

# Agenda Summary Report (ASR)

## Franklin County Board of Commissioners

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| <b>DATE SUBMITTED:</b> 09/21/21                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>PREPARED BY:</b> Jennifer Wagner, Facilities Dir. |
| <b>Meeting Date Requested:</b> 09/28/21                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>PRESENTED BY:</b> Jennifer Wagner                 |
| <b>ITEM:</b> (Select One) <input checked="" type="checkbox"/> Consent Agenda <input type="checkbox"/> Brought Before the Board<br>Time needed:                                                                                                                                                                                                                                                                                                                 |                                                      |
| <b>SUBJECT:</b> Public Works Contract for Bruce, Inc. to provide HVAC maintenance for all facilities owned by Franklin county including Franklin County Courthouse, Public Safety Building, Corrections Center, Franklin County Annex, Franklin County Public Works Administration, Franklin County Public Works Shop, Connell Shop and Veterans Center.                                                                                                       |                                                      |
| <b>FISCAL IMPACT:</b> \$169,503.56 including tax for 3-year total                                                                                                                                                                                                                                                                                                                                                                                              |                                                      |
| <b>BACKGROUND:</b><br>The campus HVAC is an environmental system and an essential function of the buildings. Therefore this contract falls under Emergency Public Works and Purchases and would become exempt from competitive bidding.<br>We currently have a 3 year contract with Bruce Inc. and they have agreed to an additional 3 year contract at the same pricing from the original 2019 agreement. This is extremely advantageous for Franklin County. |                                                      |
| <b>RECOMMENDATION</b> Franklin County Facilities recommends signing the Public Works Contract between Franklin County and Bruce, Inc. for a period of 3 years.<br>Franklin County Facilities recommends signing of the Resolution                                                                                                                                                                                                                              |                                                      |
| <b>COORDINATION:</b> Jennifer Johnson, Chief Civil DPA & Risk Manager, Contract review and discussion.<br>Keith Johnson, County Administrator, discussion                                                                                                                                                                                                                                                                                                      |                                                      |
| <b>ATTACHMENTS:</b> Public Works Contracts; Bruce Mechanical Inc<br>Franklin County Resolution                                                                                                                                                                                                                                                                                                                                                                 |                                                      |
| <b>HANDLING / ROUTING:</b> Franklin County Facilities, Auditor, Bruce Inc.                                                                                                                                                                                                                                                                                                                                                                                     |                                                      |

*I certify the above information is accurate and complete.*

J. Wagner, FACILITIES DIR. Name, Title

**FRANKLIN COUNTY RESOLUTION NO. \_\_\_\_\_**

BEFORE THE BOARD OF COUNTY COMMISSIONERS, FRANKLIN COUNTY, WASHINGTON

**RE: PUBLIC WORKS CONTRACT BETWEEN FRANKLIN COUNTY AND BRUCE MECHANICAL, INC.**

**WHEREAS**, pursuant to RCW 36.01.010 and RCW 36.32.120 the legislative authority of each county is authorized to enter into contracts on behalf of the county and ensure the care of county property and management of county funds and business; and

**WHEREAS**, the Board of Franklin County Commissioners constitutes the legislative authority of Franklin County and desires to enter into the attached agreement as being in the best interest of Franklin County.

**NOW, THEREFORE, BE IT RESOLVED** that the attached Public Works Contract between Franklin County and Bruce Mechanical, Inc., for HVAC maintenance of the Franklin County Courthouse, Public Safety Building, Justice Center, Corrections Center, Franklin County Annex, Public Works Administration, Public Works Shop, Connell Shop and the Veterans Center, in the yearly amount of \$169,503.56, is hereby approved by the Board.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2021

**BOARD OF COUNTY COMMISSIONERS  
FRANKLIN COUNTY, WASHINGTON**

\_\_\_\_\_  
Chair

Attest:

\_\_\_\_\_  
Chair Pro Tem

\_\_\_\_\_  
Clerk to the Board

\_\_\_\_\_  
Member

## **PUBLIC WORKS CONTRACT**

### **FRANKLIN COUNTY/ Bruce Inc.**

**THIS CONTRACT** is made and entered into in duplicate originals by and between **FRANKLIN COUNTY**, a political subdivision of the State of Washington, with its principal offices at 1016 North Fourth, Pasco, Washington, 99301, hereinafter "**COUNTY**" and **Bruce Inc. Heating and Air-Conditioning**, with its principal offices at 5115 W. Brinkley Rd. Suite C, Kennewick, WA, 99338, hereinafter "**CONTRACTOR**."

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

#### **1. DURATION OF CONTRACT**

The term of this Contract shall begin immediately, and shall terminate on March 31, 2025, unless terminated sooner as set forth herein.

#### **2. SERVICES AND GOODS PROVIDED BY THE CONTRACTOR**

The CONTRACTOR shall provide the following goods and services:

To provide HVAC maintenance for all facilities owned by Franklin County including Franklin county courthouse, Public Safety Building, Corrections Center, Justice Center, Franklin County Annex, Franklin County Public Works Administration, Franklin County Public Works Shop, Connell Shop and the Veterans Center.

a. A detailed description of the goods and services to be performed by the CONTRACTOR is set forth in Exhibit "A" and "A-1" which is attached hereto and incorporated herein by reference.

b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor, or facilities will be furnished by the COUNTY.

c. The CONTRACTOR shall perform according to standard industry practice of the work specified by this Contract.

d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed to by the parties.

e. The CONTRACTOR shall, from time to time, during the progress of the work, confer with the COUNTY. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

f. The CONTRACTOR shall pay prevailing rate of wage as required by RCW 39.12. These requirements are further described in Exhibit "C" which is attached hereto and incorporated herein by reference.

3. **SERVICES PROVIDED BY THE COUNTY**

In order to assist the CONTRACTOR in fulfilling its duties under this Contract, the COUNTY shall provide the following:

a. Relevant information as exists to assist the CONTRACTOR with the performance of the CONTRACTOR'S services.

b. Coordination with other County Departments or other Consultants as necessary for the performance of the CONTRACTOR'S services.

c. Services, documents, or other information identified in Exhibit "A."

