

# Agenda Summary Report (ASR)

## Franklin County Board of Commissioners

<b>DATE SUBMITTED:</b> October 27, 2022	<b>PREPARED BY:</b> Laura Stark	
<b>Meeting Date Requested:</b> November 8, 2022	<b>PRESENTED BY:</b> Craig Erdman	
<b>ITEM:</b> (Select One) <input checked="" type="checkbox"/> Consent Agenda <input type="checkbox"/> Brought Before the Board Time needed:		
<b>SUBJECT:</b> Waive Competitive Bidding Requirements and authorize the purchase of one (1) used Kenworth Semi Tractor and one (1) used Lowboy Trailer from Western States Cat of Pasco, Washington		
<b>FISCAL IMPACT:</b> \$135,875.00 to be paid from the Public Works ER&R Fund		
<b>Equipment</b>	<b>Serial Number</b>	<b>Cost</b>
2006 Kenworth T800	SN: 1XKDD40X07J900285	\$50,000.00
2013 Dragon Lowboy Trailer	SN: 1D95F5334DC661302	\$75,000.00
	Sales Tax	\$10,875.00
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	<b>Total</b>	<b>\$135,875.00</b>
<b>BACKGROUND:</b> The ER&R Fund recently purchased a new Bearcat Chip Spreader but does not currently possess the equipment necessary to mobilize the unit to worksites. Western States Equipment of Pasco has notified our department that they have a 2006 Kenworth T800 Semi Tractor and a 2013 Dragon Lowboy Trailer available for purchase. Public Works staff has physically inspected both pieces of equipment and found them to be in excellent condition, and meet the requirements for mobilizing heavy equipment such as the chip spreader. Due to the unavailability of new, like equipment until approximately 2024, Public Works is requesting that the Board of Franklin County Commissioners waive the Competitive Bidding Requirements pursuant to RCW 39.04.280(b) "Competitive bidding requirements may be waived by the governing body of the municipality for: Purchases involving special facilities or market conditions", and provide authorization for Public Works to purchase the used Kenworth and Dragon Lowboy from Western States Cat of Pasco, Washington.		
<b>RECOMMENDATION:</b> Staff recommend the Board of Franklin County Commissioners waive the Competitive Bidding Requirements pursuant to RCW 39.04.280(b) and authorize Franklin County Public Works to purchase one (1) used 2006 Kenworth T800 Semi Tractor and one (1) used 2013 Dragon Lowboy Trailer from Western States Cat of Pasco, Washington.		
<b>RECOMMENDED MOTION:</b> I move to waive the Competitive Bidding Requirements pursuant to RCW 39.04.280(b) and authorize Franklin County Public Works to purchase one (1) used 2006 Kenworth T800 Semi Tractor, and one (1) used 2013 Dragon Lowboy Trailer from Western States Cat of Pasco, Washington.		
<b>COORDINATION:</b> This matter has been discussed with Public Works staff Greg Snyder, Fleet Manager, Laura Stark, Financial and Administrative Services Manager, Scott Garberg, Chief of Road Maintenance Operations, and Craig Erdman, Public Works Director/County Engineer.		

**HANDLING / ROUTING:**

**Original Resolution – Clerk of the Board**

**Copy of Resolution – Laura Stark, Public Works**

**Copy of Resolution – Auditor's Office**

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

   
Craig Erdman, Public Works Director/County Engineer

**FRANKLIN COUNTY RESOLUTION \_\_\_\_\_**

**BEFORE THE BOARD OF COMMISSIONERS OF  
FRANKLIN COUNTY WASHINGTON**

***WAIVE COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZE PURCHASE OF  
ONE (1) USED KENWORTH SEMI TRACTOR AND ONE (1) USED DRAGON LOWBOY  
TRAILER***

**WHEREAS**, in accordance with RCW 36.33A.030, the Board of Franklin County Commissioners have appointed the Public Works Director as the administrator of the Motor Vehicle (ER&R) Fund; and

