

# THE CITY OF SPOKANE



## ADVANCE COUNCIL AGENDA

MEETING OF MONDAY, SEPTEMBER 9, 2013

### MISSION STATEMENT

TO DELIVER EFFICIENT AND EFFECTIVE SERVICES  
THAT FACILITATE ECONOMIC OPPORTUNITY  
AND ENHANCE QUALITY OF LIFE.

MAYOR DAVID A. CONDON

COUNCIL PRESIDENT BEN STUCKART

COUNCIL MEMBER MICHAEL A. ALLEN

COUNCIL MEMBER NANCY McLAUGHLIN

COUNCIL MEMBER JON SNYDER

COUNCIL MEMBER MIKE FAGAN

COUNCIL MEMBER STEVE SALVATORI

COUNCIL MEMBER AMBER WALDREF

COUNCIL CHAMBERS  
CITY HALL

808 W. SPOKANE FALLS BLVD.  
SPOKANE, WA 99201

## CITY COUNCIL BRIEFING SESSION

Council will adopt the Administrative Session Consent Agenda after they have had appropriate discussion. Items may be moved to the 6:00 p.m. Legislative Session for formal consideration by the Council at the request of any Council Member.

SPOKANE CITY COUNCIL BRIEFING SESSIONS (BEGINNING AT 3:30 P.M. EACH MONDAY) AND LEGISLATIVE SESSIONS (BEGINNING AT 6:00 P.M. EACH MONDAY) ARE BROADCAST LIVE ON CITY CABLE CHANNEL FIVE AND STREAMED LIVE ON THE CHANNEL FIVE WEBSITE. THE SESSIONS ARE REPLAYED ON CHANNEL FIVE ON WEDNESDAYS AT 6:00 P.M. AND FRIDAYS AT 10:00 A.M.

The Briefing Session is open to the public, but will be a workshop meeting. Discussion will be limited to Council Members and appropriate Staff and Counsel. There will be an opportunity for the expression of public views on any issue not relating to the Current or Advance Agendas during the Open Forum at the beginning and the conclusion of the Legislative Agenda.

### ADDRESSING THE COUNCIL

- No one may speak without first being recognized for that purpose by the Chair. Except for named parties to an adjudicative hearing, a person may be required to sign a sign-up sheet as a condition of recognition.
- Each person speaking at the public microphone shall print his or her name and address on the sheet provided at the podium and verbally identify him/herself by name, address and, if appropriate, representative capacity.
- If you are submitting letters or documents to the Council Members, please provide a minimum of ten copies via the City Clerk. The City Clerk is responsible for officially filing and distributing your submittal.
- In order that evidence and expressions of opinion be included in the record and that decorum befitting a deliberative process be maintained, modes of expression such as demonstration, banners, applause and the like will not be permitted.
- A speaker asserting a statement of fact may be asked to document and identify the source of the factual datum being asserted.

**SPEAKING TIME LIMITS:** Unless deemed otherwise by the Chair, each person addressing the Council shall be limited to a three-minute speaking time.

**CITY COUNCIL AGENDA:** The City Council Advance and Current Agendas may be obtained prior to Council Meetings from the Office of the City Clerk during regular business hours (8 a.m. - 5 p.m.). The Agenda may also be accessed on the City website at [www.spokanecity.org](http://www.spokanecity.org). Agenda items are available for public review in the Office of the City Clerk during regular business hours.

**AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION:** The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and also is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Gita George-Hatcher at (509) 625-7083, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or [ggeorge-hatcher@spokanecity.org](mailto:ggeorge-hatcher@spokanecity.org). Persons who are deaf or hard of hearing may contact Ms. George-Hatcher at (509) 625-7083 through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.

If you have questions, please call the Agenda Hotline at 625-6350.

# **BRIEFING SESSION**

**(3:30 p.m.)**

**(Council Chambers Lower Level of City Hall)  
(No Public Testimony Taken)**

**Council Reports**

**Staff Reports**

**Committee Reports**

**Advance Agenda Review**

**Current Agenda Review**

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# **ADMINISTRATIVE SESSION**

**Roll Call of Council**

# **CONSENT AGENDA**

## **REPORTS, CONTRACTS AND CLAIMS**

## **RECOMMENDATION**

- |   |                |                                      |
|---|----------------|--------------------------------------|
| <b>1. Purchase of retread tires on an as needed basis from Wingfoot Tires, Inc. (Spokane Valley, WA) using Washington State Contract No. 0113—\$150,000 (incl. tax).</b>  | <b>Approve</b> | <b>OPR 2013-0643</b>                 |
| <b>2. Low Bid of Clearwater Construction &amp; Management (Spokane, WA) for Combined Sewer Overflow Basin 34-3 Control Facility \$4,723,055 plus tax. An administrative reserve of \$472,305.50 plus tax, which is 10% of the contract price plus tax, will be set aside.</b> | <b>Approve</b> | <b>PRO 2013-0025<br/>ENG 2011145</b> |
| <b>3. Amendment to Contract with Patterson Buchanan Fobes &amp; Leitch, Inc., P.S. for outside counsel services in the legal matter of Bradley N. Thoma v. City of Spokane—increase of \$50,000. Total contract maximum amount not to exceed \$175,000.</b>                   | <b>Approve</b> | <b>OPR 2012-0361</b>                 |

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|-----|--|------------------------|--------------------------------------|
| 4.  | <b>Loan Agreements with Drinking Water State Revolving Fund for:</b>   | <b>Approve<br/>All</b> |                                      |
|     | a. <b>Central Avenue Wells 1 and 2 Rehabilitation—<br/>\$1,221,090 revenue.</b>  |                        | <b>OPR 2013-0644</b>                 |
|     | b. <b>Steel Transmission Main Replacements—<br/>\$3,357,240 revenue.</b>   |                        | <b>OPR 2013-0645</b>                 |
|     | c. <b>Top System Transmission Main Replacement—<br/>\$5,604,490 revenue.</b>   |                        | <b>OPR 2013-0646</b>                 |
| 5.  | <b>Accept awards from the Department of Housing and Urban Development Continuum of Care Program and authorize the Community, Housing, and Human Services Department to enter into contract with various non-profit agencies—\$223,876 revenue.</b>   | <b>Approve</b>         | <b>OPR 2013-0647</b>                 |
| 6.  | <b>Contract with John Epler &amp; Associates to provide consulting services for three Community, Housing, and Human Services Planning Documents (Regional Homeless Prevention &amp; Reduction Strategy, Analysis of Impediments to Fair Housing and the 2015-20 Consolidated Plan)—\$63,500 (50% to be encumbered in 2013; 50% in 2014).</b> | <b>Approve</b>         | <b>OPR 2013-0648</b>                 |
| 7.  | <b>Third of four one-year extensions to Master Contract with Cochran Technologies (Spokane Valley, WA) for design, products, installation and testing of Inside Plant Communications Infrastructure—annual estimated expense not to exceed \$100,000.</b>  | <b>Approve</b>         | <b>OPR 2010-0671<br/>RFP 3687-10</b> |
| 8.  | <b>Extension to Lease Agreement with Xerox Corporation (Tukwila, WA) for two Xerox 4112 printers from June 1, 2013 through May 31, 2014. Payments will be made monthly, with annual fee not to exceed \$48,000 (incl. tax).</b>  | <b>Approve</b>         | <b>OPR 2008-0493</b>                 |
| 9.  | <b>Contract with AssetWorks (Wayne, PA) for Annual Maintenance and Support on the Fleet Services equipment system, to also include the Software Upgrade Assistance Package, from October 1, 2013 through September 30, 2014—\$79,740.15 (incl. tax).</b>   | <b>Approve</b>         | <b>OPR 2013-0649</b>                 |
| 10. | <b>Intergovernmental Agreement with Spokane County Regarding Commute Trip Reduction Implementation.</b>  | <b>Approve</b>         | <b>OPR 2013-0650</b>                 |

- |   |                              |               |
|---|------------------------------|---------------|
| 11. Purchase and Sale Agreement for Kendall Yards 4th Addition Tendered Improvements—\$818,236.91.  | Approve                      | OPR 2013-0651 |
|   |                              |               |
| 12. Report of the Mayor of pending:   | Approve & Authorize Payments | CPR 2013-0002 |
| a. Claims and payments of previously approved obligations, including those of Parks and Library, through _____, 2013, total \$_____, with Parks and Library claims approved by their respective boards. Warrants excluding Parks and Library total \$_____. |                              |               |
| b. Payroll claims of previously approved obligations through ____: \$_____.   |                              | CPR 2013-0003 |

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## EXECUTIVE SESSION

(Closed Session of Council)

(Executive Session may be held or reconvened during the 6:00 p.m. Legislative Session)

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## CITY COUNCIL SESSION

(May be held or reconvened following the 3:30 p.m. Administrative Session)  
(Council Briefing Center)

This session may be held for the purpose of City Council meeting with Mayoral nominees to Boards and/or Commissions. The session is open to the public.

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## LEGISLATIVE SESSION

(6:00 P.M.)

(Council Reconvenes in Council Chamber)

WORDS OF INSPIRATION

PLEDGE OF ALLEGIANCE

ROLL CALL OF COUNCIL

ANNOUNCEMENTS

(Announcements regarding Changes to the City Council Agenda)

## **BOARDS AND COMMISSIONS APPOINTMENTS**

(Includes Announcements of Boards and Commissions Vacancies)

## **CITY ADMINISTRATION REPORT**

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### **COUNCIL COMMITTEE REPORTS**

(Committee Reports for Finance, Neighborhoods, Public Safety, Public Works, and Planning/Community and Economic Development Committees and other Boards and Commissions)

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### **OPEN FORUM**

This is an opportunity for citizens to discuss items of interest not relating to the Current or Advance Agendas nor relating to political campaigns/items on upcoming election ballots. This Forum shall be for a period of time not to exceed thirty minutes. After all the matters on the Agenda have been acted on, unless it is 10:00 p.m. or later, the open forum shall continue for a period of time not to exceed thirty minutes. Each speaker will be limited to three minutes, unless otherwise deemed by the Chair. If you wish to speak at the forum, please sign up on the sign-up sheet located in the Chase Gallery.

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## **LEGISLATIVE AGENDA**

### **EMERGENCY BUDGET ORDINANCES**

(Require Five Affirmative, Recorded Roll Call Votes)

Ordinance No. C35024 amending Ordinance No. C34947 passed the City Council December 10, 2012, and entitled, "An Ordinance adopting the Annual Budget of the City of Spokane for 2013, making appropriations to the various funds, departments and programs of the City of Spokane government for the fiscal year ending December 31, 2013, and providing it shall take effect immediately upon passage," and declaring an emergency and appropriating funds in:

**General Fund – Police**

**FROM: Various Accounts, \$59,000;**

**TO: Various Accounts, same amount.**

(This action budgets for the Deputy Director of Business Services and Captain Positions; effective September 15, 2013.)

### **NO EMERGENCY ORDINANCES**

## **RESOLUTIONS & FINAL READING ORDINANCE**

(Require Four Affirmative, Recorded Roll Call Votes)

- RES 2013-0064** Regarding the appointment of committees to prepare statements advocating voters' approval or rejection of Propositions No. 1, No. 2, No. 3, No. 4, No. 5 and No. 6 on the November 5, 2013. (Deferred from August 26, 2013, Agenda)
- RES 2013-0065** Declaring Physio-Control (Redmond, WA) a sole source for Physio-Control automated and manual defibrillators; and authorizing the purchase of two defibrillators and associated equipment without public bidding—\$67,501.22 (incl. tax).
- RES 2013-0066** Regarding the redevelopment of the PFC Joe E. Mann US Army Reserve Center USARC/AMSA 80 (Spokane, WA), approving the Redevelopment Plan for the Mann Center, and authorizing the Mayor or his designee to submit the same to the appropriate federal agency and to take necessary actions to implement the Plan upon approval by the federal agency.
- ORD C34925** Vacating Ohio Avenue and Summit Boulevard from College Avenue to Nettleton Street. (First Reading held August 26, 2013)

### **NO FIRST READING ORDINANCES**

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### **NO SPECIAL CONSIDERATIONS**

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### **NO HEARINGS**

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**Motion to Approve Advance Agenda for September 9, 2013**  
(per Council Rule 2.1.2)

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### **OPEN FORUM (CONTINUED)**

This is an opportunity for citizens to discuss items of interest not relating to the Current or Advance Agendas nor relating to political campaigns/items on upcoming election ballots. This Forum shall be for a period of time not to exceed thirty minutes. After all the matters on the Agenda have been acted on, unless it is 10:00 p.m. or later, the open forum shall continue for a period of time not to exceed thirty minutes. Each speaker will be limited to three minutes, unless otherwise deemed by the Chair. If you wish to speak at the forum, please sign up on the sign-up sheet located in the Chase Gallery.

**ADJOURNMENT**

The September 9, 2013, Regular Legislative Session of the City Council is adjourned to Monday, September 16, 2013.

**Note:** The September 16, 2013, 6:00 p.m. Legislative Session will be a Town Hall Session held at the Northeast Community Center.

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**NOTES**



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	OPR 2013-0643
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	STATE CONTRACT
<b>Requisition #</b>	VB
<b>Agenda Item Name</b> 5100-FLEET SERVICES PURCHASE OF RETREAD TIRES OFF STATE CONTRACT	

**Agenda Wording**

Purchase of retread tires on an "as needed" basis from WINGFOOT TIRES, INC. (Spokane Valley, WA) using Washington State Contract #0113 - \$150,000 including tax

**Summary (Background)**

As a member of the Washington State Purchasing Cooperative, State Contract pricing is available to the City of Spokane. The State of Washington contract represents the best pricing available to us because the State Contract is allowed a deeper discount from the manufacturer

**Fiscal Impact**

Expense \$ 150,000.00

Select \$

Select \$

Select \$

**Budget Account**

# various

#

# BudgetAccount3

#

**Approvals**

**Dept Head** JAKUBCZAK, GENE

**Division Director** ROMERO, RICK

**Finance** LESESNE, MICHELE

**Legal** BURNS, BARBARA

**For the Mayor** SANDERS, THERESA

**Council Notifications**

**Study Session**

**Other** PCED 8/19/13

**Distribution List**

Purchasing: tprince

Fleet Services: gjakubczak & fleetservices

Taxes & Licenses

**Additional Approvals**

**Purchasing** PRINCE, THEA

**BRIEFING PAPER**  
**Utilities Division**  
**Fleet Services Department**  
**August 19, 2013**

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**Subject:**

Approve Value Blanket with Wingfoot Tires Inc. (Spokane Valley, WA) for miscellaneous retread tires to be purchased on an "as needed" basis by the Fleet Services Department using Washington State contract #0113. Estimated annual expenditure is \$150,000 including tax.

**Background:**

As a member of the Washington State Purchasing Cooperative, State contract pricing is available to the city through Wingfoot Tires Inc. The state contract represents the best price available to the city as the State Contractor is allowed a deeper discount through the manufacturers.

**Impact:**

This VB is used to procure retread truck tires required to maintain the city's equipment fleet.

**Action:**

Approve the annual blanket with Wingfoot Inc. for the supply of miscellaneous retread tires.

**Funding:**

The estimated annual expenditure was included in the 2013 Fleet Services Department budget.

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For further information, please contact Rick Romero, Director of Utilities Division 625-6361 or [rromero@spokanecity.org](mailto:rromero@spokanecity.org).



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	PRO 2013-0025
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	2011145
<b>Bid #</b>	
<b>Requisition #</b>	CR 13733

<b>Submitting Dept</b>	ENGINEERING SERVICES
<b>Contact Name/Phone</b>	GARY NELSON 625-6678
<b>Contact E-Mail</b>	GNELSON@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	0370 - LOW BID AWARD - CSO BASIN 34-3 - CLEARWATER

**Agenda Wording**

Low Bid of Clearwater Construction & Management (Spokane, WA) for Combined Sewer Overflow Basin 34-3 Control Facility - \$4,723,055.00 plus tax. An admin reserve of \$472,305.50 plus tax, which is 10% of the contract price plus tax, will be set aside.

**Summary (Background)**

On August 19, 2013 bids were opened for the above project. The low bid was from Clearwater Construction & Management in the amount of \$4,723,055.00, which is \$866,035.00 or 15.50% under the Engineer's Estimate; four other bids were received as follows: Halme Builders, Inc. - \$5,366,342.79, Garco Construction, Inc. - \$5,749,900.00, Apollo, Inc. - \$5,810,350.35 and Graham Construction & Management, Inc. A non-responsive bid was received from Lydig Construction, Inc.

**Fiscal Impact**

Expense	\$ 5,647,356.84
Select	\$
Select	\$
Select	\$

**Budget Account**

#	4370 43416 94000 56501 10034
#	
#	BudgetAccount3
#	

**Approvals**

<b>Dept Head</b>	TWOHIG, KYLE
<b>Division Director</b>	QUINTRALL, JAN
<b>Finance</b>	BUSTOS, KIM
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	
<b>Distribution List</b>	
	lhattenburg@spokanecity.org
	pdolan@spokanecity.org
	mlesesne@spokanecity.org
	rdykes@spokanecity.org
	mhughes@spokanecity.org
	kbrooks@spokanecity.org
	htrautman@spokanecity.org

**Additional Approvals**

<b>Purchasing</b>	

**City Of Spokane**  
**Engineering Services Department**

**\*\*\* Bid Tabulation \*\*\***

**Project Number:** 2011145

**Project Description:** CSO 34-3

**Funding Source:** Federal

**Preparer:** Dan Buller

**Original Date:** 7/22/2013 10:14:28 AM

**Update Date:** 8/19/2013 4:06:08 PM

**Addendum:**

<b>Project Number: 2011145</b>			<b>Engineer's Estimate</b>		Clearwater Construction & Management		Halme Builders Inc		Garco Construction Inc	
<b>Item No</b>	<b>Bid Item Description</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>

**Schedule Description**

**Tax Classification**

**Schedule 01**

Not Public Street Improvement

101	REIMBURSEMENT FOR THIRD PARTY DAMAGE	1	EST	1.00	1.00	1.00	1.00	1.00	1.00	1.00
102	SPCC PLAN	1	LS	*****	750.00	*****	500.00	*****	500.00	*****
103	POTHOLING	2	EA	400.00	800.00	230.00	460.00	1,300.00	2,600.00	360.50
104	MOBILIZATION	1	LS	*****	270,000.00	*****	358,500.00	*****	364,000.00	*****
105	PROJECT TEMPORARY TRAFFIC CONTROL	1	LS	*****	25,000.00	*****	12,500.00	*****	21,500.00	*****
106	SPECIAL SIGNS	240	SF	20.00	4,800.00	12.00	2,880.00	11.00	2,640.00	10.10
107	SEQUENTIAL ARROW SIGN	1350	HR	1.50	2,025.00	1.00	1,350.00	1.38	1,863.00	1.26
108	PORTABLE CHANGEABLE MESSAGE SIGN	920	HR	5.00	4,600.00	4.00	3,680.00	4.14	3,808.80	15.15
109	TYPE III BARRICADE	60	EA	25.00	1,500.00	40.00	2,400.00	39.00	2,340.00	35.35
110	CLEARING AND GRUBBING	2.5	AC	8,000.00	20,000.00	4,600.00	11,500.00	4,700.00	11,750.00	15,150.00
111	REMOVE AND RESET LIGHT POLE	1	EA	300.00	300.00	7,500.00	7,500.00	7,200.00	7,200.00	6,565.00
112	REMOVE EXISTING CURB	1482	LF	3.50	5,187.00	2.00	2,964.00	2.90	4,297.80	1.25
113	REMOVE FLEXIBLE PAVEMENT FOR TRENCHES	1060	SY	6.00	6,360.00	3.00	3,180.00	3.90	4,134.00	2.50
114	REMOVE CEMENT CONCRETE SIDEWALK AND DRIVEWAY	539	SY	6.00	3,234.00	5.00	2,695.00	3.90	2,102.10	6.00

<b>Project Number: 2011145</b>			<b>Engineer's Estimate</b>		Clearwater Construction & Management		Halme Builders Inc		Garco Construction Inc	
<b>Item No</b>	<b>Bid Item Description</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>

<i>Schedule Description</i>				<i>Tax Classification</i>						
<i>Schedule 01</i>				Not Public Street Improvement						
115	REMOVE MANHOLE, CATCH BASIN OR DRYWELL	4 EA	290.00	1,160.00	225.00	900.00	230.00	920.00	220.00	880.00
116	SAWCUTTING FLEXIBLE PAVEMENT	1840 LFI	1.00	1,840.00	1.00	1,840.00	0.24	441.60	0.50	920.00
117	ABANDON EXISTING MANHOLE, CATCH BASIN OR DRYWELL	2 EA	400.00	800.00	230.00	460.00	220.00	440.00	234.00	468.00
118	REMOVE EXISTING ROAD	3353 SY	11.00	36,883.00	3.00	10,059.00	2.35	7,879.55	1.50	5,029.50
119	PREPARATION OF UNTREATED ROADWAY	1207 SY	4.00	4,828.00	3.00	3,621.00	2.00	2,414.00	7.25	8,750.75
120	STRUCTURAL EXCAVATION CLASS A INCLUDING HAUL	1 LS	*****	225,000.00	*****	154,000.00	*****	426,000.00	*****	225,000.00
121	GRAVEL BACKFILL INCLUDING HAUL	1 LS	*****	192,500.00	*****	233,600.00	*****	72,500.00	*****	192,000.00
122	PEA GRAVEL	22 CY	126.00	2,772.00	36.00	792.00	44.90	987.80	36.00	792.00
123	CSTC FOR SIDEWALK AND DRIVEWAYS	47 CY	49.00	2,303.00	38.00	1,786.00	49.00	2,303.00	61.00	2,867.00
124	CRUSHED SURFACING BASE COURSE	1023 CY	40.00	40,920.00	46.00	47,058.00	39.00	39,897.00	45.00	46,035.00
125	HMA CL. 1/2 IN. PG 70-28, 5 INCH THICK	1207 SY	35.00	42,245.00	39.00	47,073.00	37.70	45,503.90	35.00	42,245.00
126	CAST IN PLACE CONCRETE	1 LS	*****	2,538,000.00	*****	2,090,000.00	*****	2,428,000.00	*****	1,990,000.00
127	COMMERCIAL CONCRETE	1 LS	*****	47,000.00	*****	51,800.00	*****	97,700.00	*****	55,000.00
128	WATERPROOFING	291 SY	38.50	11,203.50	51.00	14,841.00	49.00	14,259.00	45.00	13,095.00
129	CORROSION RESISTANT EPOXY	3059 SY	38.50	117,771.50	2.00	6,118.00	60.40	184,763.60	120.00	367,080.00
130	VAPOR RETARDER BARRIERS	186 SY	3.00	558.00	11.00	2,046.00	19.40	3,608.40	10.00	1,860.00
131	BOLLARDS	10 EA	275.00	2,750.00	1,070.00	10,700.00	970.00	9,700.00	1,320.00	13,200.00
132	STORM SEWER PIPE 4 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	40 LF	20.00	800.00	35.00	1,400.00	54.00	2,160.00	25.00	1,000.00

<b>Project Number: 2011145</b>			<b>Engineer's Estimate</b>		Clearwater Construction & Management		Halme Builders Inc		Garco Construction Inc	
<b>Item No</b>	<b>Bid Item Description</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>

