households that have an income 80% or lower than the current area median income (AMI) for the City of Bellingham.

According to the latest census¹, there are approximately 10,500 children under the age of five 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.

▪ **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$1,093,637 is provided by the Community Priorities Fund. These funds are included in the 2024 budget. Council authorization is required, per WCC 3.08.100, as funding for this contract exceeds \$40,000.

Please contract Eric Chambers, Special Projects Manager at 360-778-6199 (EKChambe@co.whatcom.wa.us) or Ann Beck, Community Health & Human Services Manager at 360-778-6055 (ABeck@co.whatcom.wa.us), if you have any questions.

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

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

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



Whatcom County Contract No.

202411026

CONTRACT FOR SERVICES
Between Whatcom County and Bellingham and Whatcom County Housing Authorities

Bellingham and Whatcom County Housing Authorities hereinafter called **Contractor** and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 12,
 Exhibit A (Scope of Work), pp. 13 to 17,
 Exhibit B (Compensation), pp. 18 to 20,
 Exhibit C (Certificate of Insurance), p. 21,
 Exhibit D (Architect Schematic).

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 7th day of November, 2024, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of September, 2036.

The general purpose or objective of this Agreement is to build an early learning child care center within Samish Commons, an affordable Housing complex in Bellingham, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$1,093,637. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on: 11/19/2024

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

CONTRACTOR:

Bellingham and Whatcom County Housing Authorities


Andrew Calkins, Executive Director
 PO Box 9701
 Bellingham, WA 98227-9701

Signed by:  11/13/2024
09A2E7DEC661470...

 Andrew Calkins, Executive Director Date

WHATCOM COUNTY:

Recommended for Approval:

 11/19/2024
2B365BB0422344A

Ann Beck, Community Health & Human Services Manager Date

DocuSigned by:
 11/17/2024
955C651A30374BD...

Erika Lautenbach, Health and Community Services Director Date


Approved as to form:

Signed by:
 11/18/2024
EC466EF5C88B4ED

Christopher Quinn, Chief Civil Deputy Prosecutor Date

Approved:

Accepted for Whatcom County:

DocuSigned by:
 11/19/2024
1192C7C18B664E3

By: Satpal Singh Sidhu, Whatcom County Executive Date

CONTRACTOR:

Bellingham and Whatcom County Housing Authorities
Andrew Calkins, Executive Director
PO Box 9701
Bellingham, WA 98227-9701

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:

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:

In providing services under this Contract, the Contractor is an independent Contractor, and neither it nor its officers, agents, or employees are employees of the County for any purpose. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the Contractor, its employees, and/or others by reason of this Contract.

The Contractor shall protect, indemnify, defend, and save harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Contractor's failure to pay any such

compensation, wages, benefits, or taxes, and/or (2) the supplying to the Contractor of work, services, materials, or supplies by Contractor employees or other suppliers in connection with or support of the performance of this Contract.

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 Contractor or any employee of any Contractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or Contractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County. If the Contractor creates any copyrightable materials or invents any patentable property, the Contractor may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Contractor further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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, Contractors, 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 Insurance

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, Contractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

1. Commercial General Liability

| | |
|-----------------------------------|--------------------------------|
| Property Damage | \$500,000.00, per occurrence |
| General Liability & bodily injury | \$1,000,000.00, per occurrence |
| Annual Aggregate | \$2,000,000.00 |

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

2. Business Automobile Liability

| | |
|----------------|---------------------------|
| \$1,000,000.00 | Minimum, per occurrence |
| \$2,000,000.00 | Minimum, Annual Aggregate |

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

3. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's Contractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and Contractor, whichever is greater.

- c. Primary and Non-contributory Insurance. Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non- contributory to Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. Verification of Coverage/Certificates and Endorsements. The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. No Limitation on Liability. The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. Payment Conditioned on Insurance and Failure to Maintain Insurance. Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. Workers' Compensation. The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or Contractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.