**WHEREAS**, the Public Works Director has determined that the equipment necessary to mobilize heavy equipment and machinery does not currently exist within the ER&R Fleet; and

**WHEREAS**, due to current market conditions, new equipment is not projected to become available on the market until approximately 2024, and

**WHEREAS**, in accordance with RCW 39.04.280(b), local governments may waive Competitive Bidding Requirements for purchases involving special facilities or market conditions; and

**WHEREAS**, Western States Cat of Pasco, Washington is in possession of one (1) used 2006 Kenworth Semi Tractor and one (1) used 2013 Dragon Lowboy Trailer, and

**WHEREAS**, the Kenworth Semi Tractor and Dragon Lowboy Trailer meet the required specifications for mobilizing heavy equipment and machinery, and

**WHEREAS**, the Public Works Director has determined that the purchase of available, used equipment is in the best interest of Franklin County, and

**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 have the care of County property and management of County funds and business; and

**WHEREAS**, the Board of Franklin County Commissioners constitute the legislative authority of Franklin County and finds that the procurement of new vehicles and equipment to be in a unique market condition that is anticipated to last until approximately 2024, and

**FRANKLIN COUNTY RESOLUTION \_\_\_\_\_**

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Franklin County Commissioners waive the Competitive Bidding Requirements pursuant to RCW 39.04.280(b) and authorize the Public Works Department to procure one (1) used 2006 Kenworth Semi Tractor and one (1) used 2013 Dragon Lowboy Trailer from Western States Cat of Pasco, Washington.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2022

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

\_\_\_\_\_  
Chair

Attest:

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

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

\_\_\_\_\_  
Member

Originals:      Clerk of the Board

Copy:      Public Works Department  
              County Auditor / Accounting



Pasco  
2100 Frontier Loop Pasco, WA 99301  
509.547.9541

**SOLD TO:**  
Franklin County - Public Works  
3416 Stearman Ave  
Pasco, WA 99301-7104

**SHIP TO:**  
Office  
3416 Stearman Ave  
Pasco, WA 99301-7104

## SALES AGREEMENT

AGREEMENT: Q000290101-3  
AGREEMENT DATE: 9/20/2022  
AGREEMENT EXPIRES: 10/6/2022  
WAREHOUSE: Pasco Machine Sales  
CUSTOMER NO.: 2974950  
CUSTOMER PO:  
SALESMAN: Kody L Reed

Kody.Reed@wseco.com

FC09202022GS

ITEM DESCRIPTION	PRICE
2006 On Highway Truck S/N: 1XKDD40X07J900285 SMU: 717,727 hrs ID:E0112189	\$50,000.00
● Delivery Freight	
2013 Trailer S/N: 1D95F5334DC661302 ID:E0112191	\$75,000.00

### Notes

Before Tax Balance	\$125,000.00
Sales Tax	\$10,875.00
Trade Payoff	\$0.00
Downpayment	\$0.00
<b>Net Due</b>	<b>\$135,875.00</b>

### Western States Equipment

### Franklin County - Public Works

Order Received by \_\_\_\_\_  
Title Salesman Date \_\_\_\_\_

Approved and Accepted by \_\_\_\_\_  
Title \_\_\_\_\_ Date \_\_\_\_\_

Warranty Document Received (initial) \_\_\_\_\_

Trade Ins: All trade-ins are subject to equipment being in as inspected condition by vendor at time of delivery of replacement machine purchase above. Purchaser hereby sells the trade in equipment described above to the vendor and warrants it to be free and clear of all claims, liens, and security interest except as shown above.  
Warranty: By initialing above the customer acknowledges that they have received a copy of the Western States Co/Caterpillar Warranty and has read and understands said warranty. All used equipment is sold as is where is and no warranty is offered or implied except as specified above.