<i>Schedule Description</i>				<i>Tax Classification</i>						
<i>Schedule 01</i>				Not Public Street Improvement						
133	STORM SEWER PIPE 12 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	136 LF	40.00	5,440.00	40.00	5,440.00	46.75	6,358.00	46.00	6,256.00
134	STORM SEWER PIPE 24 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	669 LF	65.00	43,485.00	60.00	40,140.00	63.35	42,381.15	67.00	44,823.00
135	MANHOLE TYPE II-54, BASIC PRICE	2 EA	4,500.00	9,000.00	5,750.00	11,500.00	5,875.00	11,750.00	2,505.00	5,010.00
136	MANHOLE ADDITIONAL HEIGHT 48 IN. DIAM. TYPE II	4 VF	120.00	480.00	88.00	352.00	144.00	576.00	22.25	89.00
137	MANHOLE TYPE III-72, BASIC PRICE	1 EA	8,000.00	8,000.00	5,500.00	5,500.00	7,600.00	7,600.00	3,855.00	3,855.00
138	MANHOLE ADDITIONAL HEIGHT 72 IN. DIAM. TYPE III	2 EA	300.00	600.00	350.00	700.00	144.00	288.00	45.00	90.00
139	MANHOLE TYPE II-96, BASIC PRICE	1 EA	12,000.00	12,000.00	11,400.00	11,400.00	13,980.00	13,980.00	7,285.00	7,285.00
140	MANHOLE ADDITIONAL HEIGHT 48 IN. DIAM. TYPE II	10 VF	120.00	1,200.00	70.00	700.00	144.00	1,440.00	45.00	450.00
141	MANHOLE TYPE III-96, BASIC PRICE	4 EA	11,000.00	44,000.00	10,350.00	41,400.00	12,300.00	49,200.00	6,672.00	26,688.00
142	MANHOLE ADDITIONAL HEIGHT 96 IN. DIAM. TYPE III	12 VF	500.00	6,000.00	92.00	1,104.00	144.00	1,728.00	45.00	540.00
143	ADJUST EXISTING MANHOLE, CATCH BASIN, DRYWELL, OR INLET IN ASPHALT	3 EA	500.00	1,500.00	733.00	2,199.00	415.00	1,245.00	3,350.00	10,050.00
144	ADJUST EXISTING VALVE BOX, MONUMENT OR CLEANOUT IN ASPHALT	2 EA	300.00	600.00	250.00	500.00	215.00	430.00	330.00	660.00
146	CATCH BASIN TYPE 1 (WSDOT STYLE)	1 EA	2,000.00	2,000.00	2,100.00	2,100.00	1,740.00	1,740.00	1,835.00	1,835.00
148	CONNECT 24-36 IN. DIAM. SEWER PIPE TO EXISTING SEWER PIPE	3 EA	2,300.00	6,900.00	1,167.00	3,501.00	1,975.00	5,925.00	1,965.00	5,895.00
149	RECONSTRUCT MANHOLE INVERT	4 EA	1,400.00	5,600.00	925.00	3,700.00	655.00	2,620.00	2,750.00	11,000.00
150	MANHOLE TEST	6 EA	400.00	2,400.00	467.00	2,802.00	410.00	2,460.00	480.00	2,880.00
151	EXTRA WORK ALLOWANCE FOR ROCK EXCAVATION	600 CY	80.00	48,000.00	23.00	13,800.00	54.00	32,400.00	41.00	24,600.00

<b>Project Number: 2011145</b>			<b>Engineer's Estimate</b>		Clearwater Construction & Management		Halme Builders Inc		Garco Construction Inc	
<b>Item No</b>	<b>Bid Item Description</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>

<i>Schedule Description</i>				<i>Tax Classification</i>						
<i>Schedule 01</i>				Not Public Street Improvement						
152	TRENCH SAFETY SYSTEM	1 LS	*****	2,500.00	*****	2,900.00	*****	11,000.00	*****	815.00
153	PLUGGING EXISTING PIPE	8 EA	250.00	2,000.00	688.00	5,504.00	750.00	6,000.00	135.00	1,080.00
154	TEMPORARY ADJACENT UTILITY SUPPORT	1 LS	*****	5,000.00	*****	3,200.00	*****	3,270.00	*****	815.00
155	CLEANING EXISTING SANITARY/STORM SEWERS	1 LS	*****	5,000.00	*****	4,000.00	*****	3,600.00	*****	2,710.00
156	TRENCH EXCAVATION FOR WATER SERVICE TAP	1 LS	*****	500.00	*****	3,500.00	*****	2,035.00	*****	2,435.00
157	CSO FACILITY WATER SUPPLY AND BACKFLOW PREVENTER ASSEMBLY	1 LS	*****	26,000.00	*****	13,800.00	*****	21,750.00	*****	11,850.00
158	RAY STREET WATER MAIN REROUTE	1 LS	*****	11,000.00	*****	13,800.00	*****	11,830.00	*****	11,215.00
159	SANITARY SEWER PIPE 24 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	56 LF	100.00	5,600.00	296.00	16,576.00	300.00	16,800.00	250.00	14,000.00
160	SANITARY SEWER PIPE 30 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	203 LF	148.00	30,044.00	113.00	22,939.00	180.00	36,540.00	125.00	25,375.00
161	SANITARY SEWER PIPE 36 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	54 LF	155.00	8,370.00	306.00	16,524.00	313.00	16,902.00	385.00	20,790.00
162	SANITARY SEWER PIPE 54 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	70 LF	210.00	14,700.00	219.00	15,330.00	514.00	35,980.00	405.00	28,350.00
163	MAINTENANCE OF SEWER SERVICE	1 LS	*****	30,000.00	*****	10,900.00	*****	28,000.00	*****	3,300.00
164	FLOW CONTROL DEVICES & CONTROLS	1 LS	*****	356,000.00	*****	160,000.00	*****	157,000.00	*****	157,000.00
165	DETENTION TANK APPURTENANCES	1 LS	*****	248,000.00	*****	195,800.00	*****	206,400.00	*****	253,000.00
166	ESC LEAD	1 LS	*****	1,000.00	*****	600.00	*****	4,300.00	*****	5,050.00
167	STABILIZED CONSTRUCTION ENTRANCE	83 SY	15.00	1,245.00	29.00	2,407.00	79.00	6,557.00	30.00	2,490.00
168	INLET PROTECTION	13 EA	100.00	1,300.00	46.00	598.00	55.00	715.00	71.00	923.00

<b>Project Number: 2011145</b>			<b>Engineer's Estimate</b>		Clearwater Construction & Management		Halme Builders Inc		Garco Construction Inc	
<b>Item No</b>	<b>Bid Item Description</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>

<i>Schedule Description</i>				<i>Tax Classification</i>						
<i>Schedule 01</i>				Not Public Street Improvement						
169	SILT FENCE	962 LF	3.00	2,886.00	3.00	2,886.00	3.20	3,078.40	4.00	3,848.00
170	TOPSOIL TYPE A, 4 INCH THICK	11500 SY	8.00	92,000.00	6.00	69,000.00	4.90	56,350.00	3.00	34,500.00
171	HYDROSEEDING	6000 SY	2.00	12,000.00	5.00	30,000.00	1.75	10,500.00	0.75	4,500.00
172	CONSTRUCT BIO-INFILTRATION SWALE	502 SY	10.00	5,020.00	6.00	3,012.00	6.52	3,273.04	12.75	6,400.50
173	POROUS PAVEMENT INSTALLATION	1700 SY	81.00	137,700.00	28.00	47,600.00	52.25	88,825.00	40.00	68,000.00
174	LANDSCAPE PLAN	1 LS	*****	35,000.00	*****	68,600.00	*****	36,560.00	*****	49,000.00
175	IRRIGATION SYSTEM	1 LS	*****	15,000.00	*****	23,900.00	*****	25,000.00	*****	38,405.00
176	CEMENT CONC. CURB AND GUTTER	96 LF	22.50	2,160.00	31.00	2,976.00	32.00	3,072.00	25.00	2,400.00
177	CEMENT CONCRETE CURB	1480 LF	16.00	23,680.00	14.00	20,720.00	15.30	22,644.00	12.25	18,130.00
178	CEMENT CONCRETE RIBBON CURB	60 LF	12.00	720.00	20.00	1,200.00	22.00	1,320.00	26.00	1,560.00
179	CEMENT CONCRETE DRIVEWAY	42 SY	38.00	1,596.00	40.00	1,680.00	41.25	1,732.50	66.00	2,772.00
180	CEMENT CONCRETE DRIVEWAY TRANSITION	7 SY	25.00	175.00	43.00	301.00	41.25	288.75	66.00	462.00
181	TEMPORARY SECURITY FENCE	1650 LF	18.00	29,700.00	3.00	4,950.00	6.40	10,560.00	4.00	6,600.00
182	CEMENT CONC. SIDEWALK	527 SY	34.00	17,918.00	30.00	15,810.00	32.00	16,864.00	25.00	13,175.00
183	LIGHT LOOSE RIPRAP WITH CONCRETE	16 SY	60.00	960.00	231.00	3,696.00	110.00	1,760.00	76.00	1,216.00
184	ELECTRICAL EQUIPMENT	1 LS	*****	140,000.00	*****	146,300.00	*****	142,500.00	*****	123,400.00
185	ELECTRICAL & MECHANICAL EQUIPMENT FREIGHT & STARTUP SERVICES	1 LS	*****	40,000.00	*****	2,100.00	*****	1,990.00	*****	1,825.00
186	PAVEMENT MARKING - DURABLE HEAT APPLIED	117 SF	10.00	1,170.00	12.00	1,404.00	11.20	1,310.40	10.25	1,199.25
187	VEHICLE GATE ASSEMBLY	1 LS	*****	2,050.00	*****	6,700.00	*****	2,900.00	*****	2,660.00

<b>Project Number: 2011145</b>		<b>Engineer's Estimate</b>		Clearwater Construction & Management	Halme Builders Inc	Garco Construction Inc				
<b>Item No</b>	<b>Bid Item Description</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>

**Schedule Description**

**Tax Classification**

**Schedule 01**

Not Public Street Improvement

188	VENTILATION AND ODOR CONTROL EQUIPMENT	1 LS	*****	445,000.00	*****	537,000.00	*****	400,000.00	*****	951,000.00
189	FINAL SITE PREPARATION	1 LS	*****	25,000.00	*****	9,800.00	*****	16,800.00	*****	22,500.00
<b>Schedule Totals</b>				5,589,090.00		4,723,055.00		5,366,342.79		5,749,900.00

<b>Project Number: 2011145</b>			<b>Engineer's Estimate</b>		Apollo Inc		Graham Construction & Management Inc			
<b>Item No</b>	<b>Bid Item Description</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>

<i>Schedule Description</i>				<i>Tax Classification</i>						
<i>Schedule 01</i>				Not Public Street Improvement						
101	REIMBURSEMENT FOR THIRD PARTY DAMAGE	1 EST	1.00	1.00	1.00	1.00	1.00	1.00	0.00	0.00
102	SPCC PLAN	1 LS	*****	750.00	*****	800.00	*****	500.00	*****	0.00
103	POTHOLING	2 EA	400.00	800.00	1,000.00	2,000.00	200.00	400.00	0.00	0.00
104	MOBILIZATION	1 LS	*****	270,000.00	*****	500,000.00	*****	500,000.00	*****	0.00
105	PROJECT TEMPORARY TRAFFIC CONTROL	1 LS	*****	25,000.00	*****	110,000.00	*****	70,000.00	*****	0.00
106	SPECIAL SIGNS	240 SF	20.00	4,800.00	11.50	2,760.00	20.00	4,800.00	0.00	0.00
107	SEQUENTIAL ARROW SIGN	1350 HR	1.50	2,025.00	4.25	5,737.50	3.00	4,050.00	0.00	0.00
108	PORTABLE CHANGEABLE MESSAGE SIGN	920 HR	5.00	4,600.00	6.40	5,888.00	5.00	4,600.00	0.00	0.00
109	TYPE III BARRICADE	60 EA	25.00	1,500.00	53.00	3,180.00	100.00	6,000.00	0.00	0.00
110	CLEARING AND GRUBBING	2.5 AC	8,000.00	20,000.00	20,000.00	50,000.00	4,000.00	10,000.00	0.00	0.00
111	REMOVE AND RESET LIGHT POLE	1 EA	300.00	300.00	7,000.00	7,000.00	6,500.00	6,500.00	0.00	0.00
112	REMOVE EXISTING CURB	1482 LF	3.50	5,187.00	3.40	5,038.80	2.00	2,964.00	0.00	0.00
113	REMOVE FLEXIBLE PAVEMENT FOR TRENCHES	1060 SY	6.00	6,360.00	18.75	19,875.00	3.00	3,180.00	0.00	0.00
114	REMOVE CEMENT CONCRETE SIDEWALK AND DRIVEWAY	539 SY	6.00	3,234.00	7.65	4,123.35	4.00	2,156.00	0.00	0.00
115	REMOVE MANHOLE, CATCH BASIN OR DRYWELL	4 EA	290.00	1,160.00	400.00	1,600.00	200.00	800.00	0.00	0.00
116	SAWCUTTING FLEXIBLE PAVEMENT	1840 LFI	1.00	1,840.00	0.80	1,472.00	0.50	920.00	0.00	0.00
117	ABANDON EXISTING MANHOLE, CATCH BASIN OR DRYWELL	2 EA	400.00	800.00	480.00	960.00	200.00	400.00	0.00	0.00
118	REMOVE EXISTING ROAD	3353 SY	11.00	36,883.00	3.25	10,897.25	3.00	10,059.00	0.00	0.00
119	PREPARATION OF UNTREATED ROADWAY	1207 SY	4.00	4,828.00	1.25	1,508.75	2.50	3,017.50	0.00	0.00

<b>Project Number: 2011145</b>			<b>Engineer's Estimate</b>		Apollo Inc		Graham Construction & Management Inc			
<b>Item No</b>	<b>Bid Item Description</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>

<i>Schedule Description</i>				<i>Tax Classification</i>						
<i>Schedule 01</i>				Not Public Street Improvement						
120	STRUCTURAL EXCAVATION CLASS A INCLUDING HAUL	1 LS	*****	225,000.00	*****	330,000.00	*****	150,000.00	*****	0.00
121	GRAVEL BACKFILL INCLUDING HAUL	1 LS	*****	192,500.00	*****	300,000.00	*****	250,000.00	*****	0.00
122	PEA GRAVEL	22 CY	126.00	2,772.00	50.00	1,100.00	30.00	660.00	0.00	0.00
123	CSTC FOR SIDEWALK AND DRIVEWAYS	47 CY	49.00	2,303.00	37.00	1,739.00	34.00	1,598.00	0.00	0.00
124	CRUSHED SURFACING BASE COURSE	1023 CY	40.00	40,920.00	41.00	41,943.00	40.00	40,920.00	0.00	0.00
125	HMA CL. 1/2 IN. PG 70-28, 5 INCH THICK	1207 SY	35.00	42,245.00	38.00	45,866.00	41.00	49,487.00	0.00	0.00
126	CAST IN PLACE CONCRETE	1 LS	*****	2,538,000.00	*****	2,380,000.00	*****	2,627,000.00	*****	0.00
127	COMMERCIAL CONCRETE	1 LS	*****	47,000.00	*****	80,000.00	*****	76,000.00	*****	0.00
128	WATERPROOFING	291 SY	38.50	11,203.50	47.00	13,677.00	44.00	12,804.00	0.00	0.00
129	CORROSION RESISTANT EPOXY	3059 SY	38.50	117,771.50	59.00	180,481.00	55.00	168,245.00	0.00	0.00
130	VAPOR RETARDER BARRIERS	186 SY	3.00	558.00	0.50	93.00	4.00	744.00	0.00	0.00
131	BOLLARDS	10 EA	275.00	2,750.00	700.00	7,000.00	1,400.00	14,000.00	0.00	0.00
132	STORM SEWER PIPE 4 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	40 LF	20.00	800.00	12.00	480.00	30.00	1,200.00	0.00	0.00
133	STORM SEWER PIPE 12 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	136 LF	40.00	5,440.00	50.20	6,827.20	35.00	4,760.00	0.00	0.00
134	STORM SEWER PIPE 24 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	669 LF	65.00	43,485.00	51.00	34,119.00	52.00	34,788.00	0.00	0.00
135	MANHOLE TYPE II-54, BASIC PRICE	2 EA	4,500.00	9,000.00	5,000.00	10,000.00	5,000.00	10,000.00	0.00	0.00
136	MANHOLE ADDITIONAL HEIGHT 48 IN. DIAM. TYPE II	4 VF	120.00	480.00	100.00	400.00	75.00	300.00	0.00	0.00
137	MANHOLE TYPE III-72, BASIC PRICE	1 EA	8,000.00	8,000.00	6,300.00	6,300.00	4,800.00	4,800.00	0.00	0.00

<b>Project Number: 2011145</b>			<b>Engineer's Estimate</b>		Apollo Inc		Graham Construction & Management Inc			
<b>Item No</b>	<b>Bid Item Description</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>

<i>Schedule Description</i>				<i>Tax Classification</i>						
<i>Schedule 01</i>				Not Public Street Improvement						
138	MANHOLE ADDITIONAL HEIGHT 72 IN. DIAM. TYPE III	2 EA	300.00	600.00	100.00	200.00	300.00	600.00	0.00	0.00
139	MANHOLE TYPE II-96, BASIC PRICE	1 EA	12,000.00	12,000.00	16,000.00	16,000.00	9,900.00	9,900.00	0.00	0.00
140	MANHOLE ADDITIONAL HEIGHT 48 IN. DIAM. TYPE II	10 VF	120.00	1,200.00	100.00	1,000.00	60.00	600.00	0.00	0.00
141	MANHOLE TYPE III-96, BASIC PRICE	4 EA	11,000.00	44,000.00	14,000.00	56,000.00	9,000.00	36,000.00	0.00	0.00
142	MANHOLE ADDITIONAL HEIGHT 96 IN. DIAM. TYPE III	12 VF	500.00	6,000.00	100.00	1,200.00	80.00	960.00	0.00	0.00
143	ADJUST EXISTING MANHOLE, CATCH BASIN, DRYWELL, OR INLET IN ASPHALT	3 EA	500.00	1,500.00	300.00	900.00	650.00	1,950.00	0.00	0.00
144	ADJUST EXISTING VALVE BOX, MONUMENT OR CLEANOUT IN ASPHALT	2 EA	300.00	600.00	120.00	240.00	200.00	400.00	0.00	0.00
146	CATCH BASIN TYPE 1 (WSDOT STYLE)	1 EA	2,000.00	2,000.00	1,700.00	1,700.00	1,800.00	1,800.00	0.00	0.00
148	CONNECT 24-36 IN. DIAM. SEWER PIPE TO EXISTING SEWER PIPE	3 EA	2,300.00	6,900.00	1,170.00	3,510.00	1,000.00	3,000.00	0.00	0.00
149	RECONSTRUCT MANHOLE INVERT	4 EA	1,400.00	5,600.00	1,000.00	4,000.00	800.00	3,200.00	0.00	0.00
150	MANHOLE TEST	6 EA	400.00	2,400.00	280.00	1,680.00	400.00	2,400.00	0.00	0.00
151	EXTRA WORK ALLOWANCE FOR ROCK EXCAVATION	600 CY	80.00	48,000.00	40.00	24,000.00	20.00	12,000.00	0.00	0.00
152	TRENCH SAFETY SYSTEM	1 LS	*****	2,500.00	*****	5,000.00	*****	2,500.00	*****	0.00
153	PLUGGING EXISTING PIPE	8 EA	250.00	2,000.00	1,800.00	14,400.00	600.00	4,800.00	0.00	0.00
154	TEMPORARY ADJACENT UTILITY SUPPORT	1 LS	*****	5,000.00	*****	35,000.00	*****	2,700.00	*****	0.00
155	CLEANING EXISTING SANITARY/STORM SEWERS	1 LS	*****	5,000.00	*****	5,500.00	*****	3,500.00	*****	0.00
156	TRENCH EXCAVATION FOR WATER SERVICE TAP	1 LS	*****	500.00	*****	1,400.00	*****	3,000.00	*****	0.00

<b>Project Number: 2011145</b>			<b>Engineer's Estimate</b>		Apollo Inc		Graham Construction & Management Inc			
<b>Item No</b>	<b>Bid Item Description</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>

<i>Schedule Description</i>				<i>Tax Classification</i>						
<i>Schedule 01</i>				Not Public Street Improvement						
157	CSO FACILITY WATER SUPPLY AND BACKFLOW PREVENTER ASSEMBLY	1 LS	*****	26,000.00	*****	13,000.00	*****	14,000.00	*****	0.00
158	RAY STREET WATER MAIN REROUTE	1 LS	*****	11,000.00	*****	17,000.00	*****	12,000.00	*****	0.00
159	SANITARY SEWER PIPE 24 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	56 LF	100.00	5,600.00	320.00	17,920.00	257.00	14,392.00	0.00	0.00
160	SANITARY SEWER PIPE 30 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	203 LF	148.00	30,044.00	165.00	33,495.00	98.00	19,894.00	0.00	0.00
161	SANITARY SEWER PIPE 36 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	54 LF	155.00	8,370.00	300.00	16,200.00	266.00	14,364.00	0.00	0.00
162	SANITARY SEWER PIPE 54 IN. DIAM. INCL. STRUCTURAL EXCAVATION CLASS B	70 LF	210.00	14,700.00	275.00	19,250.00	190.00	13,300.00	0.00	0.00
163	MAINTENANCE OF SEWER SERVICE	1 LS	*****	30,000.00	*****	10,000.00	*****	9,500.00	*****	0.00
164	FLOW CONTROL DEVICES & CONTROLS	1 LS	*****	356,000.00	*****	145,000.00	*****	133,000.00	*****	0.00
165	DETENTION TANK APPURTENANCES	1 LS	*****	248,000.00	*****	240,000.00	*****	175,000.00	*****	0.00
166	ESC LEAD	1 LS	*****	1,000.00	*****	1.00	*****	1,000.00	*****	0.00
167	STABILIZED CONSTRUCTION ENTRANCE	83 SY	15.00	1,245.00	20.00	1,660.00	25.00	2,075.00	0.00	0.00
168	INLET PROTECTION	13 EA	100.00	1,300.00	90.00	1,170.00	40.00	520.00	0.00	0.00
169	SILT FENCE	962 LF	3.00	2,886.00	4.00	3,848.00	3.00	2,886.00	0.00	0.00
170	TOPSOIL TYPE A, 4 INCH THICK	11500 SY	8.00	92,000.00	3.25	37,375.00	3.00	34,500.00	0.00	0.00
171	HYDROSEEDING	6000 SY	2.00	12,000.00	0.65	3,900.00	0.60	3,600.00	0.00	0.00
172	CONSTRUCT BIO-INFILTRATION SWALE	502 SY	10.00	5,020.00	32.00	16,064.00	5.00	2,510.00	0.00	0.00
173	POROUS PAVEMENT INSTALLATION	1700 SY	81.00	137,700.00	40.00	68,000.00	38.00	64,600.00	0.00	0.00

<b>Project Number: 2011145</b>			<b>Engineer's Estimate</b>		Apollo Inc		Graham Construction & Management Inc			
<b>Item No</b>	<b>Bid Item Description</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>	<b>Unit Price</b>	<b>Amount</b>

<i>Schedule Description</i>				<i>Tax Classification</i>						
<i>Schedule 01</i>				Not Public Street Improvement						
174	LANDSCAPE PLAN	1 LS	*****	35,000.00	*****	50,000.00	*****	49,000.00	*****	0.00
175	IRRIGATION SYSTEM	1 LS	*****	15,000.00	*****	40,000.00	*****	39,000.00	*****	0.00
176	CEMENT CONC. CURB AND GUTTER	96 LF	22.50	2,160.00	30.00	2,880.00	27.00	2,592.00	0.00	0.00
177	CEMENT CONCRETE CURB	1480 LF	16.00	23,680.00	14.00	20,720.00	12.00	17,760.00	0.00	0.00
178	CEMENT CONCRETE RIBBON CURB	60 LF	12.00	720.00	22.00	1,320.00	18.00	1,080.00	0.00	0.00
179	CEMENT CONCRETE DRIVEWAY	42 SY	38.00	1,596.00	42.50	1,785.00	35.00	1,470.00	0.00	0.00
180	CEMENT CONCRETE DRIVEWAY TRANSITION	7 SY	25.00	175.00	42.50	297.50	35.00	245.00	0.00	0.00
181	TEMPORARY SECURITY FENCE	1650 LF	18.00	29,700.00	12.00	19,800.00	3.00	4,950.00	0.00	0.00
182	CEMENT CONC. SIDEWALK	527 SY	34.00	17,918.00	31.00	16,337.00	27.00	14,229.00	0.00	0.00
183	LIGHT LOOSE RIPRAP WITH CONCRETE	16 SY	60.00	960.00	86.00	1,376.00	75.00	1,200.00	0.00	0.00
184	ELECTRICAL EQUIPMENT	1 LS	*****	140,000.00	*****	140,000.00	*****	130,000.00	*****	0.00
185	ELECTRICAL & MECHANICAL EQUIPMENT FREIGHT & STARTUP SERVICES	1 LS	*****	40,000.00	*****	2,900.00	*****	7,000.00	*****	0.00
186	PAVEMENT MARKING - DURABLE HEAT APPLIED	117 SF	10.00	1,170.00	15.00	1,755.00	11.00	1,287.00	0.00	0.00
187	VEHICLE GATE ASSEMBLY	1 LS	*****	2,050.00	*****	2,700.00	*****	3,500.00	*****	0.00
188	VENTILATION AND ODOR CONTROL EQUIPMENT	1 LS	*****	445,000.00	*****	500,000.00	*****	865,000.00	*****	0.00
189	FINAL SITE PREPARATION	1 LS	*****	25,000.00	*****	20,000.00	*****	20,000.00	*****	0.00
<b>Schedule Totals</b>				5,589,090.00		5,810,350.35		5,842,417.50		0.00

**Project Number**      **2011145**      **CSO 34-3**

**SCHEDULE SUMMARY**

	<b>Sched 1</b>	<b>Sched 2</b>	<b>Sched 3</b>	<b>Sched 4</b>	<b>Sched 5</b>	<b>Sched 6</b>	<b>Sched 7</b>	<b>Sched 8</b>	<b>Total</b>
<b>Engineer's Est</b>	5,589,090.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,589,090.00
Clearwater Constructio	4,723,055.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4,723,055.00
Halme Builders Inc	5,366,342.79	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,366,342.79
Garco Construction Inc	5,749,900.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,749,900.00
Apollo Inc	5,810,350.35	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,810,350.35
Graham Construction &	5,842,417.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,842,417.50

**Low Bid Contractor:** Clearwater Construction & Management

	<b>Contractor's Bid</b>	<b>Engineer's Estimate</b>	<b>% Variance</b>	
<b>Schedule 01</b>	\$5,133,960.78	\$6,075,340.82	15.50	% Under Estimate
<b>Bid Totals</b>	\$5,133,960.78	\$6,075,340.82	15.50	% Under Estimate



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	OPR 2012-0361
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	CLAIMS

<b>Submitting Dept</b>	CITY ATTORNEY
<b>Contact Name/Phone</b>	NANCY ISSERLIS 6225
<b>Contact E-Mail</b>	NISSERLIS@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	0500 AMENDMENT TO SPECIAL COUNSEL

**Agenda Wording**

Amendment to contract with Patterson Buchanan Fobes & Leitch, Inc., P.S. for outside counsel services in legal matter of Bradley N. Thoma v. City of Spokane - increase of \$50,000.