- l. Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.
- m. Insurance for Contractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all Contractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each Contractor. Insurance coverages by Contractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement. To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its Contractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its Contractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its Contractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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 (including gender identity), 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 (including gender identity), age, marital status, disability, political affiliation, 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 (including gender identity), 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 Contractor, provided that the foregoing provision shall not apply to contracts or Contractors 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 (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; 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 unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

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:

Whatcom County Health and Community Services
Eric Chambers, Special Projects Manager

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

To:
Whatcom County Health and Community Services
Eric Chambers, Special Projects Manager
509 Girard Street
Bellingham, WA 98229
EKChambe@co.whatcom.wa.us

To:
 Bellingham and Whatcom County Housing Authorities
 Andrew Calkins, Executive Director
 PO Box 9701
 Bellingham, WA 98227-9701
andrew.calkins@bellinghamhousing.org

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

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

If applicable, 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:

If applicable, 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. If applicable, 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.

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:

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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, 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 Contract 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 Contract 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 but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. 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.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract 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. Program Description

The Contractor will use the funding provided in this contract to support the development of a licensed child care center within the affordable housing complex known as Samish Commons and located at 301 N Samish Way in Bellingham. Once complete, the project will provide forty (40) additional child care slots for Infants and toddlers.

B. Program Schedule

| Date | Activity | Milestone |
|---------------|-----------------------------------|---------------------------------------|
| November 2024 | Project Kickoff | Project kickoff meeting |
| December 2024 | Procurement of A&E Services | Contract |
| January 2025 | Procurement of general contractor | Contract |
| April 2025 | Construction begins | Permits received, construction begins |
| October 2025 | Construction completed | Walkthrough |
| November 2025 | Facility license | License |
| December 2025 | Capital Phase close out | Closeout meeting |
| January 2026 | Monitoring Phase begins | Quarterly report and annual review. |
| November 2035 | Final project closeout | Final closeout meeting |

C. Scope of Work

The Contractor will facilitate the construction of an early learning child care facility in a substantially similar form to the schematics included as Exhibit D or as otherwise agreed to in writing between the County and the Contractor. The Contractor will be reimbursed for associated costs as outlined in Exhibit B.

The project implementation will occur in two phases: Capital and Monitoring. The Capital phase begins when the Contractor receives a fully-executed agreement for this work from the County and the Monitoring Phase begins with the end of the Capital Phase and continues for ten (10) years.

Contractor's responsibility during the Capital Phase:

1. Attend a kickoff meeting with the County designated Contract Administrator.
2. Procure, through a competitive process a contractor and, if required, subcontractors to complete the work.
3. Obtain, or cause to be obtained, all required permits.
4. Complete construction of the facility in a manner substantially similar to the schematics found in Exhibit D.
5. Identify a provider to operate the facility and enter into a binding lease agreement for the use of the space with the Tenant to operate the facility as a childcare center. The lease must be approved by the County-designated Contract Administrator and must include the following terms and conditions:
 - a. The facility must be licensed by the Washington State Department of Children Youth and Families (DCYF) as a child care facility.
 - b. Include a term of no less than ten (10) years as either a single-term of service or through contract extensions.
 - c. Allow access to the facility to the County-designated Contract Administrator or designee for the purposes of monitoring general contract requirements, and affordability requirements.
 - d. Include a requirement for quarterly reports and annual site visit as outlined below.
 - e. Include a requirement to 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.

- f. Include a provision to provide a minimum of 40 childcare 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.
- g. Include a requirement to collect, at a minimum, the following demographic information for each child at intake: age and income status for those filling low income slots.
- h. Include a provision to reserve a minimum of 20% of the forty (40) 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.
- i. Provide to the County, quarterly utilization reports, due on the 15th of the month following the completion of the previous quarter. Quarters are defined as follows:
 - i. First Quarter: January 1 through March 31
 - ii. Second Quarter: April 1 through June 30
 - iii. Third Quarter: July 1 through September 30
 - iv. Fourth Quarter: October 1 through December 31
- j. Quarterly reports must include the following:
 - i. Average # of part-time, full-time, and work-time slots filled.
 - ii. Average # of part-time, full-time, and work-time slots filled with qualifying child.
 - iii. 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."
- k. Make available the necessary time and other resources necessary to participate in an annual site visit with the County-designated Contract Administrator.
- l. Require reporting to the County when an event of unusual and significant nature occurs, whether or not directly related to the project, the Tenant is responsible for notifying the County Designee as soon as reasonably possible with the chain of events, persons participating, response, and other pertinent information.
- m. 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, which is five (5) years after the Monitoring Phase has ended. Specific records including:
 - i. Records used to determine financial eligibility
 - ii. Any applicable childcare licenses, modifications, inspections, and corrective action plans, if any.
 - iii. Document related to their service delivery model, experience working with the County, and the monitoring process.
- n. Require the maintenance of the facility as a fully licensed childcare facility by the Washington State Department of Children Youth and Families (DCYF).