## SALES AGREEMENT

NO.: Q000290101-3

### EQUIPMENT DETAILS

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ALLIED MISC KENWORTH T800 CHASSIS

TRAILER DRAGON LOWBOY TRAILER

## TERMS AND CONDITIONS

**1. OFFER TO SELL, METHODS OF ACCEPTANCE AND AGREEMENT TERMS:** This Sales Agreement ("SA") is an offer for the sale of the equipment, vehicles, accessories and attachments described on the invoice (referred to generally as "equipment" or "goods") by Western States Equipment Company, an Idaho business corporation or its affiliates ("WSECO") to Customer under the terms and conditions specified herein. This offer may be accepted by (1) the execution of this SA by a representative of Customer or (2) Customer's verbal or written authorizations or conduct consistent with prior course of dealing between the parties authorizing WSECO to take action to fulfill this SA, or (3) the commencement of the manufacture or shipment of the goods specified in this SA, whichever of the foregoing first occurs.

Acceptance of this SA is limited to the express terms stated herein. Any proposal in Customer's acceptance for additional or different terms or any attempt by Customer to vary in any degree any of the terms is objected to and hereby rejected, but such proposals shall not operate as a rejection of this offer, unless such variances are in the terms of the description, quantity, price, delivery schedule, or payment schedule of the goods, but shall be deemed a material alteration of this SA and this SA shall be deemed agreed to by WSECO without said additional or different terms. Once accepted, this SA shall constitute the entire agreement between WSECO and Customer. WSECO is not bound by any representation or agreements, express, or implied, oral or otherwise, which are not stated within this SA or contained in a separate writing supplementing this SA and signed by authorized agents of both WSECO and Customer. This SA will supersede all previous communications, agreements, and contracts with respect to the subject matter hereof and no understanding, agreement, term, condition, or trade custom at variance with this SA will be binding on WSECO. No waiver or modification of the terms and conditions hereof will be effective unless in writing and signed by both Customer and WSECO.

**2. PAYMENT TERMS:** Customer agrees to pay the sales price for the equipment, less any net trade-in allowance, in accordance with the payment terms as all stated on the invoice. The sales price is offered F.O.B. at WSECO's designated facility as stated on the invoice and Customer is responsible for all shipping charges as provided in this SA. Customer is also responsible for paying all applicable sales, use or any other applicable taxes levied or assessed on the equipment by any federal, state or local governmental authority, unless Customer provides WSECO an appropriate exemption certificate as stated on the invoice. In the event that Customer fails to pay any applicable tax or other charge as agreed herein or fails to provide a valid exemption certificate, Customer agrees to indemnify and hold WSECO harmless from any liability and expense by reason of Customer's failure to pay said taxes or assessments, including, but not limited to, WSECO's reasonable attorney's fees and costs and other necessary legal expenses resulting from such failure.

**3. GRANT OF SECURITY INTEREST, AUTHORIZATION TO FILE STATEMENT AND PROTECTION OF COLLATERAL:** Until the Customer pays the total sales price and additional charges as provided in this SA, Customer hereby grants WSECO a security interest in and to the equipment and all additions, replacements, substitutions, and proceeds of the same ("Collateral") to secure payment of the sales price and any and all other amounts owed or owing by Customer to WSECO under this SA or otherwise. Customer authorizes WSECO to file financing statement(s) evidencing this security agreement and the collateral subject thereto and to take all steps necessary to perfect WSECO's interest in the equipment.

Customer agrees to execute any documents required by WSECO to evidence and perfect such security interest. Customer hereby appoints WSECO as its irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect or to continue the security interest granted in this SA. Customer will reimburse WSECO for all expenses for the perfection and the continuation of the perfection of WSECO's security interest in the Collateral. Customer promptly will notify WSECO before any changes in Customer's name including any changes to the assumed business names of Customer.

