

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	
Division:	
Program:	
Contract or Grant Administrator:	
Contractor's / Agency Name:	

Type of contract:		
Is this a new contract ?	If not, is this an amendment or renewal to an existing contract?	If amendment or renewal (per W.C.C. 3.08.11(a)), original contract #:
Is this a grant agreement?	If yes, grantor agency contract numbers:	ALN: <small>Complete ALN field if contract involves direct federal grants/cooperative agreements or pass-through federal funds</small>
Is this contract grant-funded ?	If yes, Whatcom County grant contract number(s):	
Is this contract the result of an RFP or Bid Process?	If yes, RFP and Bid number(s):	Federal reimbursement?
Procurement Method:		
Council review requirements & exemptions:		

Fund:		Original Contract Amount	
Cost Center:		This Amendment Amount (if applicable):	
Object Account:		Total Contract Amount:	

Contract term ends:

Contract routing (please initial & date):

Prepared by:		Contractor signed:	
Contractor review:		Executive review:	
Attorney signoff:		Council approval, if necessary:	AB#:
AS Finance review:			
IT review (if related):		Executive signed	

CONTRACT FOR SERVICES
Between Whatcom County and Nel/Son Distributing, DBA Nelson-Reisner

Nel/Son Distributing, DBA Nelson-Reisner, 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 14,
- Exhibit B (Compensation), pp. 15 to 15,
- Exhibit C (Certificate of Insurance).

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 1st day of August, 2026, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of July, 2027.

The general purpose or objective of this Agreement is to: Provide for the purchase of fuel to be used in Whatcom County fleet vehicles, including law enforcement vehicles when unable to refuel at the Central Shop fueling station, 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 ~~\$850,000.00~~. The maximum consideration may be amended in accordance with Whatcom County Code and the terms and conditions set forth in this agreement. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

The 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, 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 this ____ day of _____, 20 ____.

Each signatory below to this Contract warrants that they are the authorized agent of the respective party; and that they have the authority to enter into the contract and to bind the party thereto.

CONTRACTOR:

CONTRACTOR:

Nel/Son Distributing, DBA Nelson-Reisner

Dan Averill, Vice President

CONTRACTOR INFORMATION:

Nel/Son Distributing, DBA Nelson-Reisner
Dan Averill, Vice President
310 Commercial Ave
Anacortes, WA 98221

Contact Phone: (360) 293-2197
Contact Cell: (360) 661-6459
Contact Fax: (360) 293-4108
Contact Email: Daverill@nelsonreisner.com

WHATCOM COUNTY:
Recommended for Approval:

Elizabeth Kosa, Public Works Director Date

Approved as to form:

Tom Seguire, Chief Civil Deputy Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive Date

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:

The term of this Agreement shall commence and end on the dates specified on the first page of this Agreement unless terminated or extended as provided elsewhere in this Agreement.

Services and any materials provided by the Contractor prior to or after the term of this Agreement shall be performed or provided at the expense of the Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing.

10.2 Extension:

The term, consideration, and other conditions of this original Agreement may be extended upon mutual written agreement of the parties. Any such extension shall be documented in a written amendment signed by both parties and shall specify the revised term and any applicable modifications to this Agreement. Failure to extend or renew this Agreement shall result in expiration of the Agreement at the end of its current term.

10.3 Renewal:

Subject to applicable law, County priorities, Contractor performance, and the availability of appropriated funds, this Agreement may be renewed on an annual basis, upon mutual written agreement of the parties. Any renewal shall require affirmative written notice from the County of intent to renew, no later than thirty (30) days prior to the expiration of the then-current term. Each renewal shall extend the Term and shall incorporate and continue in full force and effect the consideration, scope of work, and all other conditions of this Agreement, including any amendments properly executed during the then-current term.

The renewal shall be effected by written amendment executed by the parties and shall specify the renewal period and any approved changes to the Agreement. The cumulative duration of this Agreement, including the initial term, any extensions, and all renewals, shall not exceed four (4) years from the effective date of the original agreement, unless otherwise authorized by the County.

Failure of the County to provide the required affirmative written notice of intent to renew within the time specified above, or failure to execute a renewal amendment shall result in expiration of the Agreement at the end of its current term.

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 terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon the Contractor's receipt of the notice given pursuant to section 37.2 of this Agreement. 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 in accordance with the provisions set forth in section 37.2 of this Agreement.

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 its 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. Any such approval must be set forth in a written amendment executed by both parties and shall identify the specific cost or expenses not previously included in this Agreement.