4. **CONTRACT REPRESENTATIVES**

a. For CONTRACTOR: Bruce Inc.

Name of Representative: Maryann Bruce

Title: Principal

Mailing Address: 5115 W. Brinkley Rd. Suite C

City, State, and Zip Code: Kennewick, WA 99338

Telephone Number: 509-734-0669

Fax Number: 509-783-8903

E-Mail Address: maryann@bruceinc.com

b. For COUNTY:

Name of Representative: Jennifer Wagner

Title: Facilities Director

Mailing Address: 1016 N. Fourth Avenue

City, State, and Zip Code: Pasco, WA 99301

Telephone Number: (509) 543-2994

E-Mail Address: jwagner@co.franklin.wa.us

**5. COMPENSATION**

a. For the services performed hereunder, the CONTRACTOR shall be paid based upon mutually agreed rates contained in Exhibit "B," which is attached hereto and incorporated herein by reference. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed \$169,503.56 including sales tax for the 3-year term.

b. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract or supporting exhibits or attachments.

c. The CONTRACTOR may, in accordance with Exhibit "B," submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of the work and will remit payment within thirty (30) days from the date of billing.

d. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.

e. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, then the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.

f. Unless otherwise provided for in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for payment prior to the execution of this Contract or after its termination.

**6. AMENDMENTS AND CHANGES IN WORK**

a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

b. No amendment, modification or renewal shall be made to this Contract unless set forth in a written Contract Amendment, signed by both parties' authorized representatives and attached to this Contract. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

## **7. HOLD HARMLESS AND INDEMNIFICATION**

a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the CONTRACTOR'S acts, errors, or omissions in the performance of this Contract. PROVIDED HOWEVER, that the CONTRACTOR'S obligations hereunder shall apply only to the percentage of fault attributable to the CONTRACTOR, its employees or agents.

b. In any and all claims against the COUNTY, officers, officials, employees, and agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Worker's Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws. By executing the Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract this CONTRACTOR makes with any subcontractor or agent performing work hereunder.

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, the CONTRACTOR'S employees, agents or subcontractors.

## **8. INSURANCE**

The CONTRACTOR shall be required to maintain insurance as set forth in Exhibit "E", which is attached hereto and incorporated herein by reference, and as set forth below:

### **a. Professional Legal Liability:**

The CONTRACTOR, if he is a licensed professional, shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the CONTRACTOR'S

profession and shall be written subject to limits of not less than One Million Dollars (\$1,000,000.00) per loss.

The coverage shall apply to liability for a professional error, act, or omission arising out of the scope of the CONTRACTOR'S services defined in this Contract. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the CONTRACTOR'S services as defined by this Contract including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the CONTRACTOR'S services as defined by this Contract including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract. The policy shall state that coverage is claims made, and state the retroactive date. CONTRACTOR is also required to buy claims made professional liability insurance for a period of 36 months after completion of this Contract, which can be satisfied by the continuous purchase of the above referenced insurance or an extended reporting period policy. CONTRACTOR shall annually provide COUNTY with proof of all such insurance.

**b. Worker's Compensation and Employer's Liability:**

The CONTRACTOR shall maintain worker's compensation insurance as required by Title 51, RCW, and shall provide evidence of coverage to the Franklin County Risk Manager. If this Contract is over Fifty Thousand Dollars (\$50,000.00), then the CONTRACTOR shall also maintain Employees Liability Coverage with a limit of not less than One Million Dollars (\$1,000,000.00).

**c. Industrial Insurance Premiums and Confession of Judgment:**

1. The CONTRACTOR shall pay, and is responsible for payment of, all industrial insurance premiums that become due and payable to the Washington State Department of Labor and Industries (Department) pursuant to Title 51, RCW, whether such premiums are attributable to the CONTRACTOR or its subcontractors.

2. In the event that Franklin County is required to make payment of industrial insurance premiums to the Department due to the failure, neglect or refusal of the CONTRACTOR to make payment as required herein, the CONTRACTOR authorizes Franklin County to take judgment against it and the contract hereby confesses judgment, in the amount which Franklin County is required to pay the Department pursuant to Title 51, RCW to satisfy CONTRACTOR'S liabilities hereunder. The CONTRACTOR confesses judgment in an amount equal to the entire industrial insurance premium liability due to the Department on behalf of the CONTRACTOR and its subcontractors hereunder, less any premium payments previously made to the Department by the CONTRACTOR.

3. The CONTRACTOR agrees that the amount confessed herein was expressly negotiated and that the amount due to Franklin County for satisfying CONTRACTOR'S obligations to the Department hereunder is due, justly due or to become due.

4. Until such time as Franklin County is actually reimbursed for industrial insurance premiums paid to the Department due to the failure, neglect, or refusal of the CONTRACTOR to meet its obligations hereunder, the CONTRACTOR shall be debarred from bidding on any projects for which Franklin County solicits bids.

**d. Commercial General Liability:**

If the CONTRACTOR has contact with the public arising out of the scope of the CONTRACTOR'S services defined in this Contract, the CONTRACTOR shall maintain Commercial General Liability coverage for bodily injury, personal injury, and property damage, subject to limits set forth in Exhibit E and no less than Five Hundred Thousand Dollars (\$500,000.00) per loss. The general aggregate limit shall also be as set forth in Exhibit E and shall apply separately to this Contract and be no less than One Million Dollars (\$1,000,000.00).

The CONTRACTOR will provide Commercial General Liability coverage which does not exclude any activity to be performed in fulfillment of this Contract. Specialized forms specific to the industry of the CONTRACTOR will be deemed equivalent provided coverage is no more restrictive than would be provided under a standard Commercial General Liability policy, including contractual liability coverage.

**e. Automobile Liability:**

The CONTRACTOR shall maintain automobile liability insurance as follows:

X The CONTRACTOR shall maintain Business Automobile Liability Insurance with a limit of not less than One Million Dollars (\$1,000,000.00) each accident combined Bodily Injury and Property Damages. Coverage shall include owned, hired, and non-owned automobiles.