**Summary (Background)**

The City entered into contact with the above firm for outside legal counsel services in the legal matter of Bradley N. Thoma v. City of Spokane. Additional funds are needed to defend this matter.

**Fiscal Impact**

Expense	\$ 50,000.00
Select	\$
Select	\$
Select	\$

**Budget Account**

#	0000-00000-00000-00000
#	
#	BudgetAccount3
#	

**Approvals**

<b>Dept Head</b>	BURNS, BARBARA
<b>Division Director</b>	
<b>Finance</b>	LESESNE, MICHELE
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	
<b>Distribution List</b>	
	Jim Scott - ASC
	sdhansen@spokanecity.org
	rkokot@spokanecity.org
	map@pattersonbuchanan.com
	bburns@spokanecity.org

**Additional Approvals**

<b>Purchasing</b>	

CONTRACT AMENDMENT NO. 2

THIS CONTRACT AMENDMENT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City," and PATTERSON BUCHANAN FOBES LEITCH & KALZER, INC., P.S., whose address is 2112 Third Avenue, Suite 500, Seattle, Washington, 98121, as "Firm".

WHEREAS, the parties entered into a contract wherein the Firm agreed to act as outside counsel in the matter of BRADLEY N. THOMA V. CITY OF SPOKANE;; and

WHEREAS, it is necessary to increase the maximum amount of the contract; --  
Now, Therefore,

The parties agree as follows:

1. DOCUMENTS. The contract dated April 12, 2012 and April 30, 2012, any previous amendments and/or extensions/renewals thereto are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein.

2. EFFECTIVE DATE. This contract amendment shall become effective March 1, 2013.

3. AMENDMENT. Section 3 of the contract documents is amended to read as follows:

3. COMPENSATION. The City shall pay the hourly fees and other charges as stated in the attached exhibit up to a maximum amount of ((ONE HUNDRED TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$125,000.00))) ONE HUNDRED SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$175,00.00) that may not be exceeded without the written approval of the City Attorney or city council, where appropriate.

Dated: \_\_\_\_\_

CITY OF SPOKANE

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

Title: Mayor

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Assistant City Attorney

Dated: \_\_\_\_\_

PATTERSON BUCHANAN FOBES &  
LEITCH, INC., P.S.

E-Mail address, if available:

\_\_\_\_\_

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

Title:

\_\_\_\_\_



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	OPR 2013-0644
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	ASSET MANAGEMENT
<b>Contact Name/Phone</b>	MARK PAPICH 625-6310
<b>Contact E-Mail</b>	MPAPICH@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	5900-LOAN AGREEMENT - CENTRAL AVENUE WELLS 1 & 2

**Agenda Wording**

Loan Agreement between Drinking Water State Revolving Fund (DWSRF) and the City of Spokane for Central Avenue Wells 1 and 2 Rehabilitation for revenue in the amount of \$1,221,090.00.

**Summary (Background)**

The Central Wells No. 1 and No. 2 Rehabilitation loan will replace the existing pumps and motors in two wells. This project will allow for more pumping capacity and improved efficiency. The loan is at an interest rate of 1.00 percent with a repayment period of 24 years.

**Fiscal Impact**

Revenue	\$ 1,221,090.00
Select	\$
Select	\$
Select	\$

**Budget Account**

#	4100-42410-99999-39180
#	
#	BudgetAccount3
#	

**Approvals**

<b>Dept Head</b>	WERNER, MARK
<b>Division Director</b>	QUINTRALL, JAN
<b>Finance</b>	BUSTOS, KIM
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	Public Works 8/26/13

**Distribution List**

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pdolan@spokanecity.org
mlesesne@spokanecity.org
ewade@spokanecity.org
mpapich@spokanecity.org
acline@spokanecity.org

**Additional Approvals**

<b>Purchasing</b>	

BRIEFING PAPER  
Public Works Committee  
Capital Programs  
August 26, 2013

---

Subject

Drinking Water State Revolving Fund (DWSRF) Loans for upcoming Water Department Projects.

Background

Capital Programs has received three loans through the Department of Health (DOH) for water system improvement projects. These three loans are Top System Transmission Main Replacements, Central Avenue Wells No. 1 and No. 2 and Steel Transmission Main Replacements.

The *Top System Transmission Main Replacements* loan provides funding for replacement of 2.5-miles of existing water main and 0.75-miles of new water main. The improvements will be located in 57<sup>th</sup> Avenue, Glenrose Street and 37<sup>th</sup> Avenue. This project will provide redundancy in the Top System and allow for repairs.

The *Central Wells No. 1 and No. 2 Rehabilitation* loan will replace the existing pumps and motors in the two wells. This project will allow for more pumping capacity and improved efficiency.

The *Steel Transmission Main Replacements* loan will replace 2.4 miles of existing main on Cleveland Avenue and 1.3 miles of existing main on Manito Boulevard. These existing steel mains have reached the end of their useful life and need to be replaced.

Impact

The water system improvements through these loans will provide a more reliable and efficient water system for the City.

Action

Council Approval of the DWSRF Loan Agreements.

Funding

The three DWSRF loans are for the amount of \$10,182,820 at an interest rate of 1.5 percent and a repayment period of 24 years. The loan is expected to cover the entire cost of the improvements.



**Washington State  
Public Works Board**

1011 Plum Street SE  
Post Office Box 42525  
Olympia, Washington 98504-2525

---

**Capital Agreement between:**

**City of Spokane**

and

**Public Works Board**

**For:**

Project Name: **Central Avenue Wells 1 and 2 Rehabilitation**

Loan Number: **DM13-952-132**

Loan Type: **DWSRF NT**

**Contract Start Date:** \_\_\_\_\_ **Contract Execution Date** \_\_\_\_\_



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[www.commerce.wa.gov](http://www.commerce.wa.gov)

# DECLARATIONS

## CLIENT INFORMATION

Legal Name: **City of Spokane**  
Loan Number: **DM13-952-132**  
Award Year: **2013**  
State Wide Vendor Number: **SWV00338705**

## PROJECT INFORMATION

Project Title: **Central Avenue Wells 1 and 2 Rehabilitation**  
Project City: **Spokane**  
Project State: **Washington**  
Project Zip Code: **99203**

## LOAN INFORMATION

Loan Amount: **\$1,221,090.00**  
Loan Fee (Included in loan amount if applicable) **\$12,090.00**  
Loan Forgiveness %: **0%**  
Loan Term: **24 years**  
Interest Rate: **1.00%**  
Payment Month: **October 1st**  
Earliest Date for Construction Reimbursement: **7/1/2013**  
Time of Performance **48 months from Contract execution date to Project Completion date.**

## SPECIAL TERMS AND CONDITIONS GOVERNING THIS LOAN AGREEMENT

**None.**

## LOAN SECURITY CONDITION GOVERNING THIS LOAN AGREEMENT

**This loan is a revenue obligation of the Contractor payable solely from the net revenue of the Water system. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The Board grants the Contractor the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan Contract. This option may be used only if the entire project is a domestic water, sanitary sewer, storm sewer, or solid waste utility project.**

**DECLARATIONS (continued)**

Loan Number:  
Project Title:

**DM13-952-132**  
**Central Avenue Wells 1 and 2 Rehabilitation**

Scope of Work:

**Environmental and Cultural Review Process – This work will include completing the SERP, including the SEPA process, a public meeting, a cost effectiveness analysis, and any applicable cross cutters. Design- This work will include completing the project plans, specifications, and estimates for bidding purposes. Construction- This work includes removing the existing pumps, motors, and appurtenances and replacing them with new vertical turbine pumps. The existing 7-foot wells will remain intact.**





**Contract Number: DM13-952-132**  
**Drinking Water State Revolving Fund (DWSRF)**  
**2013 New Traditional**  
**(Municipal)**

<b>1. Contractor</b> City of Spokane 808 W Spokane Falls Blvd  Spokane, WA 99203		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative</b> N/A		<b>4. Public Works Board Representative</b> N/A	
<b>5. Contract Amount</b> \$1,221,090.00	<b>6. Funding Source</b> Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Contract Start Date</b> Contract Execution Date	<b>8. Contract End Date</b> Oct 1, 2037
<b>9. Federal Funds (as applicable)</b> N/A	<b>Federal Agency</b> EPA	<b>CFDA Number</b> 66.468	
<b>10. Tax ID #</b> N/A	<b>11. SWV #</b> SWV00338705-00	<b>12. UBI #</b>	<b>13. DUNS #</b>
<b>14. Contract Purpose</b> The purpose of this Contract is to provide funding for a project of a local government that furthers the goals and objectives of the Drinking Water State Revolving Fund Loan Program. The project will be undertaken by the Contractor and will include the activities described in the Declared Scope of Work. The Board, defined as the Washington State Public Works Board, and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Declarations Page; Attachment I: Attorney's Certification; Attachment II: Federal and State Requirements; Attachment III: Disadvantaged Business Enterprise Requirements; Attachment IV: Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Attachment V: DWSRF Eligible Project Costs; and Attachment VI: Labor Standard Provisions for Subrecipients that are Governmental Entities; Attachment VII: EPA Compliance Review.			
<b>FOR THE CONTRACTOR</b>		<b>FOR PUBLIC WORKS BOARD</b>	
_____ Signature		_____ Stan Finkelstein, Board Chair	
_____ Print Name		_____ Date	
_____ Title		<b>APPROVED AS TO FORM ONLY</b>	
_____ Date		This 1st Day of May, 2013 _____ Bob Ferguson Attorney General	
		_____ <i>Signature on file</i> Kathryn Wyatt Assistant Attorney General	

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# CONTRACT TERMS AND CONDITIONS

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## DRINKING WATER STATE REVOLVING FUND NEW TRADITIONAL (MUNICIPAL)

### Part 1. SPECIAL TERMS AND CONDITIONS

#### 1.1. DEFINITIONS

As used throughout this Drinking Water State Revolving Fund Loan Contract, the following terms shall have the meaning set forth below:

- A. "Contract" shall mean this Drinking Water State Revolving Fund Loan.
- B. "Contractor" shall mean the Local Government identified on the Contract Face Sheet performing service(s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.
- C. "The Board" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the Contract.
- D. "Department of Health" shall mean the Washington State Department of Health, Office of Drinking Water, who is the recipient of the Drinking Water State Revolving Fund grant and regulates drinking water systems in the State of Washington.
- E. "Department of Commerce" and "Commerce" shall mean the Washington State Department of Commerce.
- F. AWARD YEAR shall mean the calendar year in which the funds were awarded to the Board for use in making loans under this program
- G. PAYMENT MONTH shall mean the day and month of the year in which payments are due.
- H. Unless otherwise amended, the CONTRACT END DATE shall occur in the final year of the LOAN TERM, as counted from the AWARD YEAR. The actual date of contract execution shall have no effect on the CONTRACT END DATE.
- I. "Deferral Period" shall be from the date of contract execution until the date of project completion. The Deferral Period shall not exceed 4 years in length.

#### 1.2. AUTHORITY

Acting under the authority of RCW 70.119A.170 and RCW 43.155.040, the Board has awarded the Contractor a Drinking Water State Revolving Fund loan for an approved project. The Contractor will be a sub-recipient of funds provided by the United States Environmental Protection Agency, CFDA Number 66.468, Title: Safe Drinking Water State Revolving Fund, award year of this contract.

#### 1.3. PURPOSE

The Board and the Contractor have entered into this Contract to undertake a local project that furthers the goals and objectives of the Drinking Water State Revolving Fund Loan Program. The project will be undertaken by the Contractor and will include the activities described in the SCOPE OF WORK shown on the Declarations page. The project must be undertaken in accordance with the loan Program Special Terms and Conditions and all applicable federal, state and local laws and ordinances, including but not limited to those specifically enumerated in Attachment II: Federal and State Requirements, which by this reference are incorporated into this Contract as though set forth fully herein.

#### 1.4. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and State of Washington statutes and regulations.
- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.

**1.5. AMOUNT OF LOAN**

The Board, using funds appropriated from the Drinking Water Assistance Account, shall loan the Contractor a sum not to exceed the amount shown as **LOAN AMOUNT** on the attached Declarations Page. This loan amount includes a loan fee, if applicable, which is shown on the Declarations Page as **LOAN FEE**.

**1.6. LOAN FEE**

If the loan fee applies, it will be assessed at loan execution.

The amount of the loan fee (if applicable) represents one percent (e loan request and shall not be reduced, regardless of the actual final loan amount at project completion. If the loan fee applies and the total loan amount is increased by amendment, an additional loan fee equal to one percent (1%) of the additional loan amount will be assessed at amendment execution. The amount of any loan fee will be displayed on the Declarations Page as **LOAN FEE**.

**1.7. TERM OF LOAN**

Unless otherwise amended, the term of the loan shall not exceed the period shown on the Declarations Page as **LOAN TERM**. The term shall start in the **AWARD YEAR**.

**1.8. RATE AND LOAN FORGIVENESS**

The interest rate shall be the declared **INTEREST RATE** per annum on the outstanding principal balance, based on a three hundred and sixty (360) day year composed of twelve (12) thirty (30) day months. The amount of loan forgiveness (if applicable) shall be as stated on the attached Declarations Page, and identified therein as **LOAN FORGIVENESS %**.

This loan forgiveness shall be applied at project completion and shall apply to the lesser of the loan amount or the actual eligible costs and that declared percent on any accrued interest. The percent of loan forgiveness and interest rate shall not be changed, regardless of the actual cost of the project and the Affordability Index at project completion.

**1.9. DISBURSEMENT OF LOAN PROCEEDS AND REQUIRED DOCUMENTATION**

If funding or appropriation is not available at the time the Contractor submits a request for a loan disbursement, the issuance of a warrant will be delayed or suspended until such time funds become available. Therefore, subject to availability of funds, warrants shall be issued to the Contractor for payment of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with the declared **SCOPE OF WORK**.

The loan funds will be disbursed to the Contractor as follows:

Ten percent (10%) of loan proceeds will be held until project completion. The total Drinking Water State Revolving Fund Loan shall not exceed one hundred percent (100%) of the actual eligible project costs.

When requesting reimbursement for costs incurred, the Contractor shall submit a signed and completed Invoice Voucher (Form A19), referencing the declared **SCOPE OF WORK** project activity performed, and any appropriate documentation such as bills, invoices, and receipts. The purchase of any land necessary and integral to the project must be included in the declared **SCOPE OF WORK** and be documented with an appraisal or other market valuation and a valid purchase and sale agreement. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Each A19 Reimbursement Voucher must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the project since the last invoice was submitted, as well as a report

of project status to date. The Department of Commerce (Commerce) will not release payment for any reimbursement request received until the Project Status Report is received. After approving the Voucher and the Project Status Report, Commerce shall promptly release funds to the Contractor.

Construction expenses incurred after the date shown as **EARLIEST DATE FOR CONSTRUCTION REIMBURSEMENT** on the Declarations Page are eligible for reimbursement. Requests for reimbursements for costs related to construction activities will not be accepted until the Contractor has met the following conditions:

- A. Issued a Notice to Proceed which follows the formal award of a construction contract;
- B. Completed the State Environmental Review Process;
- C. Complied with all provisions of Section 106 of the National Historic Preservation Act of 1966;
- D. Complied with Section 1.19: Prevailing Wage;
- E. Obtained approval from the Department of Health of the project report and related construction documents for all applicable activities described in the declared **SCOPE OF WORK**; and
- F. Complied with any other loan conditions required by Department of Health or The Board.

An electronic copy (emailed PDF or a FAX) of a signed A19 Reimbursement Voucher and other required documentation is the preferred method for requesting reimbursement. Submit the electronic requests to your Contracts Administration Unit (CAU) representative or fax to 360-586-8440. This electronic submittal may be 25 pages or less. If you choose to send your vouchers and backup documentation electronically, please DO NOT mail in the original. You will receive email notification from your CAU representative that the electronic request has been received.

Commerce will pay the Contractor upon acceptance of the work performed and receipt of properly completed invoices. Invoices may be submitted to Commerce not more often than monthly.

Payment shall be considered timely if made by Commerce within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

The Board may, at its sole discretion, withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the Board.

In the event that the Contractor receives reimbursement for costs that are later determined by the Board to be ineligible, these funds shall be repaid to the Drinking Water Assistance Account by payment to the Department of Commerce, or its successor, together with the submission of the Project Completion Amendment.

At the time of project completion, the Contractor shall submit to the Board a Certified Project Completion Request certifying the total actual project costs, and a final voucher for the remaining eligible funds. The Certified Project Completion Request shall include a copy of the Construction Completion Report as submitted to Department of Health.

#### **1.10. TIME OF PERFORMANCE**

The Contractor shall begin the activities identified within the declared **SCOPE OF WORK** no later than thirty (30) days after Contract execution. The Contractor must reach project completion within the period specified on the Declarations Page as **TIME OF PERFORMANCE**.

Failure to meet Time of Performance within the time frame described in this section shall constitute default under this Contract, and as a result, this Contract may be terminated. In the event of extenuating

circumstances, the Contractor may request, in writing, at least 90 days prior to the expiration of project completion date that the Board extend the deadline for project completion. The Board may extend the time of project completion.

#### **1.11. PROJECT COMPLETION AMENDMENT AND THE CERTIFIED PROJECT COMPLETION REPORT**

The Contractor shall initiate a Project Completion Amendment by submitting a Certified Project Completion Report when activities identified in the declared **SCOPE OF WORK** are complete and the Contractor agrees that no additional eligible costs will be reimbursed.

In the Project Completion Amendment, the Contractor will provide the following information to the Board:

- A. A certified statement of the actual dollar amounts spent, from all fund sources, in completing the project as described in the declared **SCOPE OF WORK**.
- B. Certification that all costs associated with the project have been incurred. Costs are incurred when goods and services are received and/or contract work is performed.
- C. A copy of the Department of Health Construction Completion Report as submitted to Department of Health.
- D. Evidence documenting compliance with audit requirements as referenced in Section 1.27.
- E. A final voucher for the remaining eligible funds.

The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount and term of the loan.

#### **1.12. REPAYMENT**

Pursuant to 40 CFR, Section 35.3525 (a)(1)(i), an assistance recipient begins annual repayment of principal and interest no later than one year after the **DEFERRAL PERIOD** end date. The first repayment installment of principal and any interest accrued to date under this Contract is due on the month declared as **PAYMENT MONTH** on the Declarations Page, of the first twelve (12) months following the **DEFERRAL PERIOD**. All subsequent payments shall consist of principal and accrued interest due on that month of each year during the remaining term of the loan.

Repayment of the loan under this Contract shall include the declared **INTEREST RATE** per annum. Interest will begin to accrue from the date each payment is issued to the Contractor. The final payment shall be on or before the completion of the declared **LOAN TERM**, payable on or before the declared **PAYMENT MONTH** of an amount sufficient to bring the loan balance to zero. Under no circumstances shall the loan repayment period exceed 20 years from the **DEFERRAL PERIOD** end date.

The Contractor has the right to repay the unpaid balance of the loan in full at any time or make accelerated payments without penalty.

The Contractor will repay the loan in accordance with the preceding conditions through the use of a check, money order, or equivalent means made payable to the Washington State Department of Commerce, or its successor.

#### **1.13. DEFAULT IN REPAYMENT**

Loan repayments shall be made in accordance with Section 1.12 of this Contract. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a monthly penalty beginning on the first (1<sup>st</sup>) day past the due date. The penalty will be one percent (1%) per month or twelve percent (12%) per annum of the delinquent payment amount. These same penalty terms shall apply if the repayment of loan funds determined to be ineligible costs are not repaid within thirty (30) days as provided for in Section 1.9.

The Contractor acknowledges and agrees to the Board's right, upon delinquency in the payment of any annual installment, to notify any other entity, creditors, or potential creditors of the Contractor of such

delinquency. Contractor shall be responsible for all legal fees incurred by the Board in any action undertaken to enforce its rights under this section.

#### **1.14. LOAN SECURITY**

Loan Security may be required as a performance condition of this contract. If such performance condition is required it shall be indicated on the attached Declarations Page and identified therein as **LOAN SECURITY CONDITION**.

The BOARD grants the Contractor the right to issue future bonds and notes that constitute a lien and charge on the revenue source superior to the lien and charge of this Loan Contract. Nothing in this section shall absolve the Contractor of its obligation to make loan repayments when due, and to adjust rates, fees, or surcharges, if necessary, to meet its obligations under this Contract.

#### **1.15. HISTORICAL AND CULTURAL ARTIFACTS**

The Contractor acknowledges that the project funded by this Contract is subject to Section 106 of the National Historic Preservation Act of 1966.

