

# AGENDA REQUEST FORM

**Return completed form and complete agenda item to the Clerk of the Board  
Yakima County Commissioners' Office, Room 232**

Prepared by:  
Lisa Freund

Department: Public Services

Requested Agenda Date: 4-<sup>28</sup>-20

Presenting: \_\_\_\_\_

Document Title: \_\_\_\_\_

<small>Board of County Commissioners Record Assigned</small> <b>BOCC Agreement</b>
#  <b>100 - 2020</b>
Yakima County, WA

<b>APPROVED FOR AGENDA:</b>	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular
<small>Board of County Commissioners Determined</small>	

**Public Works Contract with Shane's Diversified Pump Service for trouble shooting and repair of pump and control related equipment for Yakima County's water and waste water systems.**

Action Requested: *Check Applicable Box*

<input type="checkbox"/> PASS RESOLUTION	<input checked="" type="checkbox"/> EXECUTE or AMEND AGREEMENT CONTRACT or GRANT
<input type="checkbox"/> ISSUE PROCLAMATION	<input type="checkbox"/> PASS ORDINANCE <input type="checkbox"/> OTHER _____

Describe Fiscal Impact:

The contract amount is \$34,000.00 including sales tax. Costs will be funded from the County's water and wastewater system reserves.

Background Information:

The pump and control related equipment in the County's water and wastewater systems occasionally fail and need repair. Having an on-call maintenance contract such as this in place is the quickest way to get the equipment running again. With a contract such as this in place we are able to call a contractor and have them on site generally the same day thereby minimizing the possibility of disrupting service to our customers.

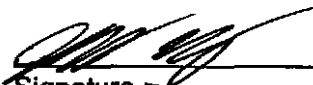
Summary & Recommendation:

Execution of the contract will allow the County to call a contractor 24/7 to help troubleshoot and repair pump and control related equipment based on hourly rates included in their bid.

Motion:

Department Head/ Elected Official

**AGREEMENT** Attached Is Approved as to Form  
Corporate Counsel Initial

  
Signature Jacob Clay on behalf of D.H.  
Lisa Freund



<small>Late Agenda Requests Require BOCC Chairman Signature:</small>
_____

## PUBLIC WORKS CONTRACT

THIS AGREEMENT is entered into between YAKIMA COUNTY, Washington, hereinafter "County", whose address is 128 North 2<sup>nd</sup> Street, Yakima, Washington 98901, and a licensed contractor registered with the State of Washington, hereinafter referred to as "Contractor", more specifically identified as:

Contractor Name: Shane's Diversified Pump Service LLC.

Mailing Address: P.O. Box 4149

City, State, Zip Code: Yakima, WA 98904

Federal Tax I.D. #: 603 179 672

WA Contractors License #: SHANEDP881CW

U.B.I. #: \_\_\_\_\_

### PROJECT # & DESCRIPTION:

Repair of Pump and Control Equipment

### SECTION 1. CONTRACTOR SELECTION

The Contractor was selected by the County to perform the public work for the Project identified in SECTION #4 using:

- Sealed Competitive Bids, *(Projects Costing \$350,000 or more.)*
- Small Works Roster Process, *(Projects Costing less than \$350,000.)*
- Telephonic or Written Quotations, *(Projects Costing less than \$50,000.)*
- Telephonic or Written Quotations, *(Projects Costing less than \$10,000.)*
- Emergency Contract, *(Board of County Commissioners must declare an Emergency.)*

All documentation relating to the contractor selection is attached hereto and shall become a part of this Agreement.

### SECTION 2. PURPOSE

Contractor was selected utilizing the public bidding process per RCW 39.04.280(1)-(4) or RCW36.32.250. The purpose of this Agreement is to set forth the scope of project, compensation, scheduling, insurance and other items as set forth below.

### SECTION 3. THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the bid proposal, addenda issued prior to execution of this Agreement, and change orders issued after execution of this Agreement. The Contract Documents constitute the contract and are as fully a part of the contract as if attached to this Agreement or repeated herein

and represent the entire and integrated Agreement between the parties hereto and supersede prior negotiations, representations or Agreement, either written or oral.