-OR-

       The CONTRACTOR shall maintain Automobile Liability Insurance or equivalent form with a limit of not less than One Hundred Thousand Dollars (\$100,000.00) each accident combined Bodily Injury and Property Damage. The aggregate limit shall be at least Three Hundred Thousand Dollars (\$300,000.00). If a personal lines Automobile Liability policy is used to meet this requirement, it must include a business rider and must cover each vehicle to be used in the performance of this Contract and the certificates of insurance must evidence these conditions have been met. If the CONTRACTOR will use non-owned vehicles in performance of this Contract, the coverage shall include owned, hired and non-owned automobiles.

-OR-

       Not Applicable.



**f. Other Insurance Provisions:**

i. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees, and agents.

ii. Where such coverage is required, the CONTRACTOR'S Commercial General Liability Insurance and Automobile Liability Insurance shall include the COUNTY, its officers, officials, employees, and agents as additional insureds with respect to performance of services.

iii. Where such coverage is required, the CONTRACTOR'S Commercial General Liability Insurance and Automobile Liability Insurance shall contain no special limitations on the scope of protection afforded to the COUNTY as additional insured.

iv. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the COUNTY, its officers, officials, employees, or agents.

v. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

vi. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

vii. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limits of indemnification.

viii. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. The CONTRACTOR'S liability coverages required herein this Contract shall only be contingency occurrence based policies excluding automobile and professional liability coverage.

**g. Verification of Coverage and Acceptability of Insurers:**

The CONTRACTOR shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A:7 with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.

i. The CONTRACTOR shall furnish the COUNTY with properly executed certificates of insurance or a signed policy endorsement which shall clearly evidence all insurance required in this section prior to commencement of services. The certificate will, at a minimum, list limits of liability and coverage. The certificate will provide that the underlying insurance contract will not be canceled, allowed to expire, except on thirty (30) days prior written notice to the COUNTY.

Any certificate or endorsement limiting or negating the insurer's obligation to notify the COUNTY of cancellation or changes shall be altered so as not to negate the intent of this provision.

ii. The CONTRACTOR shall furnish the COUNTY with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the COUNTY, its officers, officials, employees, and agents as an additional insured.

iii. The CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, send written verification to Franklin County that the CONTRACTOR is currently paying Workers Compensation.

iv. Written notice of cancellation or change shall be mailed to the COUNTY at the following address:

ATTN: Franklin County Prosecuting Attorney's Office  
Attn: Risk Manager  
1016 North Fourth Avenue  
Pasco, Washington 99301

v. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in the Contract upon request of the Franklin County Risk Manager.

## 9. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 5 of this Contract.

b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision of this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by the COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract are allowable.

c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may terminate this Contract, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with Section 5 of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

10. **ASSIGNMENT, DELEGATION, AND SUBCONTRACTING**

a. The CONTRACTOR shall perform the terms of the contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTY'S authorized representatives.

b. The CONTRACTOR warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be or deem to be or act or purport to act as an employee, agent, or representative of the COUNTY.

d. The CONTRACTOR shall assume full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes, fees, licenses, excises, or payments required by any city, county, federal, or state legislation which is now or may during the term of this Contract be enacted as to all persons employed by the CONTRACTOR and as to all duties, activities and requirements by the CONTRACTOR in performance of the work on this project and under this Contract and shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules and regulations.

e. The CONTRACTOR agrees to immediately remove any of its employees or agents from assignment to perform services under this Contract upon receipt of a written request to do from the COUNTY'S contract representative or designee.

11. **NON-WAIVER OF RIGHTS**

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time.

12. **INDEPENDENT CONTRACTOR**

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an Independent Contractor and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and the CONTRACTOR is not entitled to any County benefits,

including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to Franklin County employees.

13. **COMPLIANCE WITH LAWS**

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

14. **INSPECTION OF BOOKS AND RECORDS**

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract for five (5) years after termination of this Contract for audit purposes.

15. **NONDISCRIMINATION**

The CONTRACTOR, its assignees, delegates or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, religion, natural origin, age, sex, marital status, veteran status, sexual orientation or the presence of any disability. Implementation of this provision shall be consistent with Initiative 200, Sec. 1 (effective 12/3/98).

16. **NON-COLLUSION**

The CONTRACTOR shall sign and abide by the "NON-COLLUSION DECLARATION" attached hereto and incorporated herein by reference as Exhibit "D."

17. **OWNERSHIP OF MATERIALS/WORK PRODUCED**

All reports, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under this Contract shall be "Works for hire" as defined by the U. S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for the purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefore to the extent such use is agreed to in writing by the CONTRACTOR.

An electronic copy of all word processing documents shall be submitted to the COUNTY, upon request or at the end of the job using the word processing program and version specified by the COUNTY.

## 18. **DISPUTES**

Disputes between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, 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.

Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek alternative relief as outlined below.

Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the Parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Agreement, including but not limited to payment disputes, through the alternative dispute resolutions as listed below.

### **A. NEGOTIATION**

The Parties shall first attempt to resolve any controversies or disputes arising out of or relating to this Agreement through a good faith attempt at negotiation between the Parties or their designees.

### **B. MEDIATION**

If the Parties are unable to resolve the dispute via negotiation, the Parties shall next attempt to resolve any controversies or disputes arising out of or relating to this Agreement through a good faith attempt at mediation as outlined in RCW 7.07. The mediation shall be conducted by a mediator that is mutually agreed upon by the Parties. Each party will pay its own attorneys' fees and costs and the cost of the mediator shall be equally split by the Parties.

### **C. ARBITRATION**

1. Any controversy or claim arising out of or relating to this Agreement that is not resolved through mediation shall be resolved by final and binding arbitration pursuant to RCW 7.04A. Demand for arbitration shall be made in writing to the other party and shall be brought within three (3) years after the initial occurrence giving rise to the claim, dispute, or issue for which the arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature.

2. The arbitration shall be held in Franklin County before a single arbitrator selected by the Agreement of the parties. If the parties cannot agree upon an arbitrator within fifteen (15) days after the demand for arbitration is made, the arbitrator shall be selected by a judge in the Superior Court of Franklin County in accordance with the procedures set out in RCW 7.04A.110.