Contractor agrees that Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts and agrees to hold harmless the State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of Contractor's public works project funded under this Contract.

The Contractor agrees that, in no case shall construction activities, ground disturbance, or excavation of any sort, begin until the Contractor has complied with all provisions of Section 106 of the National Historic Preservation Act of 1966, as amended.

In addition, the Contractor shall not conduct or authorize destructive project planning activities before completing compliance with Section 106 of the National Historic Preservation Act of 1966, as amended.

If historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and implement reasonable measures to protect the discovery site from further disturbance, take reasonable steps to ensure confidentiality of the discovery site, restrict access to the site, and notify the concerned tribe's cultural staff or committee, Tribal Historical Preservation Officer (THPO), Cultural Resources Program Manager at Washington State Department of Health, and the State's Historical Preservation Officer (SHPO) at the Washington State Department of Archaeology and Historic Preservation (DAHP). If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact the concerned tribe's cultural staff or committee and DAHP.

The Contractor shall require the above provisions to be contained in all contracts for work or services related to the declared **SCOPE OF WORK**. In no case shall construction activities begin until the Contractor has complied with all provisions of Section 106 of the National Historic Preservation Act of 1966.

In addition to the requirements set forth in this Contract, the Contractor agrees to comply with Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, Revised Code of Washington (RCW) 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and Washington Administrative Code (WAC) 25-48 regarding Archaeological Excavation and Removal Permits.

#### **1.16. FEDERAL AND STATE REQUIREMENTS**

The Contractor assures compliance with all applicable federal, state and local laws, requirements, and ordinances as they pertain to the design, implementation, and administration of the approved project, including but not limited to those listed in Attachments II, III, and IV.

### **1.17. COMPETITIVE BIDDING REQUIREMENTS**

Pursuant to 40 CFR, Section 33.501(b) and (c), the Contractor also agrees to create and maintain a bidders list for both Disadvantaged Business Enterprises (DBE) and Non-Disadvantaged Business Enterprises (non-DBE). The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of DBE and non-DBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts on Environmental Protection Agency assisted projects, including both DBE and non-DBE. The bidders list must be kept at least until the grant project period has expired and the recipient is no longer receiving Environmental Protection Agency funding under the grant. For entities receiving identified loans, the bidders list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors: entity's name with point of contact; entity's mailing address, telephone number, and e-mail address; the procurement on which the entity bid or quoted, and when; and entity's status as a DBE or non-DBE.

The Contractor agrees to provide Environmental Protection Agency Form 6100-2 DBE Subcontractor Participation and Environmental Protection Agency Form 6100-3 DBE Subcontractor Performance to all its Disadvantaged Business Enterprise subcontractors.

The Contractor shall require Disadvantaged Business Enterprise provisions are contained in all contracts with any subcontractors for work or services related to the declared **SCOPE OF WORK**.

The Contractor shall comply with the provisions of RCW 43.155.060 regarding competitive bidding requirements for projects assisted in whole or in part with money from the Drinking Water State Revolving Fund program.

### **1.18. ELIGIBLE PROJECT COSTS**

The Contractor assures compliance with Attachment V: DWSRF Eligible Project Costs, which identifies eligible costs for projects funded by Drinking Water State Revolving Fund loans.

### **1.19. PREVAILING WAGE**

These terms supersede the terms in Section 2.31. Prevailing Wage Laws in General Terms and Conditions.

All contractors and subcontractors performing work on a construction project funded through this Contract shall comply with prevailing wage laws by paying the higher of state or federal prevailing wages according to:

State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for Board's review upon request; or

The Davis Bacon Act, 40 U.S.C. 276a-276a-5 and related federal acts provide that all laborers and mechanics employed by contractors or subcontractors in the performance shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

The Contractor agrees that the Contractor is legally and financially responsible for compliance with the prevailing wage requirements. Contractor is advised to consult the United States Department of Labor and Washington State Department of Labor and Industries websites to determine the federal and State prevailing wages that must be paid.

The Contractor shall ensure that all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK** shall insert in full, in any contract, the labor standards provisions listed in Attachment VI: Labor Standard Provisions For Subrecipients That Are

Governmental Entities. Contractor shall report to the Board and/or the Department of Health that this requirement has been met as stated in this Contract.

#### **1.20. FEDERAL EXCLUSION**

These Terms add to the terms in Section 2.11. Certification Regarding Debarment, Suspension or Ineligibility and Voluntary Exclusion – Primary and Lower Tier Covered Transactions in General Terms and Conditions. The Contractor also agrees to access the Federal Exclusion List at [www.sam.gov](http://www.sam.gov) and provide Federal Exclusion documentation to the Board and to keep a copy on file with the Contractor's project records.

#### **1.21. REGISTRATION WITH CENTRAL CONTRACTOR REGISTRATION (CCR)**

By signing this Contract, the Contractor accepts the requirements stated in 48 CFR 52.204-7 to register with the Central Contractor Registration (CCR) database at the System for Awards Management (SAM) website. To register in SAM, a valid Data Universal Numbering System (DUNS) Number is required. The Contractor is responsible for the accuracy and completeness of the data within the SAM database and for any liability resulting from the Government's reliance on inaccurate or incomplete data. The Contractor must remain registered in the SAM database after the initial registration. The Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in SAM to ensure it is current, accurate and complete. The Contractor shall provide evidence documenting registration and renewal of SAM registration to the Board.

In the event of the Contractor's noncompliance or refusal to comply with the requirement stated above, the Board reserves the right to suspend payment until the Contractor cures this noncompliance.

#### **1.22. RECORDKEEPING AND ACCESS TO RECORDS**

These terms supersede the terms in Section 2.36. Records Maintenance in General Terms and Conditions.

The Board, the Board's agents, and duly authorized officials of the state and federal governments shall have full access and the right to examine, copy, excerpt, or transcribe any pertinent documents, papers, records, and books of the Contractor and of persons, firms, or organizations with which the Contractor may contract, involving transactions related to this project and this Contract.

The Contractor agrees to retain these records for a period of six (6) years from the date that the debt is retired. This includes but is not limited to financial reports. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

#### **1.23. REPORTS**

The Contractor, at such times and on such forms as the Board may require, shall furnish the Board with such periodic reports as it may request pertaining to the activities undertaken pursuant to this Contract including, but not limited to:

- A. Prevailing Wage decisions and/or changes;
- B. Disadvantaged Business Enterprises utilization;
- C. Project Status Reports with each Invoice Voucher,
- D. Certified Project Completion Report at project completion (as described in Section 1.11), and
- E. Other reports as the Board may require.

In the event of the Contractor's noncompliance or refusal to comply with the requirement stated above, the Board reserves the right to suspend payment until the Contractor cures this noncompliance.

#### **1.24. AMENDMENTS, MODIFICATIONS, ASSIGNMENTS, AND WAIVERS**

Amendments, modifications, assignments, and waivers to any of the terms of this contract supersede those terms as found in the original contract.

The Contractor may request an amendment of this Contract for the purpose of modifying the declared **SCOPE OF WORK** or for extending the time of performance as provided for in Section 1.10. Any revision to the scope of work or location of the project must be approved by the Department of Health. No modification or amendment resulting in an extension of time shall take effect until a request has been received and approved by the Board in accordance with Section 1.10.

***During the term of this loan, any change in ownership of the water system(s) improved with funds received by the Contractor under this Contract must be approved in writing by the Board. As a condition of approval, the Board reserves the right to demand payment in full of the outstanding principal balance of the loan.***

No conditions or provisions of this Contract may be waived unless approved by the Board in writing. No waiver of any default or breach by any party shall be implied from any failure to take action upon such default or breach, if the default of breach persists or repeats.

#### **1.25. TERMINATION FOR CONVENIENCE**

These terms supersede the terms in Section 2.45. Termination for Convenience in General Terms and Conditions.

The Board may terminate this Contract in the event that federal or state funds are no longer available to the Board, or are not appropriated for the purpose of meeting the Board's obligations under this Contract. The Board shall notify the Contractor in writing of its determination to terminate and the reason for such termination. The effective date of the termination will be determined by the Board. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination. Nothing in this section shall affect Contractor's obligations to repay the unpaid balance of the loan.

#### **1.26. TERMINATION FOR CAUSE**

These terms supersede the terms in Section 2.44. Termination for Cause/Suspension in General Terms and Conditions.

If the Board concludes that the Contractor has failed to comply with the terms and conditions of this Contract, or has failed to use the loan proceeds only for those activities identified in the declared **SCOPE OF WORK**, or has otherwise materially breached one or more of the covenants in this Contract, the Board may at any time, at its discretion, upon notice to the Contractor, terminate the Contract and/or its attached agreements in whole or in part and declare the entire remaining balance of the loan, together with any interest accrued, immediately due and payable in full.. Such Notice of Termination for Cause shall be in writing, shall state the reason(s) for such termination, and shall specify the effective date of the termination. The effective date of the termination will be determined by the Board. Such notice shall inform the Contractor of the breach of the relevant covenant and shall allow the Contractor at least thirty (30) business days to cure such breach, if curable. The notice shall instruct the Contractor that, if the breach is not cured or cannot be cured within thirty (30) business days, the outstanding balance of the loan shall be due and payable. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination. Nothing in this section shall affect the Contractor's obligations to immediately repay the unpaid balance of the loan as prescribed in the Washington Administrative Code (WAC) 246-296-150

### **1.27. AUDIT**

These terms supersede the terms in Section 2.10. Audit in General Terms and Conditions.

#### **Municipal and Not-For-Profit entities:**

Audits of the Contractor's project activities may be conducted by the State Auditor Office (SAO). Audit costs are eligible project costs. The Contractor shall maintain its records and accounts so as to facilitate the audit requirements of the Board or its successor. The Contractor is responsible for any audit findings incurred by its own organization. The Board reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

In addition, Contractor's expending \$500,000 or more in any fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

#### **For-Profit entities:**

A report on the internal control related to the federal program, which should describe the scope of testing of the internal control and the results of the tests.

A report on compliance, which includes an opinion (or disclaimer of opinion) on whether the auditee complied with laws, regulations and the provisions of the award agreement that could have a direct and material effect on the federal program.

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

Department of Commerce  
ATTN: Public Works Board  
P.O. Box 42525  
1011 Plum Street SE  
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the Board.
- Copy of the Management Letter.

### **1.28. PROJECT SIGNS**

If the Contractor displays, during the period covered by this Contract, any signs or markers identifying those entities participating financially in the approved project, the sign or marker must identify the Washington State Public Works Board Drinking Water State Revolving Fund, and the Washington State Department of Health, as participants in the project.

### **1.29. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

As mandated by the Environmental Protection Agency, the Contractor agrees to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises in procurement under this Contract. The Contractor is required to follow the requirements identified in Attachment III: Disadvantaged Business Enterprise Requirements.

By signing this Contract, the Contractor accepts the applicable MBE/WBE fair share objectives/goals negotiated with Environmental Protection Agency by the Washington State Office of Minority and Women's Business Enterprises. The Contractor attests to the fact that it is purchasing the same or similar

construction, supplies, services and equipment, in the same or similar relevant geographic buying market as Washington State Office of Minority and Women's Business Enterprises. The goals for the utilization of disadvantaged businesses are stated in ATTACHMENT III: DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS.

The Contractor is required to furnish the Board and the Department of Health with such periodic reports as the Department may request pertaining to the utilization of disadvantaged businesses.

### **1.30. NONDISCRIMINATION PROVISION**

During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, including, but not limited to Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the Contractor's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Board. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance.

The Contractor must also include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK:**

"The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract."

### **1.31. PROHIBITION STATEMENT**

Pursuant to Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the Contractor's contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK** may not engage in severe forms of trafficking in persons during the period of time the Contract is in effect, procure a commercial sex act during the period of time the Contract is in effect, or use forced labor during the performance of this Contract. The Contractor shall require this prohibition statement in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK.**

The Contractor must also include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK:**

"Prohibition Statement- You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the awards is in effect; or use forced labor in the performance of the award or subawards under the award."

In the event that the Contractor or any of its employees is determined to have violated the terms of this section, this Contract may be terminated.

### **1.32. FALSE, INCORRECT, OR INCOMPLETE INFORMATION OR CLAIM**

The Contractor warrants that the Contractor neither has submitted nor shall submit any information that is materially false, incorrect, or incomplete to the Board.

The Contractor is advised that providing false, fictitious, or misleading information with respect to the receipt and disbursements of Environmental Protection Agency funds is basis for criminal, civil, or administrative fines and/or penalties.

**1.33. Litigation**

The Contractor warrants that there is no threatened or pending litigation, investigation, or legal action before any court, arbitrator, or administrative agency that, if adversely determined, would have a materially adverse effect on the Contractor's ability to repay the loan.

**1.34. ESTABLISHMENT OF ADEQUATE RATES AND RESERVES**

The Contractor agrees to provide a resolution adopting rate increases, capital assessments, or both, for the services of the system that shall be sufficient to provide funds which, along with other revenues of the system, will pay all operating expenses and debt repayments during the term of the loan. In addition, the Contractor shall create, fund and maintain reserves at least as required by the Water System Plan or Small Water System Management Plan. The Board reserves the right, at anytime, to request proof of compliance of these requirements from the Contractor.

**1.35. SPECIAL CONDITIONS**

If **SPECIAL CONDITIONS** are listed on the Contract Declarations Page then these conditions are herein incorporated as part of the terms and requirements of this contract.

**1.36. INVESTMENT GRADE AUDIT**

For projects involving repair, replacement, or improvement of a wastewater treatment plant, or other public works facility for which energy efficiency is obtainable, Contractor must undertake an investment grade audit per ESHB 1497.

Costs incurred as part of the investment grade audit are eligible project costs.



## **Part 2. GENERAL TERMS AND CONDITIONS**

### **2.1. DEFINITIONS**

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- C. "BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Contract
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

### **2.2. ADMINISTRATIVE COST ALLOCATION**

Administrative costs that may be allowed are set forth in the Specific Terms and Conditions. Administrative services shared by other programs shall be assigned to this Contract based on an allocation plan that reflects allowable administrative costs that support services provided under each Contract administered by the Contractor. An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed.

### **2.3. ALLOWABLE COSTS**

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

### **2.4. ALL WRITINGS CONTAINED HEREIN**

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

### **2.5. AMENDMENTS**

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### **2.6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35**

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

### **2.7. APPROVAL**

This contract shall be subject to the written approval of the BOARD's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

## 2.8. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the BOARD.

## 2.9. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

## 2.10. AUDIT

### A. General Requirements

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.

THE BOARD reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to the BOARD requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

### B. Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations

Contractors expending \$500,000 or more in a fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations." Revised OMB A-133 requires the Contractor to provide the auditor with a schedule of Federal Expenditure for the fiscal year(s) being audited. When state funds are also to be paid under this Agreement a Schedule of State Financial Assistance must also be included. Both schedules include:

- Grantor agency name
- Federal agency
- Federal program name
- Other identifying contract numbers
- Catalog of Federal Domestic Assistance (CFDA) number (if applicable)
- Grantor contract number
- Total award amount including amendments (total grant award)
- Current year expenditures

If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by the BOARD.

### **C. Documentation Requirements**

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) by sending a scanned copy to [auditreview@commerce.wa.gov](mailto:auditreview@commerce.wa.gov) or by sending a hard copy to:

Department of Commerce  
ATTN: Audit Review and Resolution Office  
1011 Plum Street  
PO Box 42525  
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the BOARD.
- Copy of the Management Letter.

### **2.11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS**

- A. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
  2. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section; and
  4. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.
- B. Where the Contractor is unable to certify to any of the statements in this contract, the Contractor shall attach an explanation to this contract.
- C. The Contractor agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the BOARD.
- D. The Contractor further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

#### **LOWER TIER COVERED TRANSACTIONS**

- a) The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - b) Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
- E. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the

meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the BOARD for assistance in obtaining a copy of these regulations.

## **2.12. CODE REQUIREMENTS**

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990, 28 C.F.R. Part 35 will be required, as specified by the local building Department.

## **2.13. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

A. "Confidential Information" as used in this section includes:

2. All material provided to the Contractor by the BOARD that is designated as "confidential" by the BOARD;
3. All material produced by the Contractor that is designated as "confidential" by the BOARD; and
4. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the BOARD or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the BOARD with its policies and procedures on confidentiality. The BOARD may require changes to such policies and procedures as they apply to this Contract whenever the BOARD reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the BOARD. Upon request, the Contractor shall immediately return to the BOARD any Confidential Information that the BOARD reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify the BOARD within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

## **2.14. CONFORMANCE**

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

## **2.15. COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the BOARD. The BOARD shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the BOARD effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the BOARD a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the BOARD.

The Contractor shall exert all reasonable effort to advise the BOARD, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide the BOARD with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. The BOARD shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

#### **2.16. DISALLOWED COSTS**

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

#### **2.17. DISPUTES**

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of the the BOARD, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

#### **2.18. DUPLICATE PAYMENT**

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

#### **2.19. ETHICS/CONFLICTS OF INTEREST**

In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

#### **2.20. GOVERNING LAW AND VENUE**

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## **2.21. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, the BOARD, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, THE BOARD, the state of Washington, its officers, employees and authorized agents.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

## **2.22. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the State of Washington or the BOARD. The Contractor will not hold itself out as or claim to be an officer or employee of the BOARD or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

## **2.23. INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, The BOARD may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The BOARD may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the BOARD under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

## **2.24. LAWS**

The Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

### **United States Laws, Regulations and Circulars (Federal)**

- A. Audits  
Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."
- B. Environmental Protection and Review  
Coastal Barrier Resources Act of 1982, 16 U.S.C. 3501 et seq.  
HUD's implementing regulations at 24 CFR parts 50 or 58, as appropriate.  
Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4821-4846 also 24 CFR 982.401(j).  
National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. and the Implementing Regulations of 24 CFR 58 (HUD) and 40 CFR 1500-1508 (Council on Environmental Quality) Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 USC 4851-4856.
- C. Flood Plains  
Flood Disaster Protection Act of 1973, 42 USC 4001-4128.
- D. Labor and Safety Standards  
All Rental Units Assisted with Federal Funds Must Meet the Section 8 Housing Quality Standards (HQS) and Local Housing Code Requirements for the duration of the Affordability Period.

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.

Davis Bacon Act, 40 U.S.C. 276a-276a-5.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

Title IV of the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4831, 24 CFR Part 35.

E. Laws against Discrimination

Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90

Nondiscrimination in Federally Assisted Programs.

Americans with Disabilities Act of 1990, Public Law 101-336.

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100. Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8.

Fair Housing, Title VIII of the Civil Rights Act of 1968, Public Law 90-284, 42 U.S.C. 3601-19.

Handicapped Employees of Government Contractors, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.

Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794.

Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in Benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq, 24 CFR Part 1.

Nondiscrimination in Employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Programs.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 U.S.C. 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

F. Office of Management and Budget Circulars

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A-122, (if the Contractor is a nonprofit organization).

Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-102, (if the Contractor is a local government or federally recognized Indian tribal government).

Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, OMB Circular A-110.

G. Other

Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243 Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352 (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that Contractors who apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

H. Privacy

Privacy Act of 1974, 5 U.S.C. 522a.

I. Relocation

Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 and implementing regulations at 49 CFR part 24.

Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR part 570.

Washington State Laws and Regulations

- A. Affirmative action, RCW 41.06.020 (11).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Housing assistance program, Chapter 43.185 RCW
- G. Interlocal cooperation act, Chapter 39.34 RCW.
- H. Noise control, Chapter 70.107 RCW.
- I. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open public meetings act, Chapter 42.30 RCW.
- K. Prevailing wages on public works, Chapter 39.12 RCW.
- L. Public records act, Chapter 42.56 RCW.
- M. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.
- N. Shoreline management act of 1971, Chapter 90.58 RCW.
- O. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- P. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State environmental policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05 Archeological and Cultural Resources.

**2.25. LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

**2.26. LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

## **2.27. LOCAL PUBLIC TRANSPORTATION COORDINATION**

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

## **2.28. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the BOARD. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

## **2.29. NOTIFICATION OF TENANT RIGHTS/RESPONSIBILITIES**

The Contractor shall provide all tenants, if any, with information outlining tenant rights and responsibilities under the Washington State Landlord Tenant laws, Title 59, Revised Code of Washington.

The Contractor shall also provide all occupants of property acquired with U.S. Department of Housing and Urban Development (HUD) funds notice regarding their eligibility for relocation assistance. Such notices will be provided as required by the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended and referenced in 49 CFR part 24 and Section 104(d) of the Housing and Community Development Act of 1974, as amended and referenced in 24 CFR 570 and noted in HUD's Handbook No. 1378. Notifications will include but not be limited to:

- General Information Notice
- Notice of Displacement/Non-Displacement

## **2.30. POLITICAL ACTIVITIES**

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

## **2.31. PREVAILING WAGE LAWS**

All contractors and subcontractors performing work on a construction project funded through this agreement shall comply with prevailing wage laws by paying the higher of state or federal prevailing wages according to:

State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for THE BOARD's review upon request; or

The Davis Bacon Act, 40 U.S.C. 276a-276a-5 and related federal acts provide that all laborers and mechanics employed by contractors or subcontractors in the performance shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

## **2.32. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS**

A Contractor which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Contract.

A Contractor which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Contract.

The Contractor's procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
3. Minimum procedural requirements, as follows:
  - a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
  - b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
  - c. Positive efforts shall be made to use small and minority-owned businesses.
  - d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
  - e. Contracts shall be made only with reasonable subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
  - f. Some form of price or cost analysis should be performed in connection with every procurement action.
  - g. Procurement records and files for purchases shall include all of the following:
    - 1) Contractor selection or rejection.
    - 2) The basis for the cost or price.
    - 3) Justification for lack of competitive bids if offers are not obtained.
  - h. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
4. Contractor and Subcontractor must receive prior approval from the BOARD for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this contract is expected to exceed \$5,000.

Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

### **2.33. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

### **2.34. PUBLICITY**

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or the BOARD's name is mentioned, or language used from which the connection with the state of Washington's or the BOARD's name may reasonably be inferred or implied, without the prior written consent of the BOARD.

### **2.35. RECAPTURE**

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, The BOARD reserves the right to recapture funds in an amount to compensate the BOARD for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the BOARD. In the alternative, The BOARD may recapture such funds from payments due under this contract.

#### **2.36. RECORDS MAINTENANCE**

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

#### **2.37. REGISTRATION WITH DEPARTMENT OF REVENUE**

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

#### **2.38. RIGHT OF INSPECTION**

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the BOARD, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

#### **2.39. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, The BOARD may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

#### **2.40. SEVERABILITY**

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

#### **2.41. SUBCONTRACTING**

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of the BOARD.

If THE BOARD approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the BOARD in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the BOARD if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the BOARD for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the BOARD and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

#### **2.42. SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

#### **2.43. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

#### **2.44. TERMINATION FOR CAUSE/SUSPENSION**

In event the BOARD determines that the Contractor failed to comply with any term or condition of this Contract, the BOARD may terminate the Contract in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, the BOARD upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the BOARD may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the BOARD to terminate the Contract upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when the BOARD determines that the Contractor did not fail to comply with the terms of the Contract or when the BOARD determines the failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated for cause, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original contract and the replacement contract, as well as all costs associated with entering into the replacement contract (i.e., competitive bidding, mailing, advertising, and staff time).

#### **2.45. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Contract, the BOARD may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the BOARD shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

#### **2.46. TERMINATION PROCEDURES**

After receipt of a notice of termination, except as otherwise directed by the BOARD, the Contractor shall:

- A.** Stop work under the Contract on the date, and to the extent specified, in the notice;
- B.** Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C.** Assign to the BOARD all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the BOARD has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of the BOARD; and
- D.** Preserve and transfer any materials, contract deliverables and/or the BOARD property in the Contractor's possession as directed by the BOARD.