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 the 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 the 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 ten (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: (a) cure any failure or default, (b) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (c) 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 the 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 (a) the Contractor's failure to pay any such compensation, wages, benefits, or taxes, and/or (b) the supplying to the Contractor of work, services, materials, or supplies by the Contractor's 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's Administrative Officer. Subcontractors must comply with the terms and conditions of this Agreement.

30.3 No Guarantee of Employment:

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

31.1 Ownership of Items Produced and Public Records Act:

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

The 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. The 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.

31.3 Web Content Accessibility:

The Contractor will ensure that all public-facing deliverables provided under this contract that constitute web content – including, without limitation, reports, presentations, flyers, digital handouts, and website material) conform to Web Content Accessibility Guidelines (WCAG) 2.1 (or any later version adopted by the Contractor) at Levels A and AA, to the extent applicable under the U.S. Department of Justice Title II web and mobile accessibility rule, 28 C.F.R. § 35.200 et seq.

The County may request reasonable clarifications or supplemental evidence regarding conformance with the standard, as set forth above. The Contractor will respond to any such requests within ten (10) days from the date of request.

If at any time the County identifies accessibility defects that materially impede completion of core tasks by its residents, the Contractor shall remediate those defects at no additional cost and re-present the affected deliverables for acceptance within a reasonable timeline.

32.1 Confidentiality:

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. The Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information.

The Contractor shall report any known or suspected unauthorized access, acquisition, or disclosure of County data or personal information ("Data Breach") to the County within forty-eight (48) hours of discovery, in accordance with RCW 19.255 and RCW 42.56.590. Such notice shall include, to the extent known, the nature of the Data Breach, the data affected, and any actions taken or planned to mitigate harm.

The 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 the Contractor's breach of this provision, including failures to maintain confidentiality or to timely report a Data Breach.

The Contractor shall fully cooperate with the County in any investigation, litigation, administrative proceeding, or audit relating to a Data Breach or alleged breach of this Agreement, including providing records, affidavits, or testimony in a timely manner, and complying with any litigation or document preservation holds issued by the County or a court of competent jurisdiction.

The Contractor shall bear all costs associated with investigating, mitigating, and remediating a Data Breach, including notification of affected individuals and agencies, unless otherwise directed by the County.

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. The 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, subcontractors 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. Professional Liability

Professional Liability - \$1,000,000 per occurrence

Obtain professional liability insurance covering the negligent acts, errors, or omissions of the professional in connection with the performance of services to the County. If any insurance policy or the professional liability insurance is written on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims-made form coverage shall be maintained by the Contractor for a minimum of 36 months following the Completion Date or earlier termination of this Contract, and the Contractor shall annually provide the Contracting Agency with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Contracting Agency to assure financial responsibility for liability for services performed.

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 the Contractor's and the Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. The 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 the 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 the Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then the 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. The 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 (5) 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 the 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 of the 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 subcontractors 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 Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors 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 that the 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: a) 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 subcontractors and their employees, agents or volunteers; or b) directly or indirectly arise out of or occur in connection with performance of this Contract or c) are based upon the Contractor's or its subcontractors' 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 subcontractors, 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 subcontractors, 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 the Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding the 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 that all of 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 subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services: :

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (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/their 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:

The 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, the 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 the 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:

Brett Piepel, Assistant Superintendent, Equipment Services
901 W Smith Rd
Bellingham, WA 98226

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (a) given in writing, and (b) 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:

Nel/Son Distributing, DBA Nelson-Reisner
Dan Averill, Vice President
310 Commercial Ave
Anacortes, WA 98221

Contact Phone: (360) 293-2197
Contact Cell: (360) 661-6459
Contact Fax: (360) 293-4108
Contact Email: Daverill@nelsonreisner.com

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, by signing this contract, the 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, by signing this contract, the Contractor further certifies, that neither it nor its principals 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 and certifies, by initialing below and executing this Agreement, 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. The Contractor shall immediately notify Whatcom County if, during the term of this Contract, the Contractor becomes debarred. The Contractor further agrees to provide immediate written notice to the County if, at any time during the term of this Agreement, they learn that their certification was erroneous when made or has become erroneous by reason of changed circumstances.

38.3 Federal Employment Verification:

Where required by federal law, including contracts containing the Federal Acquisition Regulation (FAR) E-Verify clause (48 C.F.R. 52.222-54), Contractor shall comply with all applicable federal employment eligibility verification requirements.

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 modification or amendment to this Agreement shall be valid and binding only through written agreement signed by both parties and executed by duly authorized representatives of both parties, and, for the County, approved by governing authority or county policy. No amendment shall be effective unless such approval has been obtained and the amendment has been fully executed.