3. Unless the parties agree otherwise in writing, the arbitration hearing shall occur no later than sixty (60) days after the date the arbitrator is appointed.

4. The parties agree that, with the exception of the circumstances set out in RCW 7.04A.230, the arbitrator's decision shall be binding, final and not appealable to any court of law.

5. Each party shall pay its own costs of arbitration including attorneys' fees. The arbitrator's fee and any administrative expenses imposed by the arbitrator shall be shared equally by the parties.

#### **19. CHOICE OF LAW, JURISDICTION, AND VENUE**

a. This Contract has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Franklin County, Washington.

#### **20. SEVERABILITY**

If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

#### **21. ENTIRE AGREEMENT**

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

#### **22. NOTICES**

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Section 4. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing or immediately if personally served. For service by

facsimile, service shall be effective upon receipt during working hours. If a facsimile is sent after working hours, it shall be effective at the beginning of the next working day.

23. **ACKNOWLEDGMENT**

CONTRACTOR acknowledges that the Franklin County Courthouse, Public Safety Building, facilities, and its offices and departments therein, contain records and information that is confidential or privileged by operation of law. As a result the CONTRACTOR acknowledges and agrees that in the course of performing this Contract its employees or agents shall at all times refrain from engaging in any activities that would expose them to, or others to, such confidential or privileged information.

24. **SURVIVABILITY**

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to, indemnification provisions (Sections [7]); extended reporting period requirements for professional liability insurance (Section [8(a)]); inspection and keeping of records and books (Section [14]); litigation hold notice (Section [25]); Public Records Act (Section [26]).

25. **LITIGATION HOLD NOTICE**

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section [14] of this contract may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule as set out above in Section [14].

26. **PUBLIC RECORDS ACT**

CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, RCW 42.56 *et seq.* Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTY may be required by virtue of that Act to disclose any records actually in its possession or deemed by judicial determination to be in its possession, which may include records provided to the COUNTY by CONTRACTOR that CONTRACTOR might regard as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, it agrees to conspicuously mark the records as such. CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act which will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

The parties to this Contract have executed this Contract in original duplicates as of the date written below.

This Contract shall take effect this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

CONTRACTOR:

BOARD OF COUNTY COMMISSIONERS  
Franklin County, Washington

Firm: Bruce, Inc.

\_\_\_\_\_  
Chairman

By: MARY ANN BRUCE

\_\_\_\_\_  
Chairman Pro Tem

Signature: 

\_\_\_\_\_  
Member

Title: officer

ATTEST BY:

\_\_\_\_\_  
Clerk of the Board

Approved as to form by:

 9/10/21  
\_\_\_\_\_  
Franklin County Prosecutors Office



## EXHIBIT "A"

### PUBLIC WORKS CONTRACT

FRANKLIN COUNTY/ **Bruce, Inc.**

### **SERVICES PROVIDED BY THE PARTIES**

1. The services to be performed by the CONTRACTOR under this Contract, which are also in part described in Section 2 of the Contract, (SERVICES PROVIDED BY THE CONTRACTOR), are set forth as follows:

To provide HVAC maintenance for all facilities owned by Franklin County including Franklin county courthouse, Public Safety Building, Corrections Center, Justice Center, Franklin County Annex, Franklin County Public Works Administration, Franklin County Public Works Shop, Connell Shop and Veterans Center.

### GENERAL PROVISIONS

A. All materials, labor, engineering, supervision, subcontractors, and permits for complete operating systems are to be provided by the CONTRACTOR.

2. The services to be performed by the COUNTY under this Contract, which are described in Section 3 of the Contract (SERVICES PROVIDED BY THE COUNTY), are set forth as follows (if applicable):

---

# EXHIBIT "A-1"

## PUBLIC WORKS CONTRACT

FRANKLIN COUNTY/ Bruce, Inc.

### SERVICES PROVIDED BY THE PARTIES

| FACILITY                   | COST/YEAR           | 3 YEAR TERM          | TAX @ 6%             | Jan | Feb | March | April  | May | June | July | Aug | Sept | Oct | Nov | Dec |
|----------------------------|---------------------|----------------------|----------------------|-----|-----|-------|--------|-----|------|------|-----|------|-----|-----|-----|
| ANNEX                      | \$ 4,655.12         | \$ 13,965.37         | \$ 15,166.40         |     | fc  |       | 30 day | cps |      |      | fc  |      |     | hps |     |
| CONNELL PUBLIC WORKS       | \$ 372.15           | \$ 1,116.45          | \$ 1,212.47          |     | fc  |       | 30 day | cps |      |      | fc  |      |     | hps |     |
| JUSTICE/CORRECTIONS CENTER | \$ 24,951.93        | \$ 74,855.79         | \$ 81,293.38         |     | fc  |       | 30 day | cps |      |      | fc  |      |     | hps |     |
| COURTHOUSE                 | \$ 11,277.52        | \$ 33,832.56         | \$ 36,742.16         |     | fc  |       | 30 day | cps |      |      | fc  |      |     | hps |     |
| PUBLIC SAFETY BUILDING     | \$ 9,250.15         | \$ 27,750.45         | \$ 30,136.99         |     | fc  |       | 30 day | cps |      |      | fc  |      |     | hps |     |
| PUBLIC WORKS OFFICE        | \$ 250.00           | \$ 750.00            | \$ 814.50            |     | fc  |       | 30 day | cps |      |      | fc  |      |     | hps |     |
| PUBLIC WORKS SHOP          | \$ 250.00           | \$ 750.00            | \$ 814.50            |     | fc  |       | 30 day | cps |      |      | fc  |      |     | hps |     |
| <b>TOTAL:</b>              | <b>\$ 51,006.87</b> | <b>\$ 153,020.62</b> | <b>\$ 166,180.40</b> |     |     |       |        |     |      |      |     |      |     |     |     |

Environmental controls maintenance will be performed during the *Spring* cooling planned service

cooling tower filled in *Spring*, drained in *Fall*

Water treatment of the closed loops will have an annual inspection. Open condenser loop will be monitored monthly when in service

Condenser of water cooled chiller will be "punched" during *Spring* maintenance.