Customer, upon WSECO's request, will deliver to WSECO a schedule of the locations of the Collateral and agrees to update the list upon WSECO's further request. Customer will not commit or permit damage to or destruction of the Collateral or any material part of the Collateral. WSECO and its designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral. Customer shall immediately notify WSECO of all cases involving the loss or damage of or to any material portion of the Collateral and generally of all material happenings and events affecting the Collateral.

**4. INSURANCE:** Customer shall not move, load, transport or otherwise handle the equipment on WSECO's premises without first having obtained insurance coverage. Customer shall carry all risks insurance on the equipment, including, without limitation, fire, theft and liability coverage with such other insurance as necessary to protect Customer's and WSECO's respective interests in the equipment. As long as any portion of the sales price is outstanding, Customer will deliver to WSECO from time to time the policies or certificates of insurance in forms satisfactory to WSECO, showing WSECO as an additional insured and including stipulations that coverage will not be cancelled or diminished without at least fifteen (15) days prior written notice to WSECO.

**5. TIME OF DELIVERY AND SHIPPING:** Orders for equipment are processed in the order of their acceptance by WSECO and WSECO will use its reasonable efforts to deliver the equipment to Customer on the scheduled delivery date as stated on the invoice. However, shipping and delivery dates are acknowledged to be estimates only and dependent upon many factors outside of WSECO's control including, but not limited to, the manufacturer's production schedule, material and labor shortages, shipping delays and various other unrelated factors. WSECO is not liable for delays or damages caused by delays in delivery or shipment of the equipment, unless stated on the face of the invoice to the contrary. Customer is responsible for all freight, shipping, loading and unloading costs.

**6. RISK OF LOSS/SHORTAGES/REJECTION OF GOODS:** Risk of loss of the goods shall pass to Customer as soon as the goods are properly loaded on the carrier. WSECO's responsibility for shipment ceases upon delivery of the goods to a transportation company. Any claim by Customer for shortage in shipment shall be made by written notice to WSECO within fifteen (15) days after receipt of the shipment. It is specifically agreed that the risk of loss shall not be altered by the fact that the conduct of either party hereto may constitute a default or breach and shortage in shipment is not deemed to constitute a nonconformity.



All equipment or goods shall be subject to the standard manufacturing and commercial variation and practices of the manufacturer thereof. In the event of shipment of non-conforming goods, WSECO shall be given a reasonable opportunity to replace the goods with those which conform to the order. Any notices pertaining to rejection or claims of nonconformity must be made in writing specifying in detail Customer's objections and such notices must be delivered within fifteen (15) days after delivery of the goods. It is agreed that in the event of rejection, Customer will store the goods or reship the goods to WSECO. Should Customer use the equipment or goods, such use shall be deemed an unequivocal acceptance of the goods. If Customer accepts goods tendered under this SA, such acceptance shall be final and irrevocable; no attempted revocation shall have any effect whatsoever.

**7. ASSIGNMENTS:** No right or interest in this SA shall be assigned by Customer without the written permission of WSECO, and no delegation of any obligation owed or of the performance of any obligation by Customer shall be made without written permission of WSECO. Any attempted assignment or delegation by Customer shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

**8. NO WARRANTY:** Unless provided otherwise on the invoice, the equipment is purchased "**AS IS**" and there is no other agreement with Customer regarding the equipment other than what is stated in this SA and in any credit instrument and/or guaranty between Customer and WSECO. There are no other warranties, express or implied, for any equipment, product, service, or other items sold or furnished under this SA unless agreed to in writing between Customer and WSECO. **WSECO DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**9. EQUIPMENT FAILURE/LIMITATION OF REMEDIES:** If, for any reason, the equipment does not perform satisfactorily, as judged by WSECO in its sole discretion, WSECO may repair or replace the equipment or any part thereof, at its option, without affecting any of the terms of this SA. This remedy does not apply if the equipment has failed or performs less than satisfactorily due to improper use of the equipment, accident (including, damage during shipment), neglect, abuse, misuse or exposure of the equipment to conditions beyond capacity, power, environmental design limits or operation constraints specified by WSECO or the equipment manufacturer. Customer is responsible for all expenses related to repair or replacement due to these causes. **THE REMEDIES IN THIS PARAGRAPH ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AGAINST WSECO.**