**SECTION 4. THE WORK OF THIS CONTRACT**

The Contractor shall do all work and furnish all tools and equipment for Trouble shoot and repair of County pumps and control related equipment.

and shall perform any changes in the work in accordance with the Contract Documents, which include the Contract Form, Bidder's completed Proposal Form, Scope of Work, Contract Plans, Contract Provisions, Standard Specifications, Standard Plans, Addenda, various certifications and affidavits, supplemental Agreements, and any change orders, all of which are incorporated by reference and made a part of this Agreement. In the event of any conflict between terms or provisions contained in the following with those provided in the incorporated documents, the explicit provisions contained here shall control over those provided in incorporated documents.

**SECTION 5. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

5.1. The date of commencement of the work shall be fixed in letters of notice to proceed from the County.

5.2. The contract time shall be from May 1, 2020 to April 30, 2021 or \_\_\_\_\_ working days as specified in the Special Provisions of this Contract.

**SECTION 6. THE CONTRACT SUM**

The County shall pay the Contractor for the actual work performed, the contract amount in current funds for the Contractor's performance of the contract. The Contract amount shall be as set forth in the bid proposal and shall not exceed: \$ 34,000.00 including WSST, not including any change orders to the contract.

**SECTION 7. PROGRESS PAYMENTS**

Should the time of performance of this Agreement exceed \_\_\_ days, the Contractor shall be entitled to a progress payment once monthly based on work completed less prior payments.

**SECTION 8. RETAINAGE**

8.1  This project meets the requirements of RCW 39.04.155(3), Limited Public Works Process, and is not subject to retainage as required by RCW Chapter 60.28.

OR

8.2 \_\_\_\_\_ This project is subject to retainage Pursuant to RCW 60.28.011, a sum of 5-percent of the monies earned by the Contractor will be retained from progress estimates. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to Title 82, RCW, and (2) the claims of any person arising under the Agreement. Monies retained under the provisions of RCW 60.28.011 (4) (a)- (b) shall, at the option of the Contractor, be:

- 8.3. Release of the retainage will be within 60-days following the Completion Date (pursuant to RCW 39.12, and RCW 60.28.011 (4) provided the following conditions are met:
- 8.3.1. On Contracts totaling more than \$35,000, a release has been obtained from the Washington State Department of Revenue.
  - 8.3.2. Affidavits of Wages Paid for the Contractor and all Subcontractors are on file with the County (RCW 39.12.040).
  - 8.3.3. A certificate of Payment of Contributions Penalties and Interest on Public Works Contract is received from the Washington State Employment Security Department.
  - 8.3.4. Washington State Department of Labor and Industries shows the Contractor is current with payments of industrial insurance and medical aid premiums.
  - 8.3.5. All claims, as provided by law, filed against the retainage have been resolved. In the event claims are filed and provided the conditions of 1, 2, 3 and 4 are met, the Contractor will be paid such retained percentage less an amount sufficient to pay any such claims together with a sum determined by the County sufficient to pay the cost of foreclosing on claims and to cover attorney's fees.

#### **SECTION 9. FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when the Contractor has fully performed the contract except for the Contractor's responsibility to correct any defective work as determined by the County, and to satisfy other requirements, if any, which extend beyond final payment.

#### **SECTION 10. NOTICE**

Any notice required under this Agreement shall be made by first class United States mail, to:

**Yakima County:**

Yakima County Public Services  
Attn: Joe Stump  
128 North 2nd St. Fourth Floor Courthouse  
Yakima, WA 98902

**Contractor:**

Shane's Diversified Pump Service LLC.  
P.O. Box 4149  
Yakima, WA 98904

## **SECTION 11. TERMINATION**

- 11.1 Either party may terminate this Agreement by providing thirty (30) calendar days written notice sent by certified mail to the addresses listed in Section 10.
- 11.2 If the Contractor fails to comply with the terms and conditions of this Agreement, the County may pursue such remedies as are legally available, including, but not limited to, the immediate termination of this Agreement.
- 11.3 If the funds the County relied upon to establish this Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, the County may immediately terminate this Agreement by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice.
- 11.4 If this Agreement is terminated for any reason, County shall pay only for performance rendered or costs incurred in accordance with the terms of this Agreement and prior to the effective date of termination.