Assessment of equipment will be performed within 30 days of awarded contract

*cps*- cooling planned service

*fc*-filter change

*hps*-heating planned service

\*Addition: Veterans Center located at 1020 S. 7<sup>th</sup> Ave. Pasco, WA.

Cost is \$1,107.72 a year. \$3,323.16 for 3 year contract

EXHIBIT "B"

PUBLIC WORKS CONTRACT

FRANKLIN COUNTY/ **Bruce, Inc.**

**COMPENSATION**

1. The CONTRACTOR'S compensation under this Contract, which is described in Section 5 of the Contract (COMPENSATION), is set forth as follows:

\$169,503.56 including any sales tax for the 3-year term.

EXHIBIT "C"

PUBLIC WORKS CONTRACT

FRANKLIN COUNTY/ **Bruce, Inc.**

REQUIRED CONTRACT PROVISIONS – STATE DEPARTMENT OF LABOR AND INDUSTRIES

Chapter 39.12 RCW  
PREVAILING WAGES ON PUBLIC WORKS

39.12.010 Definitions.

(1) The "prevailing rate of wage", for the intents and purposes of this chapter, shall be the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage for the purposes of this chapter shall be mathematically determined by the number of hours worked in such period of time.

(2) The "locality" for the purposes of this chapter shall be the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" for the purposes of this chapter shall include the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits.

(4) An "interested party" for the purposes of this chapter shall include a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, and the director of labor and industries or the director's designee.

[1989 c 12 § 6; 1985 c 15 § 1; 1965 ex.s. c 133 § 1; 1945 c 63 § 3; Rem. Supp. 1945 § 10322-22.]

Notes:

Severability -- 1985 c 15: See note following RCW 39.12.065.

39.12.015 Industrial statistician to make determinations of prevailing rate.

All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.

[1965 ex.s. c 133 § 2.]

39.12.020 Prevailing rate to be paid on public works and under public building service maintenance contracts — posting of statement of intent — exception.

The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the job site: PROVIDED, That on road construction, sewer line, pipeline, transmission line, street, or alley improvement projects for which no field office is needed or established, a contractor may post the prevailing rate of wage statement at the contractor's local office, gravel crushing, concrete, or asphalt batch plant as long as the contractor provides a copy of the wage statement to any employee on request:

(1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW 39.12.040; and

(2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

This chapter shall not apply to workers or other persons regularly employed by the state, or any county, municipality, or political subdivision created by its laws.

[2007 c 169 § 1; 1989 c 12 § 7; 1982 c 130 § 1; 1981 c 46 § 1; 1967 ex.s. c 14 § 1; 1945 c 63 § 1; Rem. Supp. 1945 § 10322-20.]

39.12.021 Prevailing rate to be paid on public works — apprentice workers.

Apprentice workers employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council pursuant to chapter 49.04 RCW, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship

council shall be considered to be a fully qualified journey level worker, and, therefore, shall be paid at the prevailing hourly rate for journey level workers.

[1989 c 12 § 8; 1963 c 93 § 1.]

39.12.022 Vocationally handicapped — exemption from RCW 39.12.020 — procedure.

The director of the department of labor and industries, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations provide for the employment of individuals whose earning capacity is impaired by physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the prevailing rate applicable under RCW 39.12.020 and for such period as shall be fixed in such certificates.

[1972 ex.s. c 91 § 1.]

39.12.026 Surveys — applicability by county.

(1) In establishing the prevailing rate of wage under RCW 39.12.010, 39.12.015, and 39.12.020, all data collected by the department may be used only in the county for which the work was performed.

(2) This section applies only to prevailing wage surveys initiated on or after August 1, 2003.

[2003 c 363 § 206.]

Notes:

Findings -- Intent -- 2003 c 363 §§ 201-206: See note following RCW 49.04.041.

Part headings not law -- Severability -- 2003 c 363: See notes following RCW 47.28.241.

39.12.030 Contract specifications must state minimum hourly rate — stipulation for payment — residential and commercial construction work.

(1) The specifications for every contract for the construction, reconstruction, maintenance or repair of any public work to which the state or any county, municipality, or political subdivision created by its laws is a party, shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation required for such public work employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall contain a stipulation that such laborers, workers, or mechanics shall be paid not less than such specified hourly minimum rate of wage. If the awarding agency determines that the work contracted for meets the definition of residential construction, the contract must include that information.

(2) If the hourly minimum rate of wage stated in the contract specifies residential construction rates and it is later determined that the work performed is commercial and subject to commercial construction rates, the state, county, municipality, or political subdivision that entered into the contract must pay the difference between the residential rate stated and the actual commercial rate to the contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work under the contract.

[2009 c 62 § 1; 1989 c 12 § 9; 1945 c 63 § 2; Rem. Supp. 1945 § 10322-21.]

39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid — alternative procedure.

(1) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it shall be the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages shall include:

(a) The contractor's registration certificate number; and

(b) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it shall be the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an "Affidavit of Wages Paid" before the funds retained according to the provisions of RCW 60.28.011 are released to the contractor. If a subcontractor performing work on a public works project fails to submit an "affidavit of wages paid" form, the contractor or subcontractor with whom the subcontractor had a contractual relationship for the project may file the forms on behalf of the nonresponsive subcontractor. Affidavit forms may only be filed on behalf of a nonresponsive subcontractor who has ceased operations or failed to file as required by this section. Filings made on behalf of a subcontractor may not be accepted sooner than thirty-one days after the acceptance date of the public works project and the contractor filing the affidavit must accept responsibility for payment of prevailing wages unpaid by the subcontractor on the project pursuant to RCW 39.12.020 and 39.12.065. Intentionally filing a false affidavit on behalf of a subcontractor subjects the filer to the same penalties as are provided in RCW 39.12.050. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five hundred dollars or less and for projects where the limited public works process under RCW 39.04.155(3) is followed:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency shall retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency shall require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW 60.28.011. Within thirty days of receipt of the affidavit of wages paid, the awarding agency shall submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid shall be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in subsection (2) of this section, the awarding agency shall pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section shall be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by subsection (1) of this section.