**10. LIMITATION OF LIABILITY:** Notwithstanding trade customs or prior course of dealing to the contrary, in no event will WSECO, its subsidiaries, affiliates, agents or employees be liable for any incidental, indirect, special, or consequential damages in connection with or arising out of this SA or furnishing of any goods, services or other items or any third party's ownership, maintenance, or use of any goods, services or other items furnished under this SA, including, but not limited to, lost profits or revenues, loss of use of the equipment or any associated goods, damage to associated goods, costs of capital, cost of substitute goods, or claims of Customer's clients for such damages. Customer's sole remedy, for any liability of WSECO of any kind, including but not limited to negligence, with respect to any equipment, service, or other item is limited to that set forth in the paragraph entitled "**EQUIPMENT FAILURE/LIMITATION OF REMEDIES**" of this SA. WSECO is not responsible for meeting any federal, state, local or municipal code or specification (whether statutory, regulatory or contractual), unless Customer specifies it in writing and WSECO agrees to it in writing. Customer agrees that it has selected each item of equipment based upon its own judgment and particular needs and disclaims any reliance upon any statements or presentations made by WSECO. The liability for performing under any manufacturer warranty program rests solely with the subject manufacturer and WSECO has no liability or responsibility for performance thereunder.

**11. FORCE MAJEURE:** WSECO shall not be responsible or liable for any delay or failure to deliver any or all of the goods and/or performance of the services where such delay or failure is caused by any act of God, fire, flood, inclement weather, explosion, war, insurrection, riot, embargo, statute, ordinance, regulation or order of any government or agent thereof, shortage of labor, material fuel, supplies or transportation, strike or other labor dispute, or any other cause, contingency, occurrence or circumstance of any nature, whether or not similar to those herein before specified beyond WSECO's control, which prevents, hinders or interferes with manufacture, assembly or delivery of the goods or performance of the services. Any such cause, contingency, occurrence or circumstances shall release WSECO from performance of its obligations hereunder.

**12. INDEMNITY:** Customer agrees to indemnify and hold WSECO harmless from and against any and all claims, actions, suits, proceedings, costs, expenses, damages (including but not limited to consequential and incidental damages), liabilities, fees (including, but not limited to, attorney fees and court costs), and settlements, (including those brought or incurred by or in favor of Customer's employees, agents and subcontractors), arising out of or related to the selection, delivery, loading, unloading, towing, possession, use, operation, handling or transportation of the equipment. Customer agrees to defend, at its expense, any and all suits brought against WSECO either alone or in conjunction with others and additionally to satisfy, pay and discharge any and all judgments and fines against WSECO in any such suits or actions, whether based in negligence or otherwise.

**13. DEFAULT BY CUSTOMER:** An event of default shall occur if (a) Customer fails to pay when due the sales price; (b) Customer fails to perform or observe any covenant, condition, or agreement to be performed by it hereunder; (c) Customer ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing an inability to pay debts as they become due, files a petition in bankruptcy, or if its owners, shareholders or members of Customer take actions towards dissolution or liquidation of Customer; (d) Customer attempts to sell, transfer, or encumber, sublease or convey the equipment or any part thereof prior to paying the full sales price; or (e) WSECO, in good faith deems itself, insecure relative to payment of the sales price.