## **SECTION 12. BONDS AND INSURANCE**

- 12.1 A performance bond under RCW39.08.010 ( ) Will be (  ) Will not be posted in the amount of \$ \_\_\_\_\_ by the contractor.
- 12.2 If the performance bond and retainage is waived the county retains the right of recovery against the contractor for any payments made on the contractors' behalf.
- 12.3 At all times during the life of this contract, Contractor agrees to maintain, on a primary and non-contributory basis and at its sole expense, the insurance coverages, limits, and endorsements noted below. All such insurance shall not be subject to any deductible or self-insured retention (SIR). There shall be no cancellation, material change, reduction in limits or intent not to renew the insurance coverage(s) without 30 days' written notice from the contractor or its insurer(s) to Yakima County. The requirements contained herein, as well as Yakima County's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this contract.
- 12.3.1 Commercial General Liability insurance at a limit of liability not less than \$2,000,000 Each Occurrence, and \$5,000,000 General Aggregate. Insurance shall be written on ISO occurrence form CG 00 01 or an alternate form providing equal or broader liability coverage. Such coverage shall not contain any endorsement(s) excluding or limiting Products Completed, Operations, or Contractual Liability Cross Liability. Yakima County, its officers, employees, agents, and volunteers shall be named as Additional Insureds under the coverage with respect to the work performed under this Agreement.
- 12.3.2 Business Automobile Liability insurance at a combined single limit of liability for bodily injury and property damage not less than \$2,000,000 Each Occurrence covering all Owned, Non-owned, Hired, and leased automobiles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equal or broader liability coverage. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. If necessary, the policy shall be endorsed to provide contractual liability coverage.

- 12.3.3 Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- 12.4 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability, and Commercial General Liability insurance:
  - 12.4.1 The Contractor's insurance coverage shall be primary insurance as respects those who are Additional Insureds under this Agreement. Any insurance, self-insurance or insurance pool coverage maintained by the County shall be in excess of the Contractor's insurance and shall not contribute to it.
  - 12.4.2 The Contractor's insurance shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.
- 12.5 Verification of Coverage. Prior to execution of this Agreement, Contractor shall furnish the County with original Certificates of Insurance and a copy of any amendatory endorsement, including without limitation, the Additional Insured endorsement, evidencing the insurance requirements.

**SECTION 13. INDEMNIFICATION**

- 13.1 To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold the County and its officers, officials, employees, agents, and volunteers harmless from and against all claims, damages, losses, or expenses including without limitation attorney fees, court costs, or other alternate dispute resolution costs arising out of or resulting from the performance of work under this Agreement, provided that any such claims, damages, losses or expenses are attributable to bodily injury, sickness, disease, death, personal injury, or property damage caused in whole or in part by the negligent acts, errors, or omissions of Contractor, Contractor's subcontractors, anyone directly or indirectly employed or hired by Contractor, or anyone for whose acts Contractor may be liable.
- 13.2 Contractor's Waiver of Employer's Immunity under Title 51 RCW. Contractor intends that its indemnification, defense, and hold harmless obligations set forth in this contract shall operate with full effect regardless of any provision to the contrary in Title 51 RCW, Washington's Industrial Insurance Act. Accordingly, with respect to any action brought by any employee of the Contractor against the County and its officers, employees, agents, and volunteers, Contractor specifically and to the fullest extent allowed by law waives any immunity granted under Title 51 RCW. The parties have mutually negotiated this waiver. Contractor shall similarly require that its subcontractors, and anyone directly or indirectly employed or hired by Contractor, and anyone for whose acts Contractor may be liable in connection with its performance of this Agreement to comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, respect to any action brought by any employee of the subcontractor against the County or any of its officers, employees, agents, and volunteers. The provisions of this section shall survive the expiration or termination of this Agreement.
- 13.3 Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the County, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

13.4 A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

#### **SECTION 14. PREVAILING WAGE**

14.1 The contractor will follow all prevailing wage laws according to RCW 39.12, <http://lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>

14.2 The contractor will submit Intent to Pay Prevailing Wage statements for the contractor and all subcontractors prior to the first payment being made.

14.3 The contractor will submit Affidavits of Wages Paid statements for the contractor and all subcontractors at the completion of the project.