[2012 c 129 § 1; 2009 c 219 § 2; 2007 c 210 § 4; 1991 c 15 § 1; 1982 c 130 § 2; 1981 c 46 § 2; 1975-'76 2nd ex.s. c 49 § 1; 1965 ex.s. c 133 § 3; 1945 c 63 § 4; Rem. Supp. 1945 § 10322-23.]

39.12.042 Compliance with RCW 39.12.040 — liability of public agencies to workers, laborers, or mechanics.

If any agency of the state, or any county, municipality, or political subdivision created by its laws shall knowingly fail to comply with the provisions of RCW 39.12.040 as now or hereafter amended, such agency of the state, or county, municipality, or political subdivision created by its laws, shall be liable to all workers, laborers, or mechanics to the full extent and for the full amount of wages due, pursuant to the prevailing wage requirements of RCW 39.12.020.



[1993 c 404 § 3; 1989 c 12 § 11; 1975-'76 2nd ex.s. c 49 § 2.]

Notes:

Effective date -- 1993 c 404: See note following RCW 39.12.070.

39.12.050 False statement or failure to file — penalty — unpaid wages lien against bond and retainage — prohibitions on bidding on future contracts — hearing.

(1) Any contractor or subcontractor who files a false statement or fails to file any statement or record required to be filed under this chapter and the rules adopted under this chapter, shall, after a determination to that effect has been issued by the director after hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred dollars for each false filing or failure to file, and shall not be permitted to bid, or have a bid considered, on any public works contract until the penalty has been paid in full to the director. The civil penalty under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error. Civil penalties shall be deposited in the public works administration account.

To the extent that a contractor or subcontractor has not paid wages at the rate due pursuant to RCW 39.12.020, and a finding to that effect has been made as provided by this subsection, such unpaid wages shall constitute a lien against the bonds and retainage as provided in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

(2) If a contractor or subcontractor is found to have violated the provisions of subsection (1) of this section for a second time within a five year period, the contractor or subcontractor shall be subject to the sanctions prescribed in subsection (1) of this section and shall not be allowed to bid on any public works contract for one year. The one year period shall run from the date of notice by the director of the determination of noncompliance. When an appeal is taken from the director's determination, the one year period shall commence from the date of the final determination of the appeal.

The director shall issue his or her findings that a contractor or subcontractor has violated the provisions of this subsection after a hearing held subject to the provisions of chapter 34.05 RCW.

[2009 c 219 § 3; 2001 c 219 § 1; 1985 c 15 § 3; 1977 ex.s. c 71 § 1; 1973 c 120 § 1; 1945 c 63 § 5; Rem. Supp. 1945 § 10322-24.]

Notes:

Severability -- 1985 c 15: See note following RCW 39.12.065.

39.12.055 Prohibitions on bidding on future contracts.

A contractor shall not be allowed to bid on any public works contract for one year from the date of a final determination that the contractor has committed any combination of two of the following violations or infractions within a five-year period:

Public Works Contract

Page 23 of 32

Revised March 2018

(1) Violated RCW 51.48.020(1) or 51.48.103;

(2) Committed an infraction or violation under chapter 18.27 RCW for performing work as an unregistered contractor; or

(3) Determined to be out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW.

[2009 c 197 § 3; 2008 c 120 § 3.]

Notes:

Rules -- Implementation -- 2009 c 197: See note following RCW 39.04.320.

Conflict with federal requirements -- Severability -- 2008 c 120: See notes following RCW 18.27.030.

39.12.060 Director of labor and industries to arbitrate disputes.

Such contract shall contain a further provision that in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the department of labor and industries of the state and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute.

[1989 c 12 § 10; 1965 ex.s. c 133 § 4; 1945 c 63 § 6; Rem. Supp. 1945 § 10322-25.]

Notes:

Arbitration of disputes: Chapter 49.08 RCW.

Uniform arbitration act: Chapter 7.04A RCW.

39.12.065 Investigation of complaints — hearing — remedies — penalties.

(1) Upon complaint by an interested party, the director of labor and industries shall cause an investigation to be made to determine whether there has been compliance with this chapter and the rules adopted hereunder, and if the investigation indicates that a violation may have occurred, a hearing shall be held in accordance with chapter 34.05 RCW. The director shall issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys fees.

A complaint concerning nonpayment of the prevailing rate of wage shall be filed with the  
Public Works Contract  
Page 24 of 32  
Revised March 2018

department of labor and industries no later than thirty days from the acceptance date of the public works project. The failure to timely file such a complaint shall not prohibit a claimant from pursuing a private right of action against a contractor or subcontractor for unpaid prevailing wages. The remedy provided by this section is not exclusive and is concurrent with any other remedy provided by law.

(2) To the extent that a contractor or subcontractor has not paid the prevailing rate of wage under a determination issued as provided in subsection (1) of this section, the director shall notify the agency awarding the public works contract of the amount of the violation found, and the awarding agency shall withhold, or in the case of a bond, the director shall proceed against the bond in accordance with the applicable statute to recover, such amount from the following sources in the following order of priority until the total of such amount is withheld:

(a) The retainage or bond in lieu of retainage as provided in RCW 60.28.011;

(b) If the claimant was employed by the contractor or subcontractor on the public works project, the bond filed by the contractor or subcontractor with the department of labor and industries as provided in RCW 18.27.040 and 19.28.041;

(c) A surety bond, or at the contractor's or subcontractor's option an escrow account, running to the director in the amount of the violation found; and

(d) That portion of the progress payments which is properly allocable to the contractor or subcontractor who is found to be in violation of this chapter. Under no circumstances shall any portion of the progress payments be withheld that are properly allocable to a contractor, subcontractor, or supplier, that is not found to be in violation of this chapter.

The amount withheld shall be released to the director to distribute in accordance with the director's determination.