Upon the occurrence of any event of default, WSECO may exercise the following rights and remedies: (i) declare the sales price immediately due and payable; (ii) require Customer to assemble the equipment and make it available to WSECO at a place and time designated by WSECO; (iii) WSECO shall have full power to enter upon the property or jobsite of the Customer and take possession of and remove the equipment; (iv) WSECO shall have full power and authority to sell, lease, transfer or otherwise deal with the equipment or proceeds thereof, and in connection therewith WSECO may bid on the goods or equipment and that a commercially reasonable price for said reclaimed equipment may be determined by WSECO based upon current national auction values, market trends relating to supply and demand, and related factors for goods of similar type and condition; (v) if WSECO chooses to sell or lease the reclaimed equipment, WSECO may obtain a judgment against Customer for any deficiency remaining on the sales price after application of all amounts received from the exercise of its rights under this SA; and (vi) all rights and remedies of a secured creditor under the provisions of the Idaho Uniform Commercial Code, as amended from time to time. All of WSECO's rights and remedies, whether evidenced by this SA or other related agreement, shall be cumulative and may be exercised singularly or concurrently. Customer agrees to pay all costs incurred by WSECO in enforcing this SA or any of its provisions, including without limitation reasonable attorney's fees and costs and all costs of reclaiming the goods, whether or not legal action is commenced.

**14. JURISDICTION AND VENUE:** This SA and the relationship between WSECO and Customer shall be governed and construed according to the laws of the State of Idaho. At the sole and exclusive election of WSECO, jurisdiction and venue for any action or dispute arising under this SA shall be in the in the Fourth Judicial District of the State of Idaho, in and for Ada County, which is WSECO's corporate headquarters and principal place of business, wherein the parties acknowledge having done business sufficient to establish minimum contacts under the Idaho long arm statute, and which is a mutually convenient forum. In addition, Customer waives any and all rights to jurisdiction and/or venue in any other forum, including waiver of any and all rights to remove the action from any court originally acquiring jurisdiction.

**15. EQUIPMENT DATA:** This machine may be equipped with a wireless data communication system, such as Product Link. In such case, Customer understands data reflecting the machine performance, condition and operation is being transmitted to Caterpillar/WSECO to better serve the Customer and to improve upon Caterpillar products and services. This data may include, but is not limited to: fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers and installed attachments. Neither Caterpillar nor WSECO sell, rent or share collected information to any other third party, and will exercise reasonable efforts to keep the information secure. Caterpillar Inc. and WSECO recognize and will respect customer privacy. Customer agrees to allow this data to be accessed by Caterpillar and WSECO within normal, accepted business practices.

The undersigned represents and warrants that he/she is authorized by Customer identified below to bind the Customer to the obligations and duties expressed herein and does so commit Customer to the terms and conditions of SA by signing below. Until this SA (or indential counterpart thereof) has been signed by our duly authorized representative, it will constitute an offer by Customer to enter into this SA with WSECO on the terms herein.