6. Attend a transition meeting with the County designated Contract Administrator, including a site inspection.
7. Contractor's responsibility during the Monitoring Phase:
 - a. Ensure the space is leased to a licensed child care provider for a period of at least ten (10) years.
8. Contractor's responsibility during both the Capital and monitoring Phases:
 - a. Maintain site control of the facility.
 - 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, which is five (5) years after the Monitoring Phase has ended, including but not limited to:
 - i. Invoices and supporting documentation, including procurement records, for all reimbursable expenses.
 - ii. Any tenant lease agreements, modifications, and renewals.
 - iii. Document and make available, information regarding their acquisition activities, experience working with the County, and the covenant process

9. Additional Requirements

The County may, in the event of the failure or default of either the Contractor or the Tenant to insure the proper use of the property as provided in his contract, exercise all rights and remedies available to the County for that purpose. Proper use is defined as:

- a. The property shall be used activity to provide licenses childcare services for a period of no less than ten (10) years beginning with the start of the Monitoring Phase.
- b. At least 20% of the licensed childcare slots, of the forty (40) offered by the Tenant, shall be filled by children from households that, at the time of enrollment and annually thereafter, have a gross annual household income at or below eighty percent (80%) of the local area median income, as defined by the United States Department of Housing and Urban Development (HUD) and adjusted for household size. In the event that HUD ceases to provide such estimates of area median income, then area median income shall mean such comparable figures for Whatcom County, Washington as published or reported by a federal, state, or local agency as the County shall reasonably select. The County may, at its sole discretion, broaden eligibility to better reflect the needs of families in Whatcom County. Any such adjustments will be communicated to the GRANTOR and TENANT per the notification requirements in Section 37.2 of this contract's General Conditions.
- c. The Contractor shall terminate the agreement with the Tenant if the Tenant is in default with the agreement with the Contractor.
- d. The Contractor shall start the process to terminate the agreement with the Tenant as expeditiously as possible and in no case later than thirty (30) days of receiving notice from the County that the Tenant is in default of their agreement with the Contractor and all other remedies have been exhausted. Default with the agreement with the Contractor for the purpose of this section means:
 - i. The Tenant has failed to maintain the property as provide for in the agreement.
 - ii. The Tenant has failed to obtain or maintain the necessary licensing to provide child care as issued by the Washington State Department of Children, Youth, and Families.
 - iii. That enrollment of the childcare does not meet the requirements of Section 5, above.
- e. In the event of default by the Tenant, the Contactor agrees to lease the property to another licensed or licensable childcare provider, subject to mutual acceptance of a lease with substantially similar terms and

conditions as the original agreement between the Tenant and the Contractor. The County may waive this requirement if neither the Contractor nor the County can identify an appropriate tenant within six (6) months of vacancy or in the event the County recovers the County award in full from the Contractor.

- f. The Contractor shall comply with all federal, state, and local laws and codes regarding the condition of the property and any improvements to the property.
- g. The Contractor or Tenant improvements that change the form or function of the facility must be approved, in writing, by the County-designated Contract Administrator.

10. 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 contract 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 provide documentation that confirms the Contractor's compliance with the requirements of RCW 39.04 and other state statutes concerning Public Works requirements.

11. Retainage

The Contractor shall comply in all aspects with the requirements of RCW 60.28.011 or other law applicable to it, including, but not limited to, the provisions thereof, to the extent applicable to the Contractor, which require the holding of certain amounts of payments to be made to contractors working and the deposit of such amounts in an escrow account, or as otherwise may be held, pursuant to authorized under RCW 60.28.011.