(3) A contractor or subcontractor that is found, in accordance with subsection (1) of this section, to have violated the requirement to pay the prevailing rate of wage shall be subject to a civil penalty of not less than one thousand dollars or an amount equal to twenty percent of the total prevailing wage violation found on the contract, whichever is greater, and shall not be permitted to bid, or have a bid considered, on any public works contract until such civil penalty has been paid in full to the director. If a contractor or subcontractor is found to have participated in a violation of the requirement to pay the prevailing rate of wage for a second time within a five-year period, the contractor or subcontractor shall be subject to the sanctions prescribed in this subsection and as an additional sanction shall not be allowed to bid on any public works contract for two years. Civil penalties shall be deposited in the public works administration account. If a previous or subsequent violation of a requirement to pay a prevailing rate of wage under federal or other state law is found against the contractor or subcontractor within five years from a violation under this section, the contractor or subcontractor shall not be allowed to bid on any public works contract for two years. A contractor or subcontractor shall not be barred from bidding on any public works contract if the contractor or subcontractor relied upon written information from the department to pay a prevailing rate of wage that is later determined to be in violation of this chapter. The civil penalty and sanctions

under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error. To the extent that a contractor or subcontractor has not paid the prevailing wage rate under a determination issued as provided in subsection (1) of this section, the unpaid wages shall constitute a lien against the bonds and retainage as provided herein and in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

[2009 c 219 § 4; 2001 c 219 § 2; 1994 c 88 § 1; 1985 c 15 § 2.]

Notes:

Severability -- 1985 c 15: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 15 § 4.]

#### 39.12.070 Fees authorized for approvals, certifications, and arbitrations.

The department of labor and industries may charge fees to awarding agencies on public works for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid. The department may also charge fees to persons or organizations requesting the arbitration of disputes under RCW 39.12.060. The amount of the fees shall be established by rules adopted by the department under the procedures in the administrative procedure act, chapter 34.05 RCW. The fees shall apply to all approvals, certifications, and arbitration requests made after the effective date of the rules. All fees shall be deposited in the public works administration account. The department may refuse to arbitrate for contractors, subcontractors, persons, or organizations which have not paid the proper fees. The department may, if necessary, request the attorney general to take legal action to collect delinquent fees.

The department shall set the fees permitted by this section at a level that generates revenue that is as near as practicable to the amount of the appropriation to administer this chapter, including, but not limited to, the performance of adequate wage surveys, and to investigate and enforce all alleged violations of this chapter, including, but not limited to, incorrect statements of intent to pay prevailing wage, incorrect certificates of affidavits of wages paid, and wage claims, as provided for in this chapter and chapters 49.48 and 49.52 RCW. However, the fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid shall be forty dollars.

[2008 c 285 § 2; 2006 c 230 § 1; 1993 c 404 § 1; 1982 1st ex.s. c 38 § 1.]

Notes:

Effective date -- 2008 c 285 § 2: "Section 2 of this act takes effect July 1, 2008." [2008 c 285 § 3.]

Intent -- Captions not law -- 2008 c 285: See notes following RCW 43.22.434.

Effective date -- 2006 c 230: "This act takes effect July 1, 2007." [2006 c 230 § 3.]

Effective date -- 1993 c 404: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 404 § 4.]

#### 39.12.080 Public works administration account.

The public works administration account is created in the state treasury. The department of labor and industries shall deposit in the account all moneys received from fees or civil penalties collected under RCW 39.12.050, 39.12.065, and 39.12.070. Appropriations from the account may be made only for the purposes of administration of this chapter, including, but not limited to, the performance of adequate wage surveys, and for the investigation and enforcement of all alleged violations of this chapter as provided for in this chapter and chapters 49.48 and 49.52 RCW.

[2006 c 230 § 2; 2001 c 219 § 3; 1993 c 404 § 2.]

#### Notes:

Effective date -- 2006 c 230: See note following RCW 39.12.070.

Effective date -- 1993 c 404: See note following RCW 39.12.070.

#### 39.12.100 Independent contractors — criteria.

For the purposes of this chapter, an individual employed on a public works project is not considered to be a laborer, worker, or mechanic when:

(1) The individual has been and is free from control or direction over the performance of the service, both under the contract of service and in fact;

(2) The service is either outside the usual course of business for the contractor or contractors for whom the individual performs services, or the service is performed outside all of the places of business of the enterprise for which the individual performs services, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract of service, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and

(7) On the effective date of the contract of service, if the nature of the work performed requires registration under chapter 18.27 RCW or licensure under chapter 19.28 RCW, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW.

[2009 c 63 § 1.]

#### 39.12.110 Failure to provide or allow inspection of records.

Any employer, contractor, or subcontractor who fails to provide requested records, or fails to allow adequate inspection of records in an investigation by the department of labor and industries under this chapter within sixty calendar days of service of the department's request may not use the records in any proceeding under this chapter to challenge the correctness of any determination by the department that wages are owed, that a record or statement is false, or that the employer, contractor, or subcontractor has failed to file a record or statement.

[2011 c 92 § 1.]

#### 39.12.900 Severability — 1945 c 63.

If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

[1945 c 63 § 7.]

#### WAC 296-127-022 Overtime according to RCW 49.28.065.

(1) Work performed on public works contracts will not require the payment of overtime rates for the first two hours worked in excess of eight hours per day when the employer and employee voluntarily enter into an agreement wherein the employee will work up to ten hours per day in a four-day week to accomplish forty hours of work.

(2) Recognizing that there may be days when a full ten hours of work is not available, the remainder of the forty hours may be made up on another work day or days within the same work week, except work performed on Saturdays, Sundays, and holidays is subject to the established prevailing overtime provisions for a given trade or occupation, as provided in chapter 39.12 RCW.

(3) For the purpose of this section an agreement must:

(a) Have been authorized by employees who bargained collectively with their employers through representatives of their own choosing; or

(b) Be obtained in writing, signed, and dated by both parties; and

(c) Be entered into individually with each employee; and

(d) Be entered into separately for each public works project, except that an employer, at its option, may obtain an annual authorization; and

(e) State the name of the public works project with specificity; and

(f) Be entered into voluntarily by the employer and employee.

(4) Each employer must retain copies of the individual employee authorization agreements required pursuant to subsection (3) of this section for three years from the date of acceptance of the public works project by the contract awarding agency. Absence of an authorization record for an employee shall be deemed per se evidence of lack of that employee's authorization. Such records are payroll records, subject to the requirements of WAC 296-127-320.