Upon termination of the Contract, the BOARD shall pay the Contractor for any service provided by the Contractor under the Contract prior to the date of termination. The BOARD may withhold any amount due as the BOARD reasonably determines is necessary to protect the BOARD against potential loss or liability resulting from the termination. The BOARD shall pay any withheld amount to the Contractor if the BOARD later determines that loss or liability will not occur.

The rights and remedies of the BOARD under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

**2.47. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of THE BOARD.

**2.48. WORK HOURS AND SAFETY STANDARDS**

The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)-Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Contract Work Hours Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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# ATTACHMENT I: ATTORNEY'S CERTIFICATION

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## DRINKING WATER STATE REVOLVING FUND (MUNICIPAL)

**City of Spokane**  
**DM13-952-132**

I, \_\_\_\_\_, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the Contractor identified on the Declarations Page of the Contract identified above; and

I have also examined any and all documents and records, which are pertinent to the Contract, including the application requesting this financial assistance.

Based on the foregoing, it is my opinion that:

1. The Contractor is a public body, properly constituted and operating under the laws of the State of Washington, empowered to receive and expend federal, state and local funds, to contract with the State of Washington, and to receive and expend the funds involved to accomplish the objectives set forth in their application.
2. The Contractor is empowered to accept the Drinking Water State Revolving Fund financial assistance and to provide for repayment of the loan as set forth in the loan agreement.
3. There is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the Contractor from repaying the Drinking Water State Revolving Fund loan extended by the Public Works Board with respect to such project. The Contractor is not a party to litigation, which will materially affect its ability to repay such loan on the terms contained in the loan agreement.
4. Assumption of this obligation would not exceed statutory and administrative rule debt limitations applicable to the Contractor.

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address



# ATTACHMENT II: FEDERAL AND STATE REQUIREMENTS

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## 1) Environmental Authorities

- a) Archeological and Historic Preservation Act of 1974, Public Law 86-523 as amended
- b) Clean Air Act, Public Law 84-159 as amended
- c) Coastal Barrier Resources Act, Public Law 92-583 as amended
- d) Endangered Species Act, Public Law 93-205 as amended
- e) Environmental Justice, Executive Order 12898
- f) Floodplain Management, Executive Order 11934 as amended by Executive Order 12148
- g) Protection of Wetlands, Executive Order 11990
- h) Farmland Protection Policy Act, Public Law 97-98
- i) Fish and Wildlife Coordination Act, Public Law 85-624 as amended
- j) National Historic Preservation Act of 1966, Public Law 89-665 as amended
- k) Safe Drinking Water Act, Public Law 93-523 as amended
- l) Wild and Scenic Rivers Act, Public Law 90-542 as amended

## 2) Economic and Miscellaneous Authorities

- a) Demonstration Cities and Metropolitan Development Act of 1996, Public Law 89-754 as amended, Executive Order 12372
- b) Procurement Prohibitions under Section 306 of the Clean air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- c) Uniform Relocation and Real Property Policies Act, Public Law 91-646 as amended
- d) Debarment and Suspension, Executive Order 12549

## 3) Social Policy Authorities

- a) Age Discrimination Act of 1975, Public Law 94-135
- b) Title VI of the Civil Rights Act of 1964, Public Law 88-352
- c) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500 (the Clean Water Act)
- d) Section 504 of the Rehabilitation Act of 1973, Public Law 93-112 (including Executive Orders 11914 and 11250)
- e) Equal Employment Opportunity, Executive Order 11246
- f) Disadvantaged Business Enterprise, Public Law 101-549 (the Clean Air Act), and Public Law 102-389 (the Clean Water Act)
- g) Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Public Law 100-590

## 4) State Laws

- a) Chapter 36.70A RCW, Growth Management Act
- b) Chapter 39.80 RCW, Contracts for Architectural and Engineering Services
- c) Chapter 39.12 RCW, Washington State Public Works Act
- d) Chapter 43.20 RCW, State Board of Health
- e) Chapter 43.70 RCW, Department of Health
- f) Chapter 43.155 RCW, Public Works Project
- g) Chapter 70.116 RCW, Public Water Systems Coordination Act of 1977
- h) Chapter 70.119 RCW, Public Water Supply Systems Certification and Regulation of Operations
- i) Chapter 70.119A RCW, Public Water Systems, Penalties & Compliances
- j) Chapter 246-290 WAC, Group A Public Water Systems
- k) Chapter 246-291 WAC, Group B Public Water Systems
- l) Chapter 246-292 WAC, Waterworks Operator Certification Regulations
- m) Chapter 246-293 WAC, Water Systems Coordination Act
- n) Chapter 246-294 WAC, Drinking Water Operating Permits
- o) Chapter 246-295 WAC, Satellite System Management Agencies
- o) Chapter 246-296 WAC Drinking Water State Revolving Fund Loan Program
- p) Chapter 173-160 WAC, Minimum Standards for Construction & Maintenance of Wells
- q) Title 173 WAC, Department of Ecology Rules
- r) Title 40 Part 141 Code of Federal Regulations, Federal National Primary Drinking Water Regulations (Section Adopted by Reference)



# ATTACHMENT III: DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

## GENERAL COMPLIANCE, 40 CFR, Part 33

The Contractor agrees to comply with the requirements of Environmental Protection Agency's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under this Contract, contained in 40 CFR, Part 33.

## FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

The following are exemptions from the fair share objective Requirements:

- Grant and loan recipients receiving a total of \$250K or less in EPA financial assistance in a given fiscal year.
- Tribal recipients of Performance Partnership Eligible grants under 40 CFR Part 35, Subpart B.
  - There is a 3-year phase in period for the requirement to negotiate fair share goals for Tribal and Insular Area recipients.
- Recipients of Technical Assistance Grants.

The Fair Share Objectives or goals for the utilization of disadvantaged businesses negotiated with EPA by the WA Office of Minority Women Business are stated below.

Construction	10% MBE	6% WBE
Supplies	8% MBE	4% WBE
Equipment	8% MBE	4% WBE
Purchased Services	10% MBE	4% WBE

By signing this Contract, the Contractor is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as WA Office of Minority Women Business goal is being adopted.

## SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the Contractor agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply.

Records documenting compliance with the six good faith efforts shall be retained. The six good faith efforts shall include:

- A. Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local Government recipients, this will include placing the Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- B. Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- C. Consider in the contracting process whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State and Local Government recipients, this will include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- D. Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- E. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

- F. If the prime contractor awards subcontracts, also require the prime contractor to take the five good faith efforts in paragraphs A through E above.

**MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503**

Contractor is required to submit MBE/WBE participation reports to the Board and/or the Department of Health, on a quarterly basis, beginning with the Federal fiscal year reporting period the Contractor receives the award and continuing until the project is completed.

**CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The Contractor agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

The Contractor agrees to require all general contractors to provide forms: EPA Form 6100-2 DBE Subcontractor Participation Form and EPA Form 6100-3 DBE Subcontractor Performance Form to all its Disadvantaged Business Enterprise subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK**. These two (2) forms may be obtained from the EPA Office of Small Business Program's website on the internet at <http://www.epa.gov/osbp/grants.htm>.

The Contractor agrees to require all general contractors to complete and submit to the Contractor and Environmental Protection Agency EPA Form 6100-4 DBE Subcontractor Utilization Form beginning with the Federal fiscal year reporting period the Contractor receives the award and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a Contractor's MBE/WBE accomplishments.

**BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

The Contractor is also required to create and maintain a bidders list if the Contractor of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

Section 33.501(b) of the rule is as follows:

A recipient of a Continuing Environmental Program Grant or other annual grant must create and maintain a bidders list. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts or bid or quote on subcontracts under EPA assisted projects, including both MBE/WBEs.

The bidders list must be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. For entities receiving identified loans, the bidders list must be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors:

- (1) Entity's name with point of contact;
- (2) Entity's mailing address, telephone number, and e-mail address;
- (3) The procurement on which the entity bid or quoted, and when; and
- (4) Entity's status as a MBE/WBE<sup>1</sup> or non-MBE/WBE.

The exemption found at § 33.501(c) is as follows:

A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the paragraph (b) of this section requirement to create and maintain a bidders list. Also, a recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the paragraph (b) of this section bidders list requirement of this subpart to an entity receiving an identified loan in an amount of \$250,000 or less, or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year. This exemption is limited to the paragraph (b) of this section bidders list requirements of this subpart.

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<sup>1</sup> Qualified Women and Minority business enterprises may be found on the Internet at [www.omwbe.wa.gov](http://www.omwbe.wa.gov) or by contacting the Washington State Office of Minority and Women's Enterprises at 360-704-1181.

# ATTACHMENT IV: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS



United States Environmental Protection Agency  
Washington, DC 20460

EPA Project Control Number

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

\_\_\_\_\_  
Typed Name & Title of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

I am unable to certify to the above statements. My explanation is attached.

**EPA Form 5700-49 (11-88)**



# ATTACHMENT V: DWSRF ELIGIBLE PROJECT COSTS

Must be directly attributable to the project.

1. The costs for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
2. DWSRF loan fees.
3. The purchase of a portion of another system's capacity, if it is the most cost effective solution (limited to publicly owned (municipal) systems).
4. Construction of reservoirs (clear wells) that are part of the treatment process and are collocated with the treatment facility.
5. Construction of distribution reservoirs (finished water).
6. Cost associated with restructuring or consolidation of existing water systems by publicly owned water systems.
7. Main extensions to connect to safe and reliable sources of drinking water.
8. Cost associated with collecting and preparing environmental assessment documents to obtain local permits.
9. Direct labor including related employee benefits:
  - a. Salaries and wages (at actual or average rates) covering productive labor hours of employees of the borrower (excluding the administrative organization of the operating unit involved) for periods of time actively or incidentally engaged in pre-design engineering, design engineering, construction engineering, acquisition of rights of way, and the cleaning, sterilization or bacteriological testing of water system components prior to public use. The costs of services rendered by employees generally classified as administration/project management of the loan are considered a direct cost only when such employees are assigned the types of services described above and shall be limited to 3% or less of the project loan amount.
  - b. Employee benefits relating to labor are considered a direct cost of construction projects. The following items may be included as employee benefits:
    - F.I.C.A. (Social Security) –employer's share.
    - Retirement benefits.
    - Hospital, health, dental, and other welfare insurance.
    - Life insurance.

- Industrial and medical insurance.
- Vacation.
- Holiday.
- Sick leave.
- Military leave and jury duty.

Employee benefits must be calculated as a percentage of direct labor dollars. The computation of predetermined percentage rates to be applied to current labor costs must be based on the average of total employee benefits and total labor costs for the prior fiscal year and adjusted by known current year variations.

- c. Other than work identified in Number 9.a, no costs associated with labor performed by the borrower's employees, including force account work, are eligible for financing assistance.
10. Contract engineering, planning, design, legal, and financial planning services. The Board reserves the right to declare ineligible legal costs that are unreasonable and disproportionate to the project.
11. Contract construction work.
12. Direct vehicle and equipment charges at the actual rental cost paid for the equipment or, in the case of city or county-owned equipment, at the rental rates established by the local government's "equipment rental and revolving fund" following the methods prescribed by the division of municipal corporations. However, such costs must be charged on a uniform basis to equipment used for all projects regardless of the source of funding. Cities with a population of eight thousand or less not using this type of fund are allowed the same rates as used by the State Department of Transportation.
13. Direct materials and supplies.
14. Other direct costs incurred for materials or services acquired for a specific project are eligible costs and may include, but are not limited to such items as:
  - a. Telephone charges.
  - b. Reproduction and photogrammetry costs.
  - c. Video and photography for project documentation.
  - d. Computer usage.
  - e. Printing and advertising.
15. Other project related costs include:
  - Competitive Bidding.
  - Audit.
  - Insurance.
  - Prevailing wages.
  - Attorney fees.

- Environmental Review.
- Archaeological Survey.

Water system plan costs are not eligible for reimbursement.  
Small water system management program and plan amendments costs are eligible for reimbursement.

Projects may be designed to accommodate reasonable growth. This is generally the 20-year projection included in the system's water system plan or small water system management program.



# ATTACHMENT VI: LABOR STANDARD PROVISIONS FOR SUBRECIPIENTS THAT ARE GOVERNMENTAL ENTITIES

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## Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2011 appropriation , the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site

of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### (4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman

wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act.

These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## 5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient

must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract . Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.



## ATTACHMENT VII: EPA COMPLIANCE REVIEW

**United States Environmental Protection Agency  
Washington, DC 20460**

**Preadward Compliance Review Report for  
All Applicants and Recipients Requesting EPA Financial Assistance**

**Note: Read instructions on other side before completing form.**

I. Applicant/Recipient (Name, Address, State, Zip Code).		DUNS No.
II. Is the applicant currently receiving EPA assistance?		
III. List all civil rights lawsuits and administrative complaints pending against the applicant/recipient that allege discrimination based on race, color, national origin, sex, age, or disability. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)		
List all civil rights lawsuits and administrative complaints decided against the applicant/recipient within the last year that allege discrimination based on race, color, national origin, sex, age, or disability and enclose a copy of all decisions. Please describe all corrective action taken. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)		
V. List all civil rights compliance reviews of the applicant/recipient conducted by any agency within the last two years and enclose a copy of the review and any decisions, orders, or agreements based on the review. Please describe any corrective action taken. (40 C.F.R. § 7.80(c)(3))		
VI. Is the applicant requesting EPA assistance for new construction? If no, proceed to VII; if yes, answer (a) and/or (b) below.		
YES		NO
a. If the grant is for new construction, will all new facilities or alterations to existing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities? If yes, proceed to VII; if no, proceed to VI(b).		Yes No
b. If the grant is for new construction and the new facilities or alterations to existing facilities will not be readily accessible to and usable by persons with disabilities, explain how a regulatory exception (40 C.F.R. § 7.70) applies.		Yes No
VII.* Does the applicant/recipient provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs or activities? (40 C.F.R. § 5.140 and § 7.95)		
a. Do the methods of notice accommodate those with impaired vision or hearing?		Yes No
b. Is the notice posted in a prominent place in the applicant's offices or facilities or, for education programs and activities, in appropriate periodicals and other written communications?		Yes No
c. Does the notice identify a designated civil rights coordinator?		Yes No
VIII.* Does the applicant/recipient maintain demographic data on the race, color, national origin, sex, age, or handicap of the population it serves? (40 C.F.R. § 7.85(a))		
IX.* Does the applicant/recipient have a policy/procedure for providing access to services for persons with limited English proficiency? (40 C.F.R. Part 7, E.O. 13166)		
X.* If the applicant/recipient is an education program or activity, or has 15 or more employees, has it designated an employee to coordinate its compliance with 40 C.F.R. Parts 5 and 7? Provide the name, title, position, mailing address, e-mail address, fax number, and telephone number of the designated coordinator.		
XI* If the applicant/recipient is an education program or activity, or has 15 or more employees, has it adopted grievance procedures that assure the prompt and fair resolution of complaints that allege a violation of 40 C.F.R. Parts 5 and 7? Provide a legal citation or Internet address for, or a copy of, the procedures.		
<b>For the Applicant/Recipient</b>		
I certify that the statements I have made on this form and all attachments thereto are true, accurate and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law. I assure that I will fully comply with all applicable civil rights statutes and EPA regulations.		
A. Signature of Authorized Official	B. Title of Authorized Official	C. Date
<b>For the U.S. Environmental Protection Agency</b>		
I have reviewed the information provided by the applicant/recipient and hereby certify that the applicant/recipient has submitted all preaward compliance information required by 40 C.F.R. Parts 5 and 7; that based on the information submitted, this application satisfies the preaward provisions of 40 C.F.R. Parts 5 and 7; and that the applicant has given assurance that it will fully comply with all applicable civil rights statutes and EPA regulations.		
A. Signature of Authorized EPA Official See ** note on reverse side.	B. Title of Authorized EPA Official	C. Date

EPA Form 4700-4 (Rev. 03/2008). Previous editions are obsolete.

## Instructions for EPA FORM 4700-4 (Rev. 03/2008)

### General

Recipients of Federal financial assistance from the U.S. Environmental Protection Agency must comply with the following statutes and regulations.

Title VI of the Civil Rights Acts of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Act goes on to explain that the statute shall not be construed to authorize action with respect to any employment practice of any employer, employment agency, or labor organization (except where the primary objective of the Federal financial assistance is to provide employment). Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act provides that no person in the United States shall on the ground of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the Federal Water Pollution Control Act, as amended. Employment discrimination on the basis of sex is prohibited in all such programs or activities. Section 504 of the Rehabilitation Act of 1973 provides that no otherwise qualified individual with a disability in the United States shall solely by reason of disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Employment discrimination on the basis of disability is prohibited in all such programs or activities. The Age Discrimination Act of 1975 provides that no person on the basis of age shall be excluded from participation under any program or activity receiving Federal financial assistance. Employment discrimination is not covered. Age discrimination in employment is prohibited by the Age Discrimination in Employment Act administered by the Equal Employment Opportunity Commission. Title IX of the Education Amendments of 1972 provides that no person in the United States on the basis of sex shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Employment discrimination on the basis of sex is prohibited in all such education programs or activities. Note: an education program or activity is not limited to only those conducted by a formal institution.

40 C.F.R. Part 5 implements Title IX of the Education Amendments of 1972.

40 C.F.R. Part 7 implements Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and Section 504 of The Rehabilitation Act of 1973. The Executive Order 13166 (E.O. 13166) entitled; "Improving Access to Services for Persons with Limited English Proficiency" requires Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

### Items

"Applicant" means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance. 40 C.F.R. §§ 5.105, 7.25.

"Recipient" means any entity, other than applicant, which will actually receive EPA assistance. 40 C.F.R. §§ 5.105, 7.25. "Civil rights lawsuits and administrative complaints" means any lawsuit or administrative complaint alleging discrimination on the basis of race, color, national origin, sex, age, or disability pending or decided against the applicant and/or entity which actually benefits from the grant, but excluding employment complaints not covered by 40 C.F.R. Parts 5 and 7. For example, if a city is the named applicant but the grant will actually benefit the Department of Sewage, civil rights lawsuits involving both the city and the Department of Sewage should be listed. "Civil rights compliance review" means any review assessing the applicant's and/or recipient's compliance with laws prohibiting discrimination on the basis of race, color, national origin, sex, age, or disability. Submit this form with the original and required copies of applications, requests for extensions, requests for increase of funds, etc. Updates of information are all that are required after the initial application submission. If any item is not relevant to the project for which assistance is requested, write "NA" for "Not Applicable." In the event applicant is uncertain about how to answer any questions, EPA program officials should be contacted for clarification. \* Questions VII – XI are for informational use only and will not affect an applicant's grant status. However, applicants should answer all questions on this form. (40 C.F.R. Parts 5 and 7). \*\* Note: Signature appears in the Approval Section of the EPA Comprehensive Administrative Review For Grants/Cooperative Agreements & Continuation/Supplemental Awards form. Approval indicates, in the reviewer's opinion, questions I – VI of Form 4700-4 comply with the preaward administrative requirements for EPA assistance.

### "Burden Disclosure Statement"

EPA estimates public reporting burden for the preparation of this form to average 30 minutes per response. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to U.S. EPA, Attn: Collection Strategies Division (MC 2822T), Office of Information Collection, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. The information on this form is required to enable the U.S. Environmental Protection Agency to determine whether applicants and prospective recipients are developing projects, programs and activities on a nondiscriminatory basis as required by the above statutes and regulations.



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	OPR 2013-0645
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	REVENUE

<b>Submitting Dept</b>	ASSET MANAGEMENT
<b>Contact Name/Phone</b>	MARK PAPICH 625-6310
<b>Contact E-Mail</b>	MPAPICH@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	5900-LOAN AGREEMENT - STEEL T-MAIN REPLACEMENT

**Agenda Wording**

Loan Agreement between the Drinking Water State Revolving Fund (DWSRF) and the City of Spokane for Steel Transmission Main Replacements for revenue in the amount of \$3,357,240.00.

**Summary (Background)**

The Steel Transmission Main Replacements loan will replace 2.4 miles of existing main on Cleveland Avenue and 1.3 miles of existing main on Manito Boulevard. These existing steel mains have reached the end of their useful life and need to be replaced. The loan is at an interest rate of 1.50 percent with a repayment period of 24 years.

**Fiscal Impact**

Revenue	\$ 3,357,240.00
Select	\$
Select	\$
Select	\$

**Budget Account**

#	4100-42410-99999-39180
#	
#	BudgetAccount3
#	

**Approvals**

<b>Dept Head</b>	WERNER, MARK
<b>Division Director</b>	QUINTRALL, JAN
<b>Finance</b>	BUSTOS, KIM
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	Public Works 8/26/13

**Distribution List**

lhattenburg@spokanecity.org
mhughes@spokanecity.org
pdolan@spokanecity.org
mlesesne@spokanecity.org
ewade@spokanecity.org
mpapich@spokanecity.org
acline@spokanecity.org

**Additional Approvals**

<b>Purchasing</b>	PRINCE, THEA

BRIEFING PAPER  
Public Works Committee  
Capital Programs  
August 26, 2013

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Subject

Drinking Water State Revolving Fund (DWSRF) Loans for upcoming Water Department Projects.

Background

Capital Programs has received three loans through the Department of Health (DOH) for water system improvement projects. These three loans are Top System Transmission Main Replacements, Central Avenue Wells No. 1 and No. 2 and Steel Transmission Main Replacements.

The *Top System Transmission Main Replacements* loan provides funding for replacement of 2.5-miles of existing water main and 0.75-miles of new water main. The improvements will be located in 57<sup>th</sup> Avenue, Glenrose Street and 37<sup>th</sup> Avenue. This project will provide redundancy in the Top System and allow for repairs.

The *Central Wells No. 1 and No. 2 Rehabilitation* loan will replace the existing pumps and motors in the two wells. This project will allow for more pumping capacity and improved efficiency.

The *Steel Transmission Main Replacements* loan will replace 2.4 miles of existing main on Cleveland Avenue and 1.3 miles of existing main on Manito Boulevard. These existing steel mains have reached the end of their useful life and need to be replaced.

Impact

The water system improvements through these loans will provide a more reliable and efficient water system for the City.

Action

Council Approval of the DWSRF Loan Agreements.

Funding

The three DWSRF loans are for the amount of \$10,182,820 at an interest rate of 1.5 percent and a repayment period of 24 years. The loan is expected to cover the entire cost of the improvements.



## Washington State Public Works Board

1011 Plum Street SE  
Post Office Box 42525  
Olympia, Washington 98504-2525

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July 25, 2013

Mark Papich  
City of Spokane  
808 W Spokane Falls Blvd  
Spokane, WA 99201

RE: Loan Contract Number: **DM13-952-131**

Dear **Mr. Mark Papich**:

Enclosed are two originals of the Drinking Water State Revolving Fund Loan Contract Number identified above. The Loan Contract details the terms and conditions that will govern the agreement between us, which includes the project's Scope of Work and an Attorney's Certification as formal attachments.

When you have obtained the appropriate signatures, please return both original contracts and all the attachments to the Public Works Board within 60 calendar days of the date of this letter. Failure to return the contracts within this timeline may result in your loan offer being withdrawn.

Please note that the U.S. Environmental Protection Agency is the funding source for this program and the Catalog of Federal Domestic Assistance (CFDA) number is 66.468. Consequently, the loan funds are federal and subject to both state and federal requirements.

If the loan fee applies, the amount of the loan includes an amount sufficient to cover a one-percent loan administration fee. The fee will be collected at contract execution, and is non-refundable. Please review the terms and conditions of the Loan Contract carefully, as well as the attachments.

A requirement of the DWSRF program is that you must maintain updated project records and yearly renewal of your registration in the System for Award Management at [www.sam.gov](http://www.sam.gov).