#### **SECTION 15. INDEPENDENT CONTRACTOR**

The parties agree that, for the purposes of this Agreement, the Contractor is an independent contractor and neither the Contractor nor any employee of the Contractor is an employee of the County. Neither the Contractor nor any employee of the Contractor is entitled to any benefits that Yakima County provides its employees. The Contractor is solely responsible for payment of any statutory workers' compensation or employer's liability insurance as required by state law.

#### **SECTION 16. NONDISCRIMINATION**

The Contractor agrees that it shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, sexual orientation, age, marital status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW chapter 49.60) or the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) or any other applicable state, federal or local law, rule or regulation.

The Contractor and any subcontractors shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

#### **SECTION 17. LAWS, VENUE, JURISDICTION**

This Agreement shall be governed by the laws of the State of Washington. Any action, suit, or judicial proceeding for the enforcement of this Agreement shall be brought in the Superior Court for the State of Washington in Yakima County, Washington.

#### **SECTION 18. SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement, which can be given effect without the invalid provision if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

#### **SECTION 19. WAIVER**

Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement.

**SECTION 20. ATTORNEY'S FEES**

In the event that either party shall be required to bring any action to enforce any of the provisions of this License Agreement, or shall be required to defend any action brought by the other party with respect to this License Agreement, and in the further event that one party shall prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts, and as provided for at RCW39.04.240 for awarding attorneys' fees for Public Works contracts.

**SECTION 21. SEVERABILITY**

If any term of this Agreement is held invalid by any court, the remainder of the Agreement remains valid and in full force and effect.

**SECTION 22. RECORDS**

The Contractor agrees to maintain records and documents which accurately reflect all direct and indirect costs related to the delivery of contracted services. The Contractor further agrees to retain all fiscal and program records and other material relevant to this Agreement for at least seven years. Fiscal records must be retained until all audits are resolved.

The Contractor shall, at no cost, provide to the County and the Office of the State Auditor reasonable access to the Contractor's records. These inspection rights are intended to allow the County and the State Auditor to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and these Agreement terms. These inspection rights shall survive seven years following this Agreement's termination or expiration.

**SECTION 23. OWNERSHIP OF MATERIAL**

Material created by the Contractor and paid for by the County as part of this Agreement shall be owned by the County and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the Contractor uses to perform the Program Agreement but is not created for or paid for by the County is owned by the Contractor and is not "work made for hire"; however, the County shall have a perpetual license to use this material for County internal purposes at no charge to the County, provided that such license shall be limited to the extent which the Contractor has a right to grant such a license.

**SECTION 24. DOUBLE PAYMENT PROHIBITED**

The Contractor shall not bill the County for any services, in whole or in part, which have been reimbursed or will be reimbursed by another source. In the event payment is received from another source subsequent to receiving payment from the County, the Contractor shall deduct the amount from the next regular billing.



**SECTION 25. DEBARMENT CERTIFICATION**

The Contractor, by signature to this Contract, certifies the Contractor, its Principals and any Subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (debarred). The Contractor also agrees to include the above language notification requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify the County if, during the term of this Contract, the Contractor, its Principals or Subcontractors becomes debarred. The County may immediately terminate this Contract by providing the Contractor written notice if the Contractor becomes debarred during the term of this Contract.

This Agreement is entered into on the \_\_\_ day of \_\_\_\_\_ 20 20 and is executed with at least three original copies, which shall be delivered to the Contractor, the Public Services Project Manager, Public Services Accounting Department.

**CONTRACTOR:**

Shane's Diversified Pump SVC LLC  
Company Name

Shane Heinrich  
Signature

Shane Heinrich  
Signer's name printed or typed

**BOARD OF YAKIMA COUNTY COMMISSIONERS  
AGREEMENT**

**Agreement Number**

**BOARD OF COUNTY COMMISSIONERS**

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Norm Childress, Chairman

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Ron Anderson, Commissioner

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Vicki Baker, Commissioner

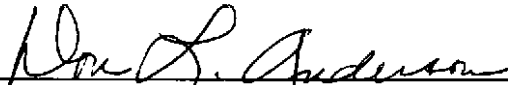
**DATED**

*Attest:*

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\_\_\_\_\_ Melissa Paul, *Clerk of the Board*  
\_\_\_\_\_ Linda Kay O'Hara, *Deputy Clerk*

**Approved as to Form:**

  
\_\_\_\_\_  
*Deputy Prosecuting Attorney*