(5) It is prohibited to work more than ten hours in any calendar day on a public works project except in cases of extraordinary emergency, such as danger to life or property.

(6) Notwithstanding the above provisions, overtime rates must be paid for all hours worked in excess of forty hours per week.

(7) This section provides a minimum public works overtime standard, and does not supersede prevailing overtime wage rates established under the authority of chapter 39.12 RCW.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-022, filed 12/18/91, effective 1/31/92. Statutory Authority: RCW 43.22.270. 88-19-055 (Order 88-21), § 296-127-022, filed 9/15/88.]

**EXHIBIT "D"**

**PUBLIC WORKS CONTRACT**

**FRANKLIN COUNTY/ Bruce, Inc.**

**NON-COLLUSION DECLARATION**

**I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:**

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
2. That by signing the signature page of this proposal. I am deemed to have signed and have agreed to the provisions of this declaration.

  
\_\_\_\_\_  
CONTRACTOR

  
\_\_\_\_\_  
DATE

**NOTICE TO ALL BIDDERS**

To report bid rigging activities call:

**1-800-424-9071**

The U. S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern Time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.



**EXHIBIT "E"**

**PUBLIC WORKS CONTRACT**

**FRANKLIN COUNTY/ Bruce, Inc.**

**PUBLIC WORKS CONTRACT  
REQUIRED INSURANCE PROVISIONS MATRIX**

| <b>TYPE OF<br/>COVERAGE</b>          | <b>WHEN REQUIRED</b>                                                                     | <b>OCCURRENCE LIMIT</b>                                                                                                                                                                                                                                                                                                      | <b>AGGREGATE LIMIT</b>                                                                                                                                                                                                                                                                                                   |
|--------------------------------------|------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Professional Legal Liability</b>  | If contractor falls within the class of professionals designated on page 2 of Exhibit C. | See page 2 of Exhibit C for the appropriate limit.                                                                                                                                                                                                                                                                           | Not Applicable                                                                                                                                                                                                                                                                                                           |
| <b>Workers' Compensation</b>         | Statutory                                                                                | N. A.                                                                                                                                                                                                                                                                                                                        | N. A.                                                                                                                                                                                                                                                                                                                    |
| <b>Commercial General Liability</b>  | If there is contact with the public.                                                     | <p>1. If less than \$25,000.00, the limit is \$500,000.00.</p> <p>2. If between \$25,000.00 and \$1,000,000.00, the limit is \$1,000,000.00.</p> <p>3. If between \$1,000,000.00 and \$5,000,000.00, the limit is \$2,000,000.00.</p> <p>4. If greater than \$5,000,000.00 the limit is set by Risk Management Division.</p> | <p>1. If less than \$25,000.00, the limit is \$1,000,000.00.</p> <p>2. If between \$25,000.00 and \$1,000,000.00 the limit is \$2,000,000.00.</p> <p>3. If between \$1,000,000.00 and \$5,000,000.00, the limit is \$5,000,000.00.</p> <p>4. If greater than \$5,000,000.00, the limit is set by Risk Mgt. Division.</p> |
| <b>Automobile Liability</b>          | If driving is involved and contract is less than \$25,000.00.                            | \$100,000.00 each accident combined bodily injury and property damage.                                                                                                                                                                                                                                                       | \$300,000.00                                                                                                                                                                                                                                                                                                             |
| <b>Business Automobile Liability</b> | If driving is involved and contract is greater than \$25,000.00.                         | \$1,000,000.00 each accident combined bodily injury and property damage.                                                                                                                                                                                                                                                     | Not Applicable                                                                                                                                                                                                                                                                                                           |

**EXHIBIT "E"**

| <b>PROFESSIONAL LIABILITY INSURANCE LIMIT SCHEDULE</b> |                               |
|--------------------------------------------------------|-------------------------------|
| <b>PROFESSIONS:</b>                                    | <b>PROFESSIONAL LIABILITY</b> |
| ACCOUNTANTS                                            | \$1,000,000                   |
| ARCHITECTS                                             | 1,000,000                     |
| ATTORNEYS                                              | 1,000,000                     |
| CONTRACTORS                                            | 1,000,000                     |
| COUNSELORS                                             | 250,000                       |
| DIETITIANS                                             | 100,000                       |
| EMBALMER                                               | 1,000,000                     |
| ENGINEERS                                              | 1,000,000                     |
| ESCROW AGENT                                           | 1,000,000                     |
| FIRE SPRINKLER SYSTEM CONTRACTORS                      | 1,000,000                     |
| LANDSCAPE ARCHITECTS                                   | 250,000                       |
| NUTRITIONISTS                                          | 250,000                       |
| PRIVATE DETECTIVES                                     | 500,000                       |
| PROCESS SERVERS                                        | 250,000                       |
| PSYCHOLOGISTS                                          | 1,000,000                     |
| REAL ESTATE APPRAISER                                  | 1,000,000                     |
| SURVEYORS                                              | 1,000,000                     |
| VETERINARIANS                                          | 1,000,000                     |
| <b>HEALTH CARE</b>                                     | <b>MEDICAL MALPRACTICE</b>    |
| DENTAL HYGIENIST                                       | 1,000,000                     |
| DENTISTS                                               | 1,000,000                     |
| EMERGENCY MEDICAL TECHNICIAN                           | 1,000,000                     |
| NURSES                                                 | 1,000,000                     |
| OSTEOPATHS                                             | 2,000,000                     |
| PHARMACISTS                                            | 1,000,000                     |
| PHYSICAL THERAPIST                                     | 1,000,000                     |
| PHYSICIANS                                             | 2,000,000                     |
| SANITARIANS                                            | 1,000,000                     |
| SEX OFFENDER TREATMENT PROVIDERS                       | 1,000,000                     |
| <b>TRADES</b>                                          | <b>ERRORS AND OMISSIONS</b>   |
| AUCTIONEERS                                            | 100,000                       |
| PLUMBERS                                               | 500,000                       |
| SECURITY GUARDS                                        | 100,000                       |
| WATER WELL CONTRACTOR/OPERATOR                         |                               |
|                                                        |                               |
|                                                        |                               |
|                                                        |                               |