Another requirement of the DWSRF program is that all entities are required to verify that the federal government has not suspended or debarred them from receiving federal funds. This includes, but is not limited to, project contractors, subcontractors, engineers, architects, consultants, and equipment vendors. The Exclusion Report can be accessed at [www.sam.gov](http://www.sam.gov). Failure to provide this required certification may result in termination of your loan contract.

After the Loan Contracts have been signed by the Board or its designee, one fully executed original will be returned to you for your files. Instructions for drawing the loan funds will be returned to you with the executed Loan Contract, as well as the necessary forms. The Loan Contract specifies that

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Administrative services provided by the Department of Commerce

(360) 725-3150

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draws may be made for costs that have been incurred, and which have supporting documentation such as receipts or bills.

We are looking forward to working with you over the course of this project. If you have any questions about this Loan Contract, please contact me.

Sincerely,

Jeff Hinckle  
PWB Staff  
(360) 725-3060  
[jeff.hinckle@commerce.wa.gov](mailto:jeff.hinckle@commerce.wa.gov)

**Enclosures:**

ATTACHMENT I: ATTORNEY'S CERTIFICATION  
ATTACHMENT II: FEDERAL AND STATE REQUIREMENTS  
ATTACHMENT III: DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS  
ATTACHMENT IV: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS  
ATTACHMENT V: DWSRF ELIGIBLE PROJECT COSTS  
ATTACHMENT VI: LABOR STANDARD PROVISIONS FOR SUBRECIPIENTS THAT ARE GOVERNMENT ENTITIES  
ATTACHMENT VII: EPA COMPLIANCE REVIEW



**Washington State  
Public Works Board**

1011 Plum Street SE  
Post Office Box 42525  
Olympia, Washington 98504-2525

---

**Capital Agreement between:**

**City of Spokane**  
and

**Public Works Board**

**For:**

Project Name: **Steel Transmission Main Replacements**

Loan Number: **DM13-952-131**

Loan Type: **DWSRF NT**

**Contract Start Date:** \_\_\_\_\_ **Contract Execution Date** \_\_\_\_\_



**Department of Commerce**  
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Washington State Department of Commerce  
[www.commerce.wa.gov](http://www.commerce.wa.gov)

# DECLARATIONS

## CLIENT INFORMATION

Legal Name: **City of Spokane**  
Loan Number: **DM13-952-131**  
Award Year: **2013**  
State Wide Vendor Number: **SWV00338705**

## PROJECT INFORMATION

Project Title: **Steel Transmission Main Replacements**  
Project City: **Spokane**  
Project State: **Washington**  
Project Zip Code: **99201**

## LOAN INFORMATION

Loan Amount: **\$3,357,240.00**  
Loan Fee (Included in loan amount if applicable) **\$33,240.00**  
Loan Forgiveness %: **0%**  
Loan Term: **24 years**  
Interest Rate: **1.50%**  
Payment Month: **October 1st**  
Earliest Date for Construction Reimbursement: **7/1/2013**  
Time of Performance **48 months from Contract execution date to Project Completion date.**

## SPECIAL TERMS AND CONDITIONS GOVERNING THIS LOAN AGREEMENT

**None.**

## LOAN SECURITY CONDITION GOVERNING THIS LOAN AGREEMENT

**This loan is a revenue obligation of the Contractor payable solely from the net revenue of the Water system. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The Board grants the Contractor the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan Contract. This option may be used only if the entire project is a domestic water, sanitary sewer, storm sewer, or solid waste utility project.**

## DECLARATIONS (continued)

Loan Number:  
Project Title:

**DM13-952-131**  
**Steel Transmission Main Replacements**

Scope of Work:

**Environmental and Cultural Review Process – This work will include completing the SERP process. This will include the SEPA process, a public meeting, a cost effectiveness analysis, and any applicable cross cutters. Design- This work will include completing the project plans, specifications, and estimates for bidding purposes for approximately 3.5 miles of pipe construction. These two projects will be designed and packaged separately. Construction- This work includes removing the existing pipelines, installing approximately 3.5 miles of new pipelines (6864 LF 24” Ductile Iron, 10,560 LF 36” Ductile Iron, 1,584 LF 30” Ductile Iron), and appurtenances, and a new paving patch will be constructed. New sodding/landscaping will be installed in Manito Park above the alignment of that pipe. The sodding/landscaping will be installed along approximately 0.4 miles of pipeline.**



**Contract Number: DM13-952-131**  
**Drinking Water State Revolving Fund (DWSRF)**  
**2013 New Traditional**  
**(Municipal)**

<b>1. Contractor</b> City of Spokane 808 W Spokane Falls Blvd Spokane, WA 99201		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative</b> N/A		<b>4. Public Works Board Representative</b> N/A	
<b>5. Contract Amount</b> \$3,357,240.00	<b>6. Funding Source</b> Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Contract Start Date</b> Contract Execution Date	<b>8. Contract End Date</b> Oct 1, 2037
<b>9. Federal Funds (as applicable)</b> N/A	<b>Federal Agency</b> EPA	<b>CFDA Number</b> 66.468	
<b>10. Tax ID #</b> N/A	<b>11. SWV #</b> SWV00338705-00	<b>12. UBI #</b>	<b>13. DUNS #</b>
<b>14. Contract Purpose</b> The purpose of this Contract is to provide funding for a project of a local government that furthers the goals and objectives of the Drinking Water State Revolving Fund Loan Program. The project will be undertaken by the Contractor and will include the activities described in the Declared Scope of Work.			
The Board, defined as the Washington State Public Works Board, and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Declarations Page; Attachment I: Attorney's Certification; Attachment II: Federal and State Requirements; Attachment III: Disadvantaged Business Enterprise Requirements; Attachment IV: Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Attachment V: DWSRF Eligible Project Costs; and Attachment VI: Labor Standard Provisions for Subrecipients that are Governmental Entities; Attachment VII: EPA Compliance Review.			
<b>FOR THE CONTRACTOR</b>		<b>FOR PUBLIC WORKS BOARD</b>	
_____ Signature		_____ Stan Finkelstein, Board Chair	
_____ Print Name		_____ Date	
_____ Title		<b>APPROVED AS TO FORM ONLY</b>	
_____ Date		This 1st Day of May, 2013 _____ Bob Ferguson Attorney General	
		_____ <i>Signature on file</i> Kathryn Wyatt Assistant Attorney General	



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# CONTRACT TERMS AND CONDITIONS

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## DRINKING WATER STATE REVOLVING FUND NEW TRADITIONAL (MUNICIPAL)

### Part 1. SPECIAL TERMS AND CONDITIONS

#### 1.1. DEFINITIONS

As used throughout this Drinking Water State Revolving Fund Loan Contract, the following terms shall have the meaning set forth below:

- A. "Contract" shall mean this Drinking Water State Revolving Fund Loan.
- B. "Contractor" shall mean the Local Government identified on the Contract Face Sheet performing service(s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.
- C. "The Board" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the Contract.
- D. "Department of Health" shall mean the Washington State Department of Health, Office of Drinking Water, who is the recipient of the Drinking Water State Revolving Fund grant and regulates drinking water systems in the State of Washington.
- E. "Department of Commerce" and "Commerce" shall mean the Washington State Department of Commerce.
- F. AWARD YEAR shall mean the calendar year in which the funds were awarded to the Board for use in making loans under this program
- G. PAYMENT MONTH shall mean the day and month of the year in which payments are due.
- H. Unless otherwise amended, the CONTRACT END DATE shall occur in the final year of the LOAN TERM, as counted from the AWARD YEAR. The actual date of contract execution shall have no effect on the CONTRACT END DATE.
- I. "Deferral Period" shall be from the date of contract execution until the date of project completion. The Deferral Period shall not exceed 4 years in length.

#### 1.2. AUTHORITY

Acting under the authority of RCW 70.119A.170 and RCW 43.155.040, the Board has awarded the Contractor a Drinking Water State Revolving Fund loan for an approved project. The Contractor will be a sub-recipient of funds provided by the United States Environmental Protection Agency, CFDA Number 66.468, Title: Safe Drinking Water State Revolving Fund, award year of this contract.

#### 1.3. PURPOSE

The Board and the Contractor have entered into this Contract to undertake a local project that furthers the goals and objectives of the Drinking Water State Revolving Fund Loan Program. The project will be undertaken by the Contractor and will include the activities described in the SCOPE OF WORK shown on the Declarations page. The project must be undertaken in accordance with the loan Program Special Terms and Conditions and all applicable federal, state and local laws and ordinances, including but not limited to those specifically enumerated in Attachment II: Federal and State Requirements, which by this reference are incorporated into this Contract as though set forth fully herein.

#### 1.4. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and State of Washington statutes and regulations.
- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.

**1.5. AMOUNT OF LOAN**

The Board, using funds appropriated from the Drinking Water Assistance Account, shall loan the Contractor a sum not to exceed the amount shown as **LOAN AMOUNT** on the attached Declarations Page. This loan amount includes a loan fee, if applicable, which is shown on the Declarations Page as **LOAN FEE**.

**1.6. LOAN FEE**

If the loan fee applies, it will be assessed at loan execution.

The amount of the loan fee (if applicable) represents one percent (e loan request and shall not be reduced, regardless of the actual final loan amount at project completion. If the loan fee applies and the total loan amount is increased by amendment, an additional loan fee equal to one percent (1%) of the additional loan amount will be assessed at amendment execution. The amount of any loan fee will be displayed on the Declarations Page as **LOAN FEE**.

**1.7. TERM OF LOAN**

Unless otherwise amended, the term of the loan shall not exceed the period shown on the Declarations Page as **LOAN TERM**. The term shall start in the **AWARD YEAR**.

**1.8. RATE AND LOAN FORGIVENESS**

The interest rate shall be the declared **INTEREST RATE** per annum on the outstanding principal balance, based on a three hundred and sixty (360) day year composed of twelve (12) thirty (30) day months. The amount of loan forgiveness (if applicable) shall be as stated on the attached Declarations Page, and identified therein as **LOAN FORGIVENESS %**.

This loan forgiveness shall be applied at project completion and shall apply to the lesser of the loan amount or the actual eligible costs and that declared percent on any accrued interest. The percent of loan forgiveness and interest rate shall not be changed, regardless of the actual cost of the project and the Affordability Index at project completion.

**1.9. DISBURSEMENT OF LOAN PROCEEDS AND REQUIRED DOCUMENTATION**

If funding or appropriation is not available at the time the Contractor submits a request for a loan disbursement, the issuance of a warrant will be delayed or suspended until such time funds become available. Therefore, subject to availability of funds, warrants shall be issued to the Contractor for payment of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with the declared **SCOPE OF WORK**.

The loan funds will be disbursed to the Contractor as follows:

Ten percent (10%) of loan proceeds will be held until project completion. The total Drinking Water State Revolving Fund Loan shall not exceed one hundred percent (100%) of the actual eligible project costs.

When requesting reimbursement for costs incurred, the Contractor shall submit a signed and completed Invoice Voucher (Form A19), referencing the declared **SCOPE OF WORK** project activity performed, and any appropriate documentation such as bills, invoices, and receipts. The purchase of any land necessary and integral to the project must be included in the declared **SCOPE OF WORK** and be documented with an appraisal or other market valuation and a valid purchase and sale agreement. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Each A19 Reimbursement Voucher must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the project since the last invoice was submitted, as well as a report

of project status to date. The Department of Commerce (Commerce) will not release payment for any reimbursement request received until the Project Status Report is received. After approving the Voucher and the Project Status Report, Commerce shall promptly release funds to the Contractor.

Construction expenses incurred after the date shown as **EARLIEST DATE FOR CONSTRUCTION REIMBURSEMENT** on the Declarations Page are eligible for reimbursement. Requests for reimbursements for costs related to construction activities will not be accepted until the Contractor has met the following conditions:

- A. Issued a Notice to Proceed which follows the formal award of a construction contract;
- B. Completed the State Environmental Review Process;
- C. Complied with all provisions of Section 106 of the National Historic Preservation Act of 1966;
- D. Complied with Section 1.19: Prevailing Wage;
- E. Obtained approval from the Department of Health of the project report and related construction documents for all applicable activities described in the declared **SCOPE OF WORK**; and
- F. Complied with any other loan conditions required by Department of Health or The Board.

An electronic copy (emailed PDF or a FAX) of a signed A19 Reimbursement Voucher and other required documentation is the preferred method for requesting reimbursement. Submit the electronic requests to your Contracts Administration Unit (CAU) representative or fax to 360-586-8440. This electronic submittal may be 25 pages or less. If you choose to send your vouchers and backup documentation electronically, please DO NOT mail in the original. You will receive email notification from your CAU representative that the electronic request has been received.

Commerce will pay the Contractor upon acceptance of the work performed and receipt of properly completed invoices. Invoices may be submitted to Commerce not more often than monthly.

Payment shall be considered timely if made by Commerce within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

The Board may, at its sole discretion, withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the Board.

In the event that the Contractor receives reimbursement for costs that are later determined by the Board to be ineligible, these funds shall be repaid to the Drinking Water Assistance Account by payment to the Department of Commerce, or its successor, together with the submission of the Project Completion Amendment.

At the time of project completion, the Contractor shall submit to the Board a Certified Project Completion Request certifying the total actual project costs, and a final voucher for the remaining eligible funds. The Certified Project Completion Request shall include a copy of the Construction Completion Report as submitted to Department of Health.

#### **1.10. TIME OF PERFORMANCE**

The Contractor shall begin the activities identified within the declared **SCOPE OF WORK** no later than thirty (30) days after Contract execution. The Contractor must reach project completion within the period specified on the Declarations Page as **TIME OF PERFORMANCE**.

Failure to meet Time of Performance within the time frame described in this section shall constitute default under this Contract, and as a result, this Contract may be terminated. In the event of extenuating

circumstances, the Contractor may request, in writing, at least 90 days prior to the expiration of project completion date that the Board extend the deadline for project completion. The Board may extend the time of project completion.

#### **1.11. PROJECT COMPLETION AMENDMENT AND THE CERTIFIED PROJECT COMPLETION REPORT**

The Contractor shall initiate a Project Completion Amendment by submitting a Certified Project Completion Report when activities identified in the declared **SCOPE OF WORK** are complete and the Contractor agrees that no additional eligible costs will be reimbursed.

In the Project Completion Amendment, the Contractor will provide the following information to the Board:

- A. A certified statement of the actual dollar amounts spent, from all fund sources, in completing the project as described in the declared **SCOPE OF WORK**.
- B. Certification that all costs associated with the project have been incurred. Costs are incurred when goods and services are received and/or contract work is performed.
- C. A copy of the Department of Health Construction Completion Report as submitted to Department of Health.
- D. Evidence documenting compliance with audit requirements as referenced in Section 1.27.
- E. A final voucher for the remaining eligible funds.

The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount and term of the loan.

#### **1.12. REPAYMENT**

Pursuant to 40 CFR, Section 35.3525 (a)(1)(i), an assistance recipient begins annual repayment of principal and interest no later than one year after the **DEFERRAL PERIOD** end date. The first repayment installment of principal and any interest accrued to date under this Contract is due on the month declared as **PAYMENT MONTH** on the Declarations Page, of the first twelve (12) months following the **DEFERRAL PERIOD**. All subsequent payments shall consist of principal and accrued interest due on that month of each year during the remaining term of the loan.

Repayment of the loan under this Contract shall include the declared **INTEREST RATE** per annum. Interest will begin to accrue from the date each payment is issued to the Contractor. The final payment shall be on or before the completion of the declared **LOAN TERM**, payable on or before the declared **PAYMENT MONTH** of an amount sufficient to bring the loan balance to zero. Under no circumstances shall the loan repayment period exceed 20 years from the **DEFERRAL PERIOD** end date.

The Contractor has the right to repay the unpaid balance of the loan in full at any time or make accelerated payments without penalty.

The Contractor will repay the loan in accordance with the preceding conditions through the use of a check, money order, or equivalent means made payable to the Washington State Department of Commerce, or its successor.

#### **1.13. DEFAULT IN REPAYMENT**

Loan repayments shall be made in accordance with Section 1.12 of this Contract. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a monthly penalty beginning on the first (1<sup>st</sup>) day past the due date. The penalty will be one percent (1%) per month or twelve percent (12%) per annum of the delinquent payment amount. These same penalty terms shall apply if the repayment of loan funds determined to be ineligible costs are not repaid within thirty (30) days as provided for in Section 1.9.

The Contractor acknowledges and agrees to the Board's right, upon delinquency in the payment of any annual installment, to notify any other entity, creditors, or potential creditors of the Contractor of such

delinquency. Contractor shall be responsible for all legal fees incurred by the Board in any action undertaken to enforce its rights under this section.

#### **1.14. LOAN SECURITY**

Loan Security may be required as a performance condition of this contract. If such performance condition is required it shall be indicated on the attached Declarations Page and identified therein as **LOAN SECURITY CONDITION**.

The BOARD grants the Contractor the right to issue future bonds and notes that constitute a lien and charge on the revenue source superior to the lien and charge of this Loan Contract. Nothing in this section shall absolve the Contractor of its obligation to make loan repayments when due, and to adjust rates, fees, or surcharges, if necessary, to meet its obligations under this Contract.

#### **1.15. HISTORICAL AND CULTURAL ARTIFACTS**

The Contractor acknowledges that the project funded by this Contract is subject to Section 106 of the National Historic Preservation Act of 1966.

Contractor agrees that Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts and agrees to hold harmless the State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of Contractor's public works project funded under this Contract.

The Contractor agrees that, in no case shall construction activities, ground disturbance, or excavation of any sort, begin until the Contractor has complied with all provisions of Section 106 of the National Historic Preservation Act of 1966, as amended.

In addition, the Contractor shall not conduct or authorize destructive project planning activities before completing compliance with Section 106 of the National Historic Preservation Act of 1966, as amended.

If historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and implement reasonable measures to protect the discovery site from further disturbance, take reasonable steps to ensure confidentiality of the discovery site, restrict access to the site, and notify the concerned tribe's cultural staff or committee, Tribal Historical Preservation Officer (THPO), Cultural Resources Program Manager at Washington State Department of Health, and the State's Historical Preservation Officer (SHPO) at the Washington State Department of Archaeology and Historic Preservation (DAHP). If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact the concerned tribe's cultural staff or committee and DAHP.

The Contractor shall require the above provisions to be contained in all contracts for work or services related to the declared **SCOPE OF WORK**. In no case shall construction activities begin until the Contractor has complied with all provisions of Section 106 of the National Historic Preservation Act of 1966.

In addition to the requirements set forth in this Contract, the Contractor agrees to comply with Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, Revised Code of Washington (RCW) 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and Washington Administrative Code (WAC) 25-48 regarding Archaeological Excavation and Removal Permits.

#### **1.16. FEDERAL AND STATE REQUIREMENTS**

The Contractor assures compliance with all applicable federal, state and local laws, requirements, and ordinances as they pertain to the design, implementation, and administration of the approved project, including but not limited to those listed in Attachments II, III, and IV.

### **1.17. COMPETITIVE BIDDING REQUIREMENTS**

Pursuant to 40 CFR, Section 33.501(b) and (c), the Contractor also agrees to create and maintain a bidders list for both Disadvantaged Business Enterprises (DBE) and Non-Disadvantaged Business Enterprises (non-DBE). The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of DBE and non-DBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts on Environmental Protection Agency assisted projects, including both DBE and non-DBE. The bidders list must be kept at least until the grant project period has expired and the recipient is no longer receiving Environmental Protection Agency funding under the grant. For entities receiving identified loans, the bidders list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors: entity's name with point of contact; entity's mailing address, telephone number, and e-mail address; the procurement on which the entity bid or quoted, and when; and entity's status as a DBE or non-DBE.

The Contractor agrees to provide Environmental Protection Agency Form 6100-2 DBE Subcontractor Participation and Environmental Protection Agency Form 6100-3 DBE Subcontractor Performance to all its Disadvantaged Business Enterprise subcontractors.

The Contractor shall require Disadvantaged Business Enterprise provisions are contained in all contracts with any subcontractors for work or services related to the declared **SCOPE OF WORK**.

The Contractor shall comply with the provisions of RCW 43.155.060 regarding competitive bidding requirements for projects assisted in whole or in part with money from the Drinking Water State Revolving Fund program.

### **1.18. ELIGIBLE PROJECT COSTS**

The Contractor assures compliance with Attachment V: DWSRF Eligible Project Costs, which identifies eligible costs for projects funded by Drinking Water State Revolving Fund loans.

### **1.19. PREVAILING WAGE**

These terms supersede the terms in Section 2.31. Prevailing Wage Laws in General Terms and Conditions.

All contractors and subcontractors performing work on a construction project funded through this Contract shall comply with prevailing wage laws by paying the higher of state or federal prevailing wages according to:

State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for Board's review upon request; or

The Davis Bacon Act, 40 U.S.C. 276a-276a-5 and related federal acts provide that all laborers and mechanics employed by contractors or subcontractors in the performance shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

The Contractor agrees that the Contractor is legally and financially responsible for compliance with the prevailing wage requirements. Contractor is advised to consult the United States Department of Labor and Washington State Department of Labor and Industries websites to determine the federal and State prevailing wages that must be paid.

The Contractor shall ensure that all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK** shall insert in full, in any contract, the labor standards provisions listed in Attachment VI: Labor Standard Provisions For Subrecipients That Are

Governmental Entities. Contractor shall report to the Board and/or the Department of Health that this requirement has been met as stated in this Contract.

**1.20. FEDERAL EXCLUSION**

These Terms add to the terms in Section 2.11. Certification Regarding Debarment, Suspension or Ineligibility and Voluntary Exclusion – Primary and Lower Tier Covered Transactions in General Terms and Conditions. The Contractor also agrees to access the Federal Exclusion List at [www.sam.gov](http://www.sam.gov) and provide Federal Exclusion documentation to the Board and to keep a copy on file with the Contractor's project records.

**1.21. REGISTRATION WITH CENTRAL CONTRACTOR REGISTRATION (CCR)**

By signing this Contract, the Contractor accepts the requirements stated in 48 CFR 52.204-7 to register with the Central Contractor Registration (CCR) database at the System for Awards Management (SAM) website. To register in SAM, a valid Data Universal Numbering System (DUNS) Number is required. The Contractor is responsible for the accuracy and completeness of the data within the SAM database and for any liability resulting from the Government's reliance on inaccurate or incomplete data. The Contractor must remain registered in the SAM database after the initial registration. The Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in SAM to ensure it is current, accurate and complete. The Contractor shall provide evidence documenting registration and renewal of SAM registration to the Board.

In the event of the Contractor's noncompliance or refusal to comply with the requirement stated above, the Board reserves the right to suspend payment until the Contractor cures this noncompliance.

**1.22. RECORDKEEPING AND ACCESS TO RECORDS**

These terms supersede the terms in Section 2.36. Records Maintenance in General Terms and Conditions.

The Board, the Board's agents, and duly authorized officials of the state and federal governments shall have full access and the right to examine, copy, excerpt, or transcribe any pertinent documents, papers, records, and books of the Contractor and of persons, firms, or organizations with which the Contractor may contract, involving transactions related to this project and this Contract.

The Contractor agrees to retain these records for a period of six (6) years from the date that the debt is retired. This includes but is not limited to financial reports. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**1.23. REPORTS**

The Contractor, at such times and on such forms as the Board may require, shall furnish the Board with such periodic reports as it may request pertaining to the activities undertaken pursuant to this Contract including, but not limited to:

- A. Prevailing Wage decisions and/or changes;
- B. Disadvantaged Business Enterprises utilization;
- C. Project Status Reports with each Invoice Voucher,
- D. Certified Project Completion Report at project completion (as described in Section 1.11), and
- E. Other reports as the Board may require.

In the event of the Contractor's noncompliance or refusal to comply with the requirement stated above, the Board reserves the right to suspend payment until the Contractor cures this noncompliance.