**CUSTOMER:** \_\_\_\_\_

**WESTERN STATES EQUIPMENT COMPANY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

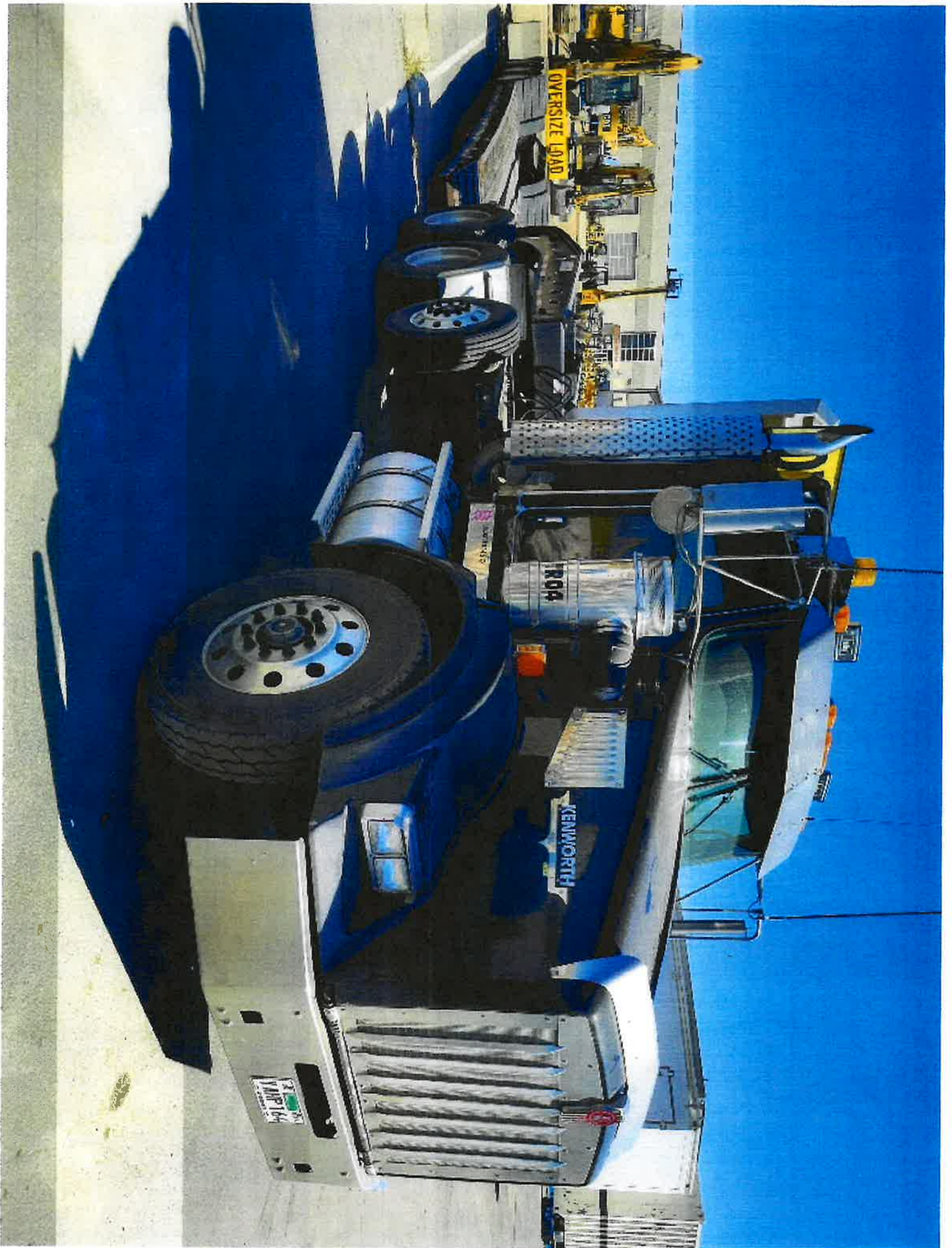
Print Name: \_\_\_\_\_

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

Title: Salesman

Date: \_\_\_\_\_

Date: \_\_\_\_\_





**PDF RCW 39.04.280****Competitive bidding requirements—Exemptions.**

This section provides uniform exemptions to competitive bidding requirements utilized by municipalities when awarding contracts for public works and contracts for purchases. The statutes governing a specific type of municipality may also include other exemptions from competitive bidding requirements. The purpose of this section is to supplement and not to limit the current powers of any municipality to provide exemptions from competitive bidding requirements.

(1) Competitive bidding requirements may be waived by the governing body of the municipality for:

- (a) Purchases that are clearly and legitimately limited to a single source of supply;
- (b) Purchases involving special facilities or market conditions;
- (c) Purchases in the event of an emergency;
- (d) Purchases of insurance or bonds; and
- (e) Public works in the event of an emergency.

(2)(a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements under (b) of this subsection, the resolution must recite the factual basis for the exception. This subsection (2)(a) does not apply in the event of an emergency.

(b) If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract.

(3) For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

[ 1998 c 278 § 1.]