12. Reporting Requirements During the Capital Phase

- a. Clear communication is essential for project success. During the construction phase, the Contractor must provide quarterly progress reports to the County's Contract Administrator. Progress reports must include, at a minimum, the following:
 - i. Progress, including any milestones achieved
 - ii. Outline of a plan for the coming quarter
 - iii. Any problems experienced
- b. In addition to quarterly reports, the Contractor shall communicate with the Contract Administrator within 48 hours, when:
 - i. An event occurs that could substantially threaten the scope, budget, or schedule.
 - ii. Any other event of unusual and significant nature that occurs whether directly or indirectly related to the project.
 - iii. Reports will include a description of the chain of events, personnel involved, response, and any other pertinent information.

13. Ongoing Monitoring of the Affordability

- a. The County will conduct annual monitoring for compliance with the terms of this contract and required terms and conditions of the lease between the Contractor and the Tenant.
- b. The Contractor will:

- i. Maintain site control of the land and facility.
- ii. 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 end date of this contract. Specifically, supporting documentation for all reimbursable expenses.

14. 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 caused to be operated a licensed child care center in the manner described herein 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.

EXHIBIT "B"
(COMPENSATION)

Funding for this contract may not exceed \$1,093,637 and is provided by the Community Priorities Fund. Funding will be disbursed on a reimbursement basis to the Contractor for the costs described below and subject to the terms and conditions outlined in Exhibits B, B1, and B2.

In addition to the Contractor generated invoice and documentation requirements described in Exhibits B., B1, and B2, invoices must include the following:

- a. An invoice number generated by the Contractor;
- b. Contract number assigned by Whatcom 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.

In addition, 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. The first time the Contractor submits an invoice for a new product or service, invoices must include:

- The Vendor's (construction contractor/subcontractor) Intent to Pay ID number, issued by the Washington State Labor and Industry upon filing the "Statement of Intent to Pay Prevailing Wages", when applicable; and
- Procurement documentation.

Approved goods and services include:

| Cost Description | Budget |
|--|-------------------------|
| Professional Services | |
| Project Management (BWCHA Staff) | \$50,000 |
| Design and Permitting | \$132,000 |
| <i>Professional Services Subtotal:</i> | <i>\$182,000</i> |
| Construction | |
| Construction | \$859,559 |
| Construction Contingency (5% of project cost, per RFP) | \$52,078 |
| <i>Construction Subtotal:</i> | <i>\$911,637</i> |
| Total Budget: | \$1,093,637 |

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

| Contractor's Invoicing Contact Information: | |
|--|--------------------------------------|
| Name | Andrew Calkins |
| Phone | (360) 527-4605 |
| Email | andrew.calkins@bellinghamhousing.org |

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. 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.
8. 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.**
9. 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:

☐ invoices 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.**

☐ 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.