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 (a) any act or failure to act by the Administrative Officer or the County, or (b) 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. The 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, 34.3, 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. SERVICE:

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

- Bellingham:
 1. 500 Kentucky Street (Grant and Kentucky Street)
Bellingham, WA 98225
Products: Diesel, Gas, Air, Water, Office on Site
 2. 2800 Roeder Avenue
Bellingham, WA 98225
Products: Diesel, Gas, Non-ethanol, Air, Water
 3. 5296 Guide Meridian
Bellingham, WA 98226
Products: Diesel, Gas, Air, Water, and restroom
- Ferndale:
 1. 6045 Portal Way (I-5 Exit 263)
Ferndale, WA 98248
Products: Diesel, Gas, Bulk DEF, Air, Water, and restroom
- Lynden:
 1. 1920 Front Street
Lynden, WA 98264
Products: Diesel, Gas, Office on Site, Air, Water
- Nooksack:
 1. 204 Nooksack Avenue
Everson, WA 98247
Products: Diesel, Off Road Diesel, Gas, 89 Non-Ethanol gas, Bulk DEF, and restroom

B. VOLUME:

Approximately 100,000 gallons of unleaded regular gasoline and approximately 15,000 gallons of Ultra Low Sulfur #2 Diesel fuel are purchased through the card lock fuel system during a 12-month period. The volume purchased may or may not vary each year. The majority of our diesel fuel is fueled in-house; therefore, we do not utilize the card lock fueling system as much for these vehicles.

Currently the County owns cards for each of the approximately 600 cars and pieces of equipment, of which 175 use diesel fuel and 450 use unleaded gasoline, and for each of the 800 authorized drivers, as well as the fleet management database that includes each piece of equipment and name of each authorized driver.

C. ACCESS DEVICE:

All Pacific Pride locations in Whatcom County are equipped with a Comdata Smart Sight card readers. These units have been in place for ten years with good reliability. The card reader at the Central Shop is currently a Petro Vend, the Contractor agrees to continue to use dual card system, which will not require any equipment or software changes. Any cost associated with software upgrades would be paid by the contractor.

D. TRANSACTION REPORT:

Automatically, provide fueling data from vendor card lock pump locations to the County no less than twice per month. This data shall be consistent and be formatted to be download into the County's Fleet Management Program and shall include the following information for each transaction: date, time, transaction number, driver card number, vehicle card number, type of fuel, and odometer reading.

E. SERVICE CHANGES

If the service offered changes, deteriorates, or diminishes materially after contract award, the County reserves the right to terminate the contract in accordance with Section 11.1 (Termination for Default) of the General Conditions, upon written notice, as required by Section 37.2 (Notice), and purchase service from another vendor.

F. ANALYZE FUEL

If fuel is found to be substandard, the County reserves the right to terminate the contract in accordance with Section 11.1 (Termination for Default) of the General Conditions, upon written notice, as required by Section 37.2 (Notice), and purchase service from another vendor.

EXHIBIT "B"
(COMPENSATION)

A. COMPENSATION:

Compensation will be made for fuel and DEF purchased at card lock facilities outside of the Central Shop. Total funding for this contract, in an amount not to exceed \$850,000 for the initial term, is provided by the Equipment Rental & Revolving (ER&R) fund.

B. VEHICLE CARD PRICE:

Currently the County owns fuel cards for each piece of equipment and authorized driver. Cards for new vehicles and replacement fuel cards will be provided free of charge.

C. PRICE OF PRODUCT:

Price is based off the current supplier rack price plus the handling charge listed in the table below, Price will be adjusted weekly on Tuesdays to reflect current refiners rack price charged to the vendor. The table below provides an example of the calculation of the total fuel price. For any gasoline product not listed in the table below, the cost will be the supplier rack price plus a \$0.12 handling charge and any diesel product not listed below, the cost will be the supplier rack price plus a \$0.145 handling charge.

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

Vendor handling charge or margin listed in the table below will be firm for the period of August 1, 2026 through July 31, 2027 and shall be stated per gallon

FUEL	OCTANE RATING	SUPPLIER RACK PRICE (April 1 2026)	HANDLING CHARGE	PRICE PER GALLON
Unleaded Gasoline	87	\$ 4.0559	\$.12	\$ 4.1759
Ultra Low Sulfur #2 Diesel	N/A	\$ 5.4882	\$.145	\$ 5.6332
Ethanol-Free Gasoline	89	\$ 4.5559	\$.12	\$ 4.6759
Diesel Exhaust Fluid	N/A	\$ 1.46	\$ 1.00	\$ 2.46

D. HANDLING PRICE ADJUSTMENT:

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

E. INVOICE:

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

Upon receipt of a valid invoice, Whatcom County will pay applicable Washington State sales tax on diesel fuel, state excise (road) tax on gasoline, and any other taxes or environmental fees as required by law.

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