#### **1.24. AMENDMENTS, MODIFICATIONS, ASSIGNMENTS, AND WAIVERS**

Amendments, modifications, assignments, and waivers to any of the terms of this contract supersede those terms as found in the original contract.

The Contractor may request an amendment of this Contract for the purpose of modifying the declared **SCOPE OF WORK** or for extending the time of performance as provided for in Section 1.10. Any revision to the scope of work or location of the project must be approved by the Department of Health. No modification or amendment resulting in an extension of time shall take effect until a request has been received and approved by the Board in accordance with Section 1.10.

***During the term of this loan, any change in ownership of the water system(s) improved with funds received by the Contractor under this Contract must be approved in writing by the Board. As a condition of approval, the Board reserves the right to demand payment in full of the outstanding principal balance of the loan.***

No conditions or provisions of this Contract may be waived unless approved by the Board in writing. No waiver of any default or breach by any party shall be implied from any failure to take action upon such default or breach, if the default of breach persists or repeats.

#### **1.25. TERMINATION FOR CONVENIENCE**

These terms supersede the terms in Section 2.45. Termination for Convenience in General Terms and Conditions.

The Board may terminate this Contract in the event that federal or state funds are no longer available to the Board, or are not appropriated for the purpose of meeting the Board's obligations under this Contract. The Board shall notify the Contractor in writing of its determination to terminate and the reason for such termination. The effective date of the termination will be determined by the Board. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination. Nothing in this section shall affect Contractor's obligations to repay the unpaid balance of the loan.

#### **1.26. TERMINATION FOR CAUSE**

These terms supersede the terms in Section 2.44. Termination for Cause/Suspension in General Terms and Conditions.

If the Board concludes that the Contractor has failed to comply with the terms and conditions of this Contract, or has failed to use the loan proceeds only for those activities identified in the declared **SCOPE OF WORK**, or has otherwise materially breached one or more of the covenants in this Contract, the Board may at any time, at its discretion, upon notice to the Contractor, terminate the Contract and/or its attached agreements in whole or in part and declare the entire remaining balance of the loan, together with any interest accrued, immediately due and payable in full.. Such Notice of Termination for Cause shall be in writing, shall state the reason(s) for such termination, and shall specify the effective date of the termination. The effective date of the termination will be determined by the Board. Such notice shall inform the Contractor of the breach of the relevant covenant and shall allow the Contractor at least thirty (30) business days to cure such breach, if curable. The notice shall instruct the Contractor that, if the breach is not cured or cannot be cured within thirty (30) business days, the outstanding balance of the loan shall be due and payable. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination. Nothing in this section shall affect the Contractor's obligations to immediately repay the unpaid balance of the loan as prescribed in the Washington Administrative Code (WAC) 246-296-150

### **1.27. AUDIT**

These terms supersede the terms in Section 2.10. Audit in General Terms and Conditions.

#### **Municipal and Not-For-Profit entities:**

Audits of the Contractor's project activities may be conducted by the State Auditor Office (SAO). Audit costs are eligible project costs. The Contractor shall maintain its records and accounts so as to facilitate the audit requirements of the Board or its successor. The Contractor is responsible for any audit findings incurred by its own organization. The Board reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

In addition, Contractor's expending \$500,000 or more in any fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

#### **For-Profit entities:**

A report on the internal control related to the federal program, which should describe the scope of testing of the internal control and the results of the tests.

A report on compliance, which includes an opinion (or disclaimer of opinion) on whether the auditee complied with laws, regulations and the provisions of the award agreement that could have a direct and material effect on the federal program.

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

Department of Commerce  
ATTN: Public Works Board  
P.O. Box 42525  
1011 Plum Street SE  
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the Board.
- Copy of the Management Letter.

### **1.28. PROJECT SIGNS**

If the Contractor displays, during the period covered by this Contract, any signs or markers identifying those entities participating financially in the approved project, the sign or marker must identify the Washington State Public Works Board Drinking Water State Revolving Fund, and the Washington State Department of Health, as participants in the project.

### **1.29. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

As mandated by the Environmental Protection Agency, the Contractor agrees to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises in procurement under this Contract. The Contractor is required to follow the requirements identified in Attachment III: Disadvantaged Business Enterprise Requirements.

By signing this Contract, the Contractor accepts the applicable MBE/WBE fair share objectives/goals negotiated with Environmental Protection Agency by the Washington State Office of Minority and Women's Business Enterprises. The Contractor attests to the fact that it is purchasing the same or similar

construction, supplies, services and equipment, in the same or similar relevant geographic buying market as Washington State Office of Minority and Women's Business Enterprises. The goals for the utilization of disadvantaged businesses are stated in ATTACHMENT III: DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS.

The Contractor is required to furnish the Board and the Department of Health with such periodic reports as the Department may request pertaining to the utilization of disadvantaged businesses.

### **1.30. NONDISCRIMINATION PROVISION**

During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, including, but not limited to Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the Contractor's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Board. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance.

The Contractor must also include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK:**

"The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract."

### **1.31. PROHIBITION STATEMENT**

Pursuant to Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the Contractor's contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK** may not engage in severe forms of trafficking in persons during the period of time the Contract is in effect, procure a commercial sex act during the period of time the Contract is in effect, or use forced labor during the performance of this Contract. The Contractor shall require this prohibition statement in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK.**

The Contractor must also include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK:**

"Prohibition Statement- You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the awards is in effect; or use forced labor in the performance of the award or subawards under the award."

In the event that the Contractor or any of its employees is determined to have violated the terms of this section, this Contract may be terminated.

### **1.32. FALSE, INCORRECT, OR INCOMPLETE INFORMATION OR CLAIM**

The Contractor warrants that the Contractor neither has submitted nor shall submit any information that is materially false, incorrect, or incomplete to the Board.

The Contractor is advised that providing false, fictitious, or misleading information with respect to the receipt and disbursements of Environmental Protection Agency funds is basis for criminal, civil, or administrative fines and/or penalties.

**1.33. Litigation**

The Contractor warrants that there is no threatened or pending litigation, investigation, or legal action before any court, arbitrator, or administrative agency that, if adversely determined, would have a materially adverse effect on the Contractor's ability to repay the loan.

**1.34. ESTABLISHMENT OF ADEQUATE RATES AND RESERVES**

The Contractor agrees to provide a resolution adopting rate increases, capital assessments, or both, for the services of the system that shall be sufficient to provide funds which, along with other revenues of the system, will pay all operating expenses and debt repayments during the term of the loan. In addition, the Contractor shall create, fund and maintain reserves at least as required by the Water System Plan or Small Water System Management Plan. The Board reserves the right, at anytime, to request proof of compliance of these requirements from the Contractor.

**1.35. SPECIAL CONDITIONS**

If **SPECIAL CONDITIONS** are listed on the Contract Declarations Page then these conditions are herein incorporated as part of the terms and requirements of this contract.

**1.36. INVESTMENT GRADE AUDIT**

For projects involving repair, replacement, or improvement of a wastewater treatment plant, or other public works facility for which energy efficiency is obtainable, Contractor must undertake an investment grade audit per ESHB 1497.

Costs incurred as part of the investment grade audit are eligible project costs.



## Part 2. GENERAL TERMS AND CONDITIONS

### 2.1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- C. "BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Contract
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

### 2.2. ADMINISTRATIVE COST ALLOCATION

Administrative costs that may be allowed are set forth in the Specific Terms and Conditions. Administrative services shared by other programs shall be assigned to this Contract based on an allocation plan that reflects allowable administrative costs that support services provided under each Contract administered by the Contractor. An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed.

### 2.3. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

### 2.4. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

### 2.5. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### 2.6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

### 2.7. APPROVAL

This contract shall be subject to the written approval of the BOARD's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

## 2.8. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the BOARD.

## 2.9. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

## 2.10. AUDIT

### A. General Requirements

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.

THE BOARD reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to the BOARD requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

### B. Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations

Contractors expending \$500,000 or more in a fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations." Revised OMB A-133 requires the Contractor to provide the auditor with a schedule of Federal Expenditure for the fiscal year(s) being audited. When state funds are also to be paid under this Agreement a Schedule of State Financial Assistance must also be included. Both schedules include:

- Grantor agency name
- Federal agency
- Federal program name
- Other identifying contract numbers
- Catalog of Federal Domestic Assistance (CFDA) number (if applicable)
- Grantor contract number
- Total award amount including amendments (total grant award)
- Current year expenditures

If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by the BOARD.

### **C. Documentation Requirements**

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) by sending a scanned copy to [auditreview@commerce.wa.gov](mailto:auditreview@commerce.wa.gov) or by sending a hard copy to:

Department of Commerce  
ATTN: Audit Review and Resolution Office  
1011 Plum Street  
PO Box 42525  
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the BOARD.
- Copy of the Management Letter.

### **2.11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS**

- A. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
  2. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section; and
  4. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.
- B. Where the Contractor is unable to certify to any of the statements in this contract, the Contractor shall attach an explanation to this contract.
- C. The Contractor agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the BOARD.
- D. The Contractor further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

#### **LOWER TIER COVERED TRANSACTIONS**

- a) The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - b) Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
- E. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the

meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the BOARD for assistance in obtaining a copy of these regulations.

## **2.12. CODE REQUIREMENTS**

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990, 28 C.F.R. Part 35 will be required, as specified by the local building Department.

## **2.13. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

A. "Confidential Information" as used in this section includes:

2. All material provided to the Contractor by the BOARD that is designated as "confidential" by the BOARD;
3. All material produced by the Contractor that is designated as "confidential" by the BOARD; and
4. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the BOARD or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the BOARD with its policies and procedures on confidentiality. The BOARD may require changes to such policies and procedures as they apply to this Contract whenever the BOARD reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the BOARD. Upon request, the Contractor shall immediately return to the BOARD any Confidential Information that the BOARD reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify the BOARD within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

## **2.14. CONFORMANCE**

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

## **2.15. COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the BOARD. The BOARD shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the BOARD effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the BOARD a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the BOARD.

The Contractor shall exert all reasonable effort to advise the BOARD, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide the BOARD with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. The BOARD shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

#### **2.16. DISALLOWED COSTS**

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

#### **2.17. DISPUTES**

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of the the BOARD, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

#### **2.18. DUPLICATE PAYMENT**

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

#### **2.19. ETHICS/CONFLICTS OF INTEREST**

In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

#### **2.20. GOVERNING LAW AND VENUE**

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## **2.21. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, the BOARD, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, THE BOARD, the state of Washington, its officers, employees and authorized agents.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

## **2.22. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the State of Washington or the BOARD. The Contractor will not hold itself out as or claim to be an officer or employee of the BOARD or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

## **2.23. INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, The BOARD may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The BOARD may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the BOARD under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

## **2.24. LAWS**

The Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

### **United States Laws, Regulations and Circulars (Federal)**

#### A. Audits

Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

#### B. Environmental Protection and Review

Coastal Barrier Resources Act of 1982, 16 U.S.C. 3501 et seq.

HUD's implementing regulations at 24 CFR parts 50 or 58, as appropriate.

Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4821-4846 also 24 CFR 982.401(j).

National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. and the Implementing Regulations of 24 CFR 58 (HUD) and 40 CFR 1500-1508 (Council on Environmental Quality) Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 USC 4851-4856.

#### C. Flood Plains

Flood Disaster Protection Act of 1973, 42 USC 4001-4128.

#### D. Labor and Safety Standards

All Rental Units Assisted with Federal Funds Must Meet the Section 8 Housing Quality Standards (HQS) and Local Housing Code Requirements for the duration of the Affordability Period.

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.

Davis Bacon Act, 40 U.S.C. 276a-276a-5.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

Title IV of the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4831, 24 CFR Part 35.

E. Laws against Discrimination

Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90  
Nondiscrimination in Federally Assisted Programs.

Americans with Disabilities Act of 1990, Public Law 101-336.

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100. Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8.

Fair Housing, Title VIII of the Civil Rights Act of 1968, Public Law 90-284, 42 U.S.C. 3601-19.

Handicapped Employees of Government Contractors, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.

Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794.

Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in Benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq, 24 CFR Part 1.

Nondiscrimination in Employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Programs.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 U.S.C. 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

F. Office of Management and Budget Circulars

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A-122, (if the Contractor is a nonprofit organization).

Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-102, (if the Contractor is a local government or federally recognized Indian tribal government).

Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, OMB Circular A-110.

G. Other

Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243 Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352 (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that Contractors who apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

H. Privacy

Privacy Act of 1974, 5 U.S.C. 522a.

I. Relocation

Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 and implementing regulations at 49 CFR part 24.

Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR part 570.

Washington State Laws and Regulations

- A. Affirmative action, RCW 41.06.020 (11).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Housing assistance program, Chapter 43.185 RCW
- G. Interlocal cooperation act, Chapter 39.34 RCW.
- H. Noise control, Chapter 70.107 RCW.
- I. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open public meetings act, Chapter 42.30 RCW.
- K. Prevailing wages on public works, Chapter 39.12 RCW.
- L. Public records act, Chapter 42.56 RCW.
- M. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.
- N. Shoreline management act of 1971, Chapter 90.58 RCW.
- O. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- P. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State environmental policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05 Archeological and Cultural Resources.

**2.25. LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

**2.26. LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

## **2.27. LOCAL PUBLIC TRANSPORTATION COORDINATION**

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

## **2.28. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the BOARD. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

## **2.29. NOTIFICATION OF TENANT RIGHTS/RESPONSIBILITIES**

The Contractor shall provide all tenants, if any, with information outlining tenant rights and responsibilities under the Washington State Landlord Tenant laws, Title 59, Revised Code of Washington.

The Contractor shall also provide all occupants of property acquired with U.S. Department of Housing and Urban Development (HUD) funds notice regarding their eligibility for relocation assistance. Such notices will be provided as required by the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended and referenced in 49 CFR part 24 and Section 104(d) of the Housing and Community Development Act of 1974, as amended and referenced in 24 CFR 570 and noted in HUD's Handbook No. 1378. Notifications will include but not be limited to:

- General Information Notice
- Notice of Displacement/Non-Displacement

## **2.30. POLITICAL ACTIVITIES**

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

## **2.31. PREVAILING WAGE LAWS**

All contractors and subcontractors performing work on a construction project funded through this agreement shall comply with prevailing wage laws by paying the higher of state or federal prevailing wages according to:

State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for THE BOARD's review upon request; or

The Davis Bacon Act, 40 U.S.C. 276a-276a-5 and related federal acts provide that all laborers and mechanics employed by contractors or subcontractors in the performance shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

## **2.32. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS**

A Contractor which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Contract.

A Contractor which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Contract.

The Contractor's procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
3. Minimum procedural requirements, as follows:
  - a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
  - b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
  - c. Positive efforts shall be made to use small and minority-owned businesses.
  - d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
  - e. Contracts shall be made only with reasonable subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
  - f. Some form of price or cost analysis should be performed in connection with every procurement action.
  - g. Procurement records and files for purchases shall include all of the following:
    - 1) Contractor selection or rejection.
    - 2) The basis for the cost or price.
    - 3) Justification for lack of competitive bids if offers are not obtained.
  - h. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
4. Contractor and Subcontractor must receive prior approval from the BOARD for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this contract is expected to exceed \$5,000.

Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

### **2.33. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

### **2.34. PUBLICITY**

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or the BOARD's name is mentioned, or language used from which the connection with the state of Washington's or the BOARD's name may reasonably be inferred or implied, without the prior written consent of the BOARD.

### **2.35. RECAPTURE**

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, The BOARD reserves the right to recapture funds in an amount to compensate the BOARD for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the BOARD. In the alternative, The BOARD may recapture such funds from payments due under this contract.

#### **2.36. RECORDS MAINTENANCE**

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

#### **2.37. REGISTRATION WITH DEPARTMENT OF REVENUE**

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

#### **2.38. RIGHT OF INSPECTION**

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the BOARD, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

#### **2.39. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, The BOARD may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

#### **2.40. SEVERABILITY**

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

#### **2.41. SUBCONTRACTING**

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of the BOARD.

If THE BOARD approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the BOARD in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the BOARD if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the BOARD for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the BOARD and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

#### **2.42. SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

#### **2.43. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

#### **2.44. TERMINATION FOR CAUSE/SUSPENSION**

In event the BOARD determines that the Contractor failed to comply with any term or condition of this Contract, the BOARD may terminate the Contract in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, the BOARD upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the BOARD may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the BOARD to terminate the Contract upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when the BOARD determines that the Contractor did not fail to comply with the terms of the Contract or when the BOARD determines the failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated for cause, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original contract and the replacement contract, as well as all costs associated with entering into the replacement contract (i.e., competitive bidding, mailing, advertising, and staff time).

#### **2.45. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Contract, the BOARD may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the BOARD shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

#### **2.46. TERMINATION PROCEDURES**

After receipt of a notice of termination, except as otherwise directed by the BOARD, the Contractor shall:

- A.** Stop work under the Contract on the date, and to the extent specified, in the notice;
- B.** Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C.** Assign to the BOARD all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the BOARD has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of the BOARD; and
- D.** Preserve and transfer any materials, contract deliverables and/or the BOARD property in the Contractor's possession as directed by the BOARD.

Upon termination of the Contract, the BOARD shall pay the Contractor for any service provided by the Contractor under the Contract prior to the date of termination. The BOARD may withhold any amount due as the BOARD reasonably determines is necessary to protect the BOARD against potential loss or liability resulting from the termination. The BOARD shall pay any withheld amount to the Contractor if the BOARD later determines that loss or liability will not occur.

The rights and remedies of the BOARD under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

**2.47. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of THE BOARD.

**2.48. WORK HOURS AND SAFETY STANDARDS**

The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)-Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Contract Work Hours Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.



# ATTACHMENT I: ATTORNEY'S CERTIFICATION

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## DRINKING WATER STATE REVOLVING FUND (MUNICIPAL)

**City of Spokane**  
**DM13-952-131**

I, \_\_\_\_\_, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the Contractor identified on the Declarations Page of the Contract identified above; and

I have also examined any and all documents and records, which are pertinent to the Contract, including the application requesting this financial assistance.

Based on the foregoing, it is my opinion that:

1. The Contractor is a public body, properly constituted and operating under the laws of the State of Washington, empowered to receive and expend federal, state and local funds, to contract with the State of Washington, and to receive and expend the funds involved to accomplish the objectives set forth in their application.
2. The Contractor is empowered to accept the Drinking Water State Revolving Fund financial assistance and to provide for repayment of the loan as set forth in the loan agreement.
3. There is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the Contractor from repaying the Drinking Water State Revolving Fund loan extended by the Public Works Board with respect to such project. The Contractor is not a party to litigation, which will materially affect its ability to repay such loan on the terms contained in the loan agreement.
4. Assumption of this obligation would not exceed statutory and administrative rule debt limitations applicable to the Contractor.

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address



# ATTACHMENT II: FEDERAL AND STATE REQUIREMENTS

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## 1) Environmental Authorities

- a) Archeological and Historic Preservation Act of 1974, Public Law 86-523 as amended
- b) Clean Air Act, Public Law 84-159 as amended
- c) Coastal Barrier Resources Act, Public Law 92-583 as amended
- d) Endangered Species Act, Public Law 93-205 as amended
- e) Environmental Justice, Executive Order 12898
- f) Floodplain Management, Executive Order 11934 as amended by Executive Order 12148
- g) Protection of Wetlands, Executive Order 11990
- h) Farmland Protection Policy Act, Public Law 97-98
- i) Fish and Wildlife Coordination Act, Public Law 85-624 as amended
- j) National Historic Preservation Act of 1966, Public Law 89-665 as amended
- k) Safe Drinking Water Act, Public Law 93-523 as amended
- l) Wild and Scenic Rivers Act, Public Law 90-542 as amended

## 2) Economic and Miscellaneous Authorities

- a) Demonstration Cities and Metropolitan Development Act of 1996, Public Law 89-754 as amended, Executive Order 12372
- b) Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- c) Uniform Relocation and Real Property Policies Act, Public Law 91-646 as amended
- d) Debarment and Suspension, Executive Order 12549

## 3) Social Policy Authorities

- a) Age Discrimination Act of 1975, Public Law 94-135
- b) Title VI of the Civil Rights Act of 1964, Public Law 88-352
- c) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500 (the Clean Water Act)
- d) Section 504 of the Rehabilitation Act of 1973, Public Law 93-112 (including Executive Orders 11914 and 11250)
- e) Equal Employment Opportunity, Executive Order 11246
- f) Disadvantaged Business Enterprise, Public Law 101-549 (the Clean Air Act), and Public Law 102-389 (the Clean Water Act)
- g) Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Public Law 100-590

## 4) State Laws

- a) Chapter 36.70A RCW, Growth Management Act
- b) Chapter 39.80 RCW, Contracts for Architectural and Engineering Services
- c) Chapter 39.12 RCW, Washington State Public Works Act
- d) Chapter 43.20 RCW, State Board of Health
- e) Chapter 43.70 RCW, Department of Health
- f) Chapter 43.155 RCW, Public Works Project
- g) Chapter 70.116 RCW, Public Water Systems Coordination Act of 1977
- h) Chapter 70.119 RCW, Public Water Supply Systems Certification and Regulation of Operations
- i) Chapter 70.119A RCW, Public Water Systems, Penalties & Compliances
- j) Chapter 246-290 WAC, Group A Public Water Systems
- k) Chapter 246-291 WAC, Group B Public Water Systems
- l) Chapter 246-292 WAC, Waterworks Operator Certification Regulations
- m) Chapter 246-293 WAC, Water Systems Coordination Act
- n) Chapter 246-294 WAC, Drinking Water Operating Permits
- o) Chapter 246-295 WAC, Satellite System Management Agencies
- o) Chapter 246-296 WAC Drinking Water State Revolving Fund Loan Program
- p) Chapter 173-160 WAC, Minimum Standards for Construction & Maintenance of Wells
- q) Title 173 WAC, Department of Ecology Rules
- r) Title 40 Part 141 Code of Federal Regulations, Federal National Primary Drinking Water Regulations (Section Adopted by Reference)



# ATTACHMENT III: DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

## GENERAL COMPLIANCE, 40 CFR, Part 33

The Contractor agrees to comply with the requirements of Environmental Protection Agency's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under this Contract, contained in 40 CFR, Part 33.

## FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

The following are exemptions from the fair share objective Requirements:

- Grant and loan recipients receiving a total of \$250K or less in EPA financial assistance in a given fiscal year.
- Tribal recipients of Performance Partnership Eligible grants under 40 CFR Part 35, Subpart B.
  - There is a 3-year phase in period for the requirement to negotiate fair share goals for Tribal and Insular Area recipients.
- Recipients of Technical Assistance Grants.

The Fair Share Objectives or goals for the utilization of disadvantaged businesses negotiated with EPA by the WA Office of Minority Women Business are stated below.

Construction	10% MBE	6% WBE
Supplies	8% MBE	4% WBE
Equipment	8% MBE	4% WBE
Purchased Services	10% MBE	4% WBE

By signing this Contract, the Contractor is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as WA Office of Minority Women Business goal is being adopted.

## SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the Contractor agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply.

Records documenting compliance with the six good faith efforts shall be retained. The six good faith efforts shall include:

- A. Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local Government recipients, this will include placing the Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- B. Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- C. Consider in the contracting process whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State and Local Government recipients, this will include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- D. Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- E. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

- F. If the prime contractor awards subcontracts, also require the prime contractor to take the five good faith efforts in paragraphs A through E above.

**MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503**

Contractor is required to submit MBE/WBE participation reports to the Board and/or the Department of Health, on a quarterly basis, beginning with the Federal fiscal year reporting period the Contractor receives the award and continuing until the project is completed.

**CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The Contractor agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

The Contractor agrees to require all general contractors to provide forms: EPA Form 6100-2 DBE Subcontractor Participation Form and EPA Form 6100-3 DBE Subcontractor Performance Form to all its Disadvantaged Business Enterprise subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK**. These two (2) forms may be obtained from the EPA Office of Small Business Program's website on the internet at <http://www.epa.gov/osbp/grants.htm>.

The Contractor agrees to require all general contractors to complete and submit to the Contractor and Environmental Protection Agency EPA Form 6100-4 DBE Subcontractor Utilization Form beginning with the Federal fiscal year reporting period the Contractor receives the award and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a Contractor's MBE/WBE accomplishments.

**BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

The Contractor is also required to create and maintain a bidders list if the Contractor of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

Section 33.501(b) of the rule is as follows:

A recipient of a Continuing Environmental Program Grant or other annual grant must create and maintain a bidders list. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts or bid or quote on subcontracts under EPA assisted projects, including both MBE/WBEs.

The bidders list must be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. For entities receiving identified loans, the bidders list must be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors:

- (1) Entity's name with point of contact;
- (2) Entity's mailing address, telephone number, and e-mail address;
- (3) The procurement on which the entity bid or quoted, and when; and
- (4) Entity's status as a MBE/WBE<sup>1</sup> or non-MBE/WBE.

The exemption found at § 33.501(c) is as follows:

A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the paragraph (b) of this section requirement to create and maintain a bidders list. Also, a recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the paragraph (b) of this section bidders list requirement of this subpart to an entity receiving an identified loan in an amount of \$250,000 or less, or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year. This exemption is limited to the paragraph (b) of this section bidders list requirements of this subpart.

<sup>1</sup> Qualified Women and Minority business enterprises may be found on the Internet at [www.omwbe.wa.gov](http://www.omwbe.wa.gov) or by contacting the Washington State Office of Minority and Women's Enterprises at 360-704-1181.

# ATTACHMENT IV: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS



United States Environmental Protection Agency  
Washington, DC 20460

EPA Project Control Number

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

\_\_\_\_\_  
Typed Name & Title of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

I am unable to certify to the above statements. My explanation is attached.

**EPA Form 5700-49 (11-88)**



# ATTACHMENT V: DWSRF ELIGIBLE PROJECT COSTS

Must be directly attributable to the project.

1. The costs for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
2. DWSRF loan fees.
3. The purchase of a portion of another system's capacity, if it is the most cost effective solution (limited to publicly owned (municipal) systems).
4. Construction of reservoirs (clear wells) that are part of the treatment process and are collocated with the treatment facility.
5. Construction of distribution reservoirs (finished water).
6. Cost associated with restructuring or consolidation of existing water systems by publicly owned water systems.
7. Main extensions to connect to safe and reliable sources of drinking water.
8. Cost associated with collecting and preparing environmental assessment documents to obtain local permits.
9. Direct labor including related employee benefits:
  - a. Salaries and wages (at actual or average rates) covering productive labor hours of employees of the borrower (excluding the administrative organization of the operating unit involved) for periods of time actively or incidentally engaged in pre-design engineering, design engineering, construction engineering, acquisition of rights of way, and the cleaning, sterilization or bacteriological testing of water system components prior to public use. The costs of services rendered by employees generally classified as administration/project management of the loan are considered a direct cost only when such employees are assigned the types of services described above and shall be limited to 3% or less of the project loan amount.
  - b. Employee benefits relating to labor are considered a direct cost of construction projects. The following items may be included as employee benefits:
    - F.I.C.A. (Social Security) –employer's share.
    - Retirement benefits.
    - Hospital, health, dental, and other welfare insurance.
    - Life insurance.

- Industrial and medical insurance.
- Vacation.
- Holiday.
- Sick leave.
- Military leave and jury duty.

Employee benefits must be calculated as a percentage of direct labor dollars. The computation of predetermined percentage rates to be applied to current labor costs must be based on the average of total employee benefits and total labor costs for the prior fiscal year and adjusted by known current year variations.

- c. Other than work identified in Number 9.a, no costs associated with labor performed by the borrower's employees, including force account work, are eligible for financing assistance.
10. Contract engineering, planning, design, legal, and financial planning services. The Board reserves the right to declare ineligible legal costs that are unreasonable and disproportionate to the project.
11. Contract construction work.
12. Direct vehicle and equipment charges at the actual rental cost paid for the equipment or, in the case of city or county-owned equipment, at the rental rates established by the local government's "equipment rental and revolving fund" following the methods prescribed by the division of municipal corporations. However, such costs must be charged on a uniform basis to equipment used for all projects regardless of the source of funding. Cities with a population of eight thousand or less not using this type of fund are allowed the same rates as used by the State Department of Transportation.
13. Direct materials and supplies.
14. Other direct costs incurred for materials or services acquired for a specific project are eligible costs and may include, but are not limited to such items as:
  - a. Telephone charges.
  - b. Reproduction and photogrammetry costs.
  - c. Video and photography for project documentation.
  - d. Computer usage.
  - e. Printing and advertising.
15. Other project related costs include:
  - Competitive Bidding.
  - Audit.
  - Insurance.
  - Prevailing wages.
  - Attorney fees.

- Environmental Review.
- Archaeological Survey.

Water system plan costs are not eligible for reimbursement. Small water system management program and plan amendments costs are eligible for reimbursement.

Projects may be designed to accommodate reasonable growth. This is generally the 20-year projection included in the system's water system plan or small water system management program.



# ATTACHMENT VI: LABOR STANDARD PROVISIONS FOR SUBRECIPIENTS THAT ARE GOVERNMENTAL ENTITIES

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## Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2011 appropriation , the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site

of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### (4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman

wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act.

These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## 5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient

must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract . Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.



## ATTACHMENT VII: EPA COMPLIANCE REVIEW

**United States Environmental Protection Agency  
Washington, DC 20460**

**Preadward Compliance Review Report for  
All Applicants and Recipients Requesting EPA Financial Assistance**

**Note: Read instructions on other side before completing form.**

I. Applicant/Recipient (Name, Address, State, Zip Code).		DUNS No.
II. Is the applicant currently receiving EPA assistance?		
III. List all civil rights lawsuits and administrative complaints pending against the applicant/recipient that allege discrimination based on race, color, national origin, sex, age, or disability. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)		
List all civil rights lawsuits and administrative complaints decided against the applicant/recipient within the last year that allege discrimination based on race, color, national origin, sex, age, or disability and enclose a copy of all decisions. Please describe all corrective action taken. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)		
V. List all civil rights compliance reviews of the applicant/recipient conducted by any agency within the last two years and enclose a copy of the review and any decisions, orders, or agreements based on the review. Please describe any corrective action taken. (40 C.F.R. § 7.80(c)(3))		
VI. Is the applicant requesting EPA assistance for new construction? If no, proceed to VII; if yes, answer (a) and/or (b) below.		
YES		NO
a. If the grant is for new construction, will all new facilities or alterations to existing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities? If yes, proceed to VII; if no, proceed to VI(b).		Yes No
b. If the grant is for new construction and the new facilities or alterations to existing facilities will not be readily accessible to and usable by persons with disabilities, explain how a regulatory exception (40 C.F.R. § 7.70) applies.		Yes No
VII.* Does the applicant/recipient provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs or activities? (40 C.F.R. § 5.140 and § 7.95)		
a. Do the methods of notice accommodate those with impaired vision or hearing?		Yes No
b. Is the notice posted in a prominent place in the applicant's offices or facilities or, for education programs and activities, in appropriate periodicals and other written communications?		Yes No
c. Does the notice identify a designated civil rights coordinator?		Yes No
VIII.* Does the applicant/recipient maintain demographic data on the race, color, national origin, sex, age, or handicap of the population it serves? (40 C.F.R. § 7.85(a))		
IX.* Does the applicant/recipient have a policy/procedure for providing access to services for persons with limited English proficiency? (40 C.F.R. Part 7, E.O. 13166)		
X.* If the applicant/recipient is an education program or activity, or has 15 or more employees, has it designated an employee to coordinate its compliance with 40 C.F.R. Parts 5 and 7? Provide the name, title, position, mailing address, e-mail address, fax number, and telephone number of the designated coordinator.		
XI* If the applicant/recipient is an education program or activity, or has 15 or more employees, has it adopted grievance procedures that assure the prompt and fair resolution of complaints that allege a violation of 40 C.F.R. Parts 5 and 7? Provide a legal citation or Internet address for, or a copy of, the procedures.		
<b>For the Applicant/Recipient</b>		
I certify that the statements I have made on this form and all attachments thereto are true, accurate and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law. I assure that I will fully comply with all applicable civil rights statutes and EPA regulations.		
A. Signature of Authorized Official	B. Title of Authorized Official	C. Date
<b>For the U.S. Environmental Protection Agency</b>		
I have reviewed the information provided by the applicant/recipient and hereby certify that the applicant/recipient has submitted all preaward compliance information required by 40 C.F.R. Parts 5 and 7; that based on the information submitted, this application satisfies the preaward provisions of 40 C.F.R. Parts 5 and 7; and that the applicant has given assurance that it will fully comply with all applicable civil rights statutes and EPA regulations.		
A. Signature of Authorized EPA Official See ** note on reverse side.	B. Title of Authorized EPA Official	C. Date

EPA Form 4700-4 (Rev. 03/2008). Previous editions are obsolete.

## Instructions for EPA FORM 4700-4 (Rev. 03/2008)

### General

Recipients of Federal financial assistance from the U.S. Environmental Protection Agency must comply with the following statutes and regulations.

Title VI of the Civil Rights Acts of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Act goes on to explain that the statute shall not be construed to authorize action with respect to any employment practice of any employer, employment agency, or labor organization (except where the primary objective of the Federal financial assistance is to provide employment). Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act provides that no person in the United States shall on the ground of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the Federal Water Pollution Control Act, as amended. Employment discrimination on the basis of sex is prohibited in all such programs or activities. Section 504 of the Rehabilitation Act of 1973 provides that no otherwise qualified individual with a disability in the United States shall solely by reason of disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Employment discrimination on the basis of disability is prohibited in all such programs or activities. The Age Discrimination Act of 1975 provides that no person on the basis of age shall be excluded from participation under any program or activity receiving Federal financial assistance. Employment discrimination is not covered. Age discrimination in employment is prohibited by the Age Discrimination in Employment Act administered by the Equal Employment Opportunity Commission. Title IX of the Education Amendments of 1972 provides that no person in the United States on the basis of sex shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Employment discrimination on the basis of sex is prohibited in all such education programs or activities. Note: an education program or activity is not limited to only those conducted by a formal institution.

40 C.F.R. Part 5 implements Title IX of the Education Amendments of 1972.

40 C.F.R. Part 7 implements Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and Section 504 of The Rehabilitation Act of 1973. The Executive Order 13166 (E.O. 13166) entitled; "Improving Access to Services for Persons with Limited English Proficiency" requires Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

### Items

"Applicant" means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance. 40 C.F.R. §§ 5.105, 7.25.

"Recipient" means any entity, other than applicant, which will actually receive EPA assistance. 40 C.F.R. §§ 5.105, 7.25. "Civil rights lawsuits and administrative complaints" means any lawsuit or administrative complaint alleging discrimination on the basis of race, color, national origin, sex, age, or disability pending or decided against the applicant and/or entity which actually benefits from the grant, but excluding employment complaints not covered by 40 C.F.R. Parts 5 and 7. For example, if a city is the named applicant but the grant will actually benefit the Department of Sewage, civil rights lawsuits involving both the city and the Department of Sewage should be listed. "Civil rights compliance review" means any review assessing the applicant's and/or recipient's compliance with laws prohibiting discrimination on the basis of race, color, national origin, sex, age, or disability. Submit this form with the original and required copies of applications, requests for extensions, requests for increase of funds, etc. Updates of information are all that are required after the initial application submission. If any item is not relevant to the project for which assistance is requested, write "NA" for "Not Applicable." In the event applicant is uncertain about how to answer any questions, EPA program officials should be contacted for clarification. \* Questions VII – XI are for informational use only and will not affect an applicant's grant status. However, applicants should answer all questions on this form. (40 C.F.R. Parts 5 and 7). \*\* Note: Signature appears in the Approval Section of the EPA Comprehensive Administrative Review For Grants/Cooperative Agreements & Continuation/Supplemental Awards form. Approval indicates, in the reviewer's opinion, questions I – VI of Form 4700-4 comply with the preaward administrative requirements for EPA assistance.

### "Burden Disclosure Statement"

EPA estimates public reporting burden for the preparation of this form to average 30 minutes per response. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to U.S. EPA, Attn: Collection Strategies Division (MC 2822T), Office of Information Collection, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. The information on this form is required to enable the U.S. Environmental Protection Agency to determine whether applicants and prospective recipients are developing projects, programs and activities on a nondiscriminatory basis as required by the above statutes and regulations.



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	OPR 2013-0646
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	ASSET MANAGEMENT
<b>Contact Name/Phone</b>	MARK PAPICH 625-6310
<b>Contact E-Mail</b>	MPAPICH@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	5900 - LOAN AGREEMENT - TOP SYSTEM T-MAIN REPLACEMENT

**Agenda Wording**

Loan Agreement between the Drinking Water State Revolving Fund (DWSRF) and the City of Spokane for Top System Transmission Main Replacement for revenue in the amount of \$5,604,490.00.

**Summary (Background)**

The Top System Transmission Main Replacements loan agreement provides funding for replacement of 2.5 miles of existing water main and 0.75 miles of new water main. The improvements will be located in 57th Avenue, Glenrose Street and 37th Avenue. This project will provide redundancy in the Top System and allow for repairs. The loan is at an interest rate of 1.50 percent with a repayment period of 24 years.

**Fiscal Impact**

Revenue	\$ 5,604,490.00
Select	\$
Select	\$
Select	\$

**Budget Account**

#	4100-42410-99999-39180
#	
#	BudgetAccount3
#	

**Approvals**

<b>Dept Head</b>	WERNER, MARK
<b>Division Director</b>	QUINTRALL, JAN
<b>Finance</b>	BUSTOS, KIM
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	Public Works 8/26/13

**Distribution List**

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mpapich@spokanecity.org
acline@spokanecity.org

**Additional Approvals**

<b>Purchasing</b>	

BRIEFING PAPER  
Public Works Committee  
Capital Programs  
August 26, 2013

---

Subject

Drinking Water State Revolving Fund (DWSRF) Loans for upcoming Water Department Projects.

Background

Capital Programs has received three loans through the Department of Health (DOH) for water system improvement projects. These three loans are Top System Transmission Main Replacements, Central Avenue Wells No. 1 and No. 2 and Steel Transmission Main Replacements.

The *Top System Transmission Main Replacements* loan provides funding for replacement of 2.5-miles of existing water main and 0.75-miles of new water main. The improvements will be located in 57<sup>th</sup> Avenue, Glenrose Street and 37<sup>th</sup> Avenue. This project will provide redundancy in the Top System and allow for repairs.

The *Central Wells No. 1 and No. 2 Rehabilitation* loan will replace the existing pumps and motors in the two wells. This project will allow for more pumping capacity and improved efficiency.

The *Steel Transmission Main Replacements* loan will replace 2.4 miles of existing main on Cleveland Avenue and 1.3 miles of existing main on Manito Boulevard. These existing steel mains have reached the end of their useful life and need to be replaced.

Impact

The water system improvements through these loans will provide a more reliable and efficient water system for the City.

Action

Council Approval of the DWSRF Loan Agreements.

Funding

The three DWSRF loans are for the amount of \$10,182,820 at an interest rate of 1.5 percent and a repayment period of 24 years. The loan is expected to cover the entire cost of the improvements.



**Washington State  
Public Works Board**

1011 Plum Street SE  
Post Office Box 42525  
Olympia, Washington 98504-2525

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**Capital Agreement between:**

**City of Spokane**

and

**Public Works Board**

**For:**

Project Name: **Top System Transmission Main Replacement**

Loan Number: **DM13-952-123**

Loan Type: **DWSRF NT**

**Contract Start Date:** \_\_\_\_\_ **Contract Execution Date** \_\_\_\_\_



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# DECLARATIONS

## CLIENT INFORMATION

Legal Name: **City of Spokane**  
Loan Number: **DM13-952-123**  
Award Year: **2013**  
State Wide Vendor Number: **SWV00338705**

## PROJECT INFORMATION

Project Title: **Top System Transmission Main Replacement**  
Project City: **Spokane**  
Project State: **Washington**  
Project Zip Code: **99207-2794**

## LOAN INFORMATION

Loan Amount: **\$5,604,490.00**  
Loan Fee (Included in loan amount if applicable) **\$55,490.00**  
Loan Forgiveness %: **0%**  
Loan Term: **24 years**  
Interest Rate: **1.50%**  
Payment Month: **October 1st**  
Earliest Date for Construction Reimbursement: **7/1/2013**  
Time of Performance **48 months from Contract execution date to Project Completion date.**

## SPECIAL TERMS AND CONDITIONS GOVERNING THIS LOAN AGREEMENT

**None.**

## LOAN SECURITY CONDITION GOVERNING THIS LOAN AGREEMENT

**This loan is a revenue obligation of the Contractor payable solely from the net revenue of the Water system. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The Board grants the Contractor the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan Contract. This option may be used only if the entire project is a domestic water, sanitary sewer, storm sewer, or solid waste utility project.**

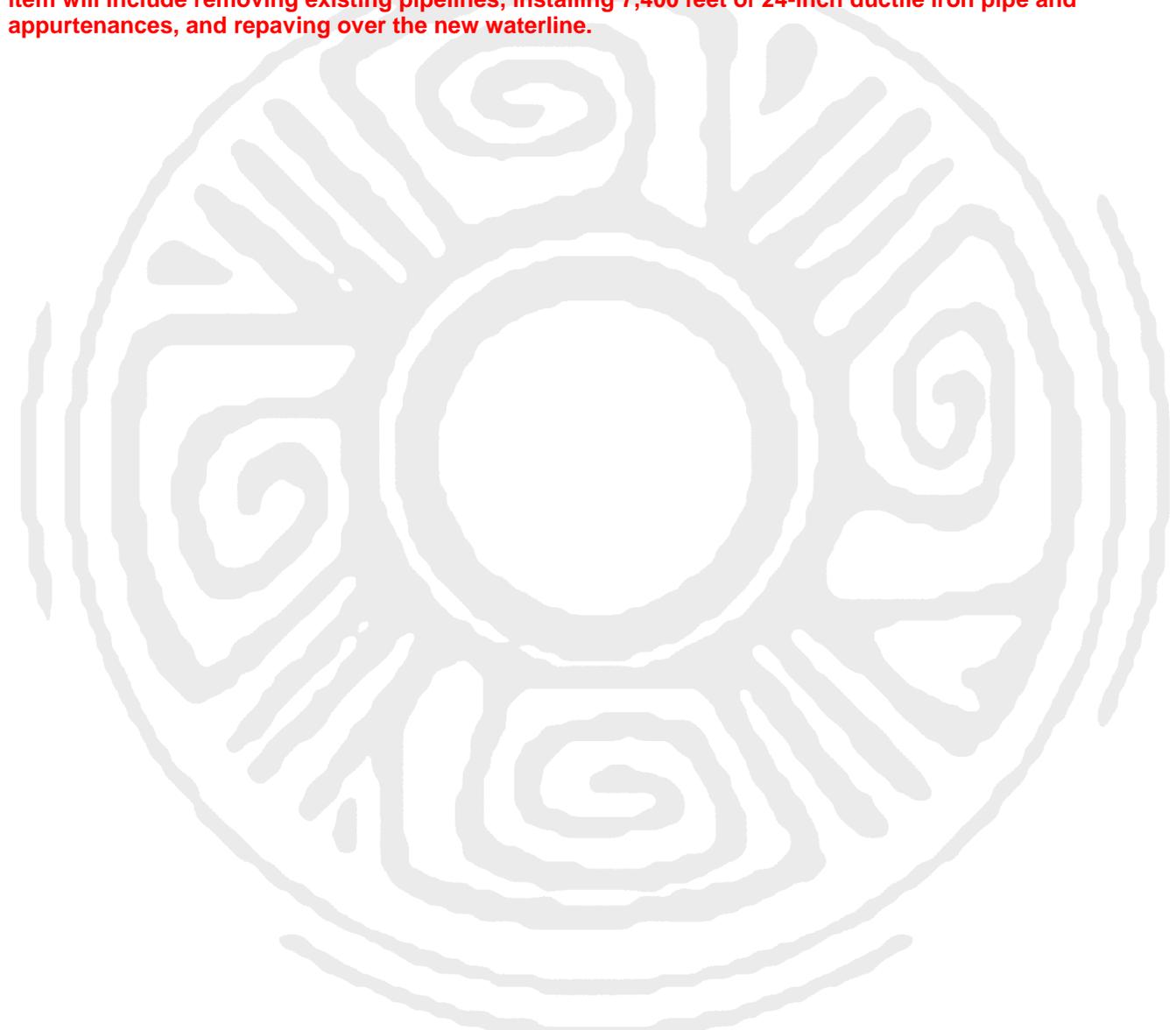
## DECLARATIONS (continued)

Loan Number:  
Project Title:

**DM13-952-123**  
**Top System Transmission Main Replacement**

Scope of Work:

**1. Environmental and Cultural Review Process: This work will include completing the SERP process which is the SEPA, Public Meeting, Cost Effective Analysis and applicable Cross Cutters. 2. Design: This work will include completing the project plans, specifications and estimates for bidding purposes for approximately 1.4 miles of pipe construction. 3. Construction: This task item will include removing existing pipelines, installing 7,400 feet of 24-inch ductile iron pipe and appurtenances, and repaving over the new waterline.**





**Contract Number: DM13-952-123**  
**Drinking Water State Revolving Fund (DWSRF)**  
**2013 New Traditional**  
**(Municipal)**

<b>1. Contractor</b> City of Spokane 808 W Spokane Falls Blvd  Spokane, WA 99207-2794		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative</b> N/A		<b>4. Public Works Board Representative</b> N/A	
<b>5. Contract Amount</b> \$5,604,490.00	<b>6. Funding Source</b> Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Contract Start Date</b> Contract Execution Date	<b>8. Contract End Date</b> Oct 1, 2037
<b>9. Federal Funds (as applicable)</b> N/A	<b>Federal Agency</b> EPA	<b>CFDA Number</b> 66.468	
<b>10. Tax ID #</b> N/A	<b>11. SWV #</b> SWV00338705-00	<b>12. UBI #</b>	<b>13. DUNS #</b>
<b>14. Contract Purpose</b> The purpose of this Contract is to provide funding for a project of a local government that furthers the goals and objectives of the Drinking Water State Revolving Fund Loan Program. The project will be undertaken by the Contractor and will include the activities described in the Declared Scope of Work.			
The Board, defined as the Washington State Public Works Board, and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Declarations Page; Attachment I: Attorney's Certification; Attachment II: Federal and State Requirements; Attachment III: Disadvantaged Business Enterprise Requirements; Attachment IV: Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Attachment V: DWSRF Eligible Project Costs; and Attachment VI: Labor Standard Provisions for Subrecipients that are Governmental Entities; Attachment VII: EPA Compliance Review.			
<b>FOR THE CONTRACTOR</b>		<b>FOR PUBLIC WORKS BOARD</b>	
_____ Signature		_____ Stan Finkelstein, Board Chair	
_____ Print Name		_____ Date	
_____ Title		<b>APPROVED AS TO FORM ONLY</b>	
_____ Date		This 1st Day of May, 2013 _____ Bob Ferguson Attorney General	
		_____ <i>Signature on file</i> Kathryn Wyatt Assistant Attorney General	

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# CONTRACT TERMS AND CONDITIONS

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## DRINKING WATER STATE REVOLVING FUND NEW TRADITIONAL (MUNICIPAL)

### Part 1. SPECIAL TERMS AND CONDITIONS

#### 1.1. DEFINITIONS