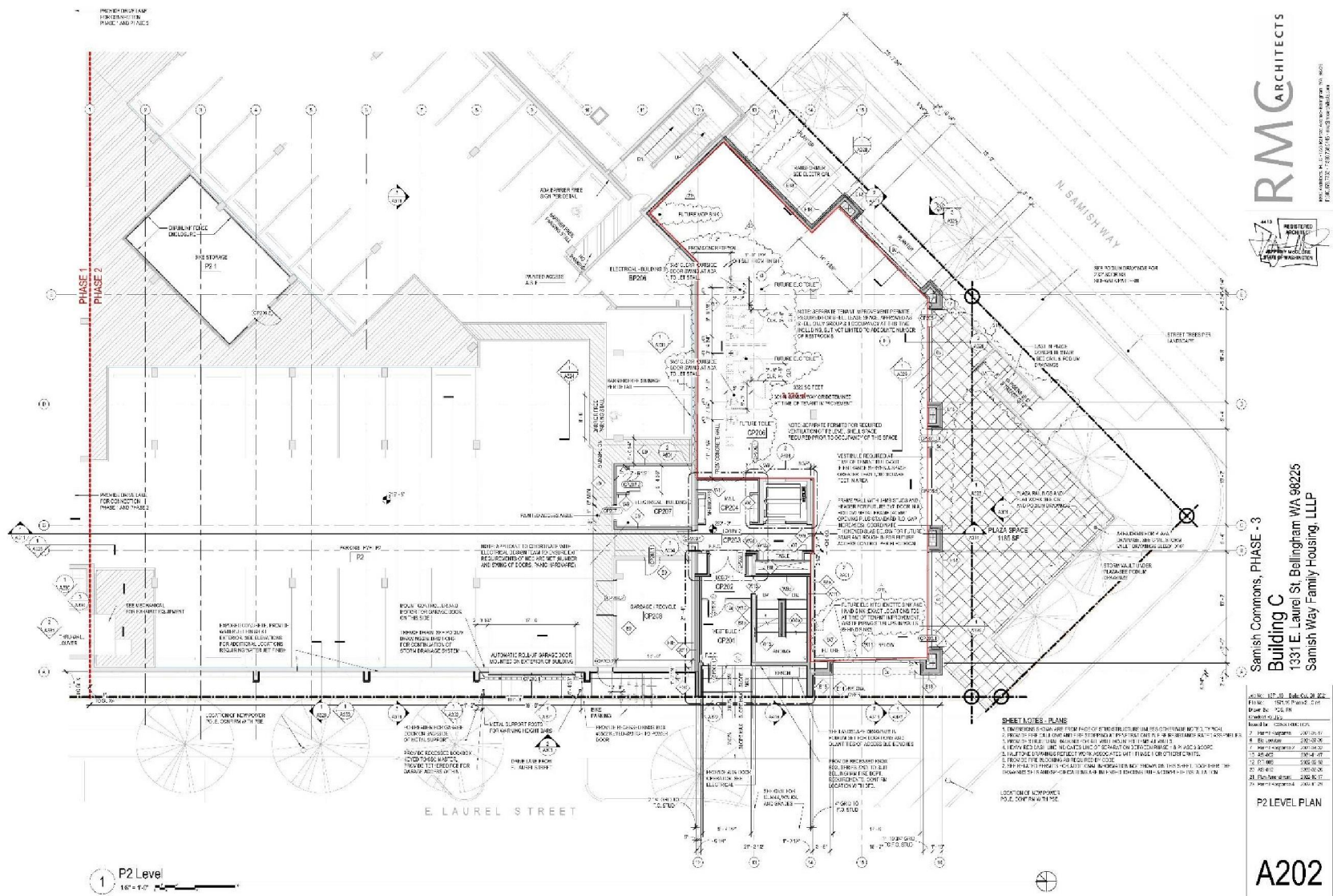
Whatcom County will not reimburse for:

- 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 34.1 of the General Terms of this Contract.

EXHIBIT "D" (ARCHITECT SCHEMATICS)



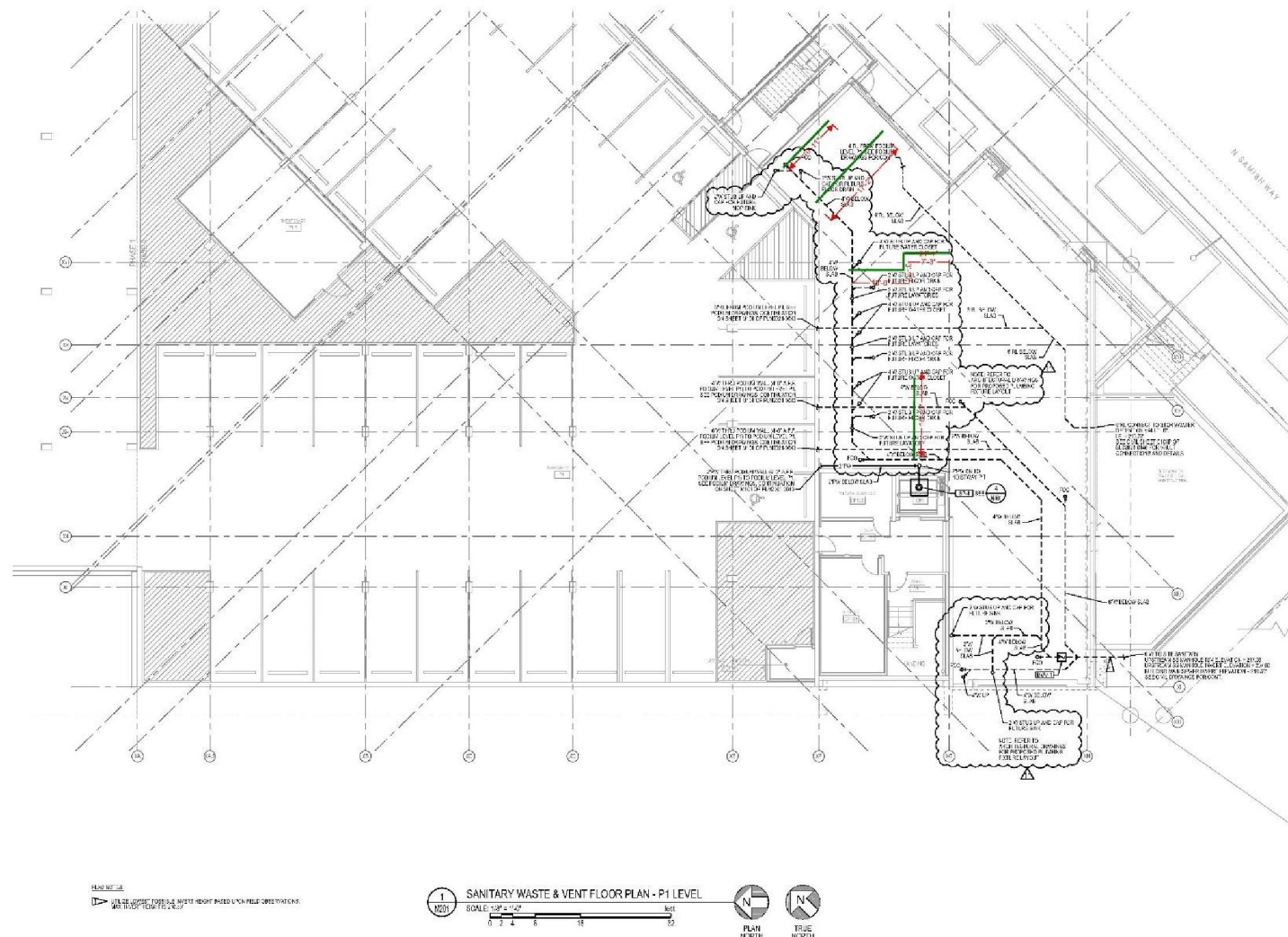


BOGARD | PASCUA
ENGINEERS, PS
CONSULTING ENGINEERS
22425 127th Avenue, Suite 11
Eden Prairie, MN 55324
Phone: 952.810.0100

Samish Commons, PHASE - 3
Building C
1331 E. Laurel St, Bellingham WA 98225
Samish Way Family Housing, LLP

| | |
|--------------------------|-----------------|
| Job No. 200204 | Date Cont'd 200 |
| File No. 200204-File 2 | Page 2 |
| Owner Dr. R | |
| Contracted By: sp | |
| Issued For: Construction | |
| 1. Bidder | May 15, 2002 |
| 2. Two on Response | May 16, 2002 |
| 3. Permit Response 2 | Aug 16, 2002 |
| 4. Permit Response 3 | Aug 17, 2002 |
| 5. One on Bid | Dec 10, 2002 |
| 6. One on Bid | Dec 10, 2002 |
| 7. One on Bid | Dec 10, 2002 |
| 8. One on Bid | Dec 10, 2002 |
| 9. One on Bid | Dec 10, 2002 |
| 10. One on Bid | Dec 10, 2002 |
| 11. One on Bid | Dec 10, 2002 |
| 12. One on Bid | Dec 10, 2002 |
| 13. One on Bid | Dec 10, 2002 |
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| 99. One on Bid | Dec 10, 2002 |
| 100. One on Bid | Dec 10, 2002 |

P1 LEVEL
FLOOR PLAN -
SANITARY
WASTE & VENT
M201
BUILDING C



| | | |
|------------------|-------------------|------------------|
| Job No. | 1571-00 | Date: 01/22/2016 |
| Rev No. | 001/00 | Project: 22-0000 |
| Company No. | 00000001 | |
| Customer Ref No. | | |
| Invoice Ref No. | 01/22/2016 | |
| 1 | Home Inspection | 3,000.00 |
| 2 | Full Inspection | 3,000.00 |
| 3 | Home Inspection 2 | 3,000.00 |
| 10 | ASAC | 3,000.00 |
| 17 | ASAC | 3,000.00 |
| 20 | ASAC | 3,000.00 |
| 21 | ASAC | 3,000.00 |

P2 LEVEL PLAN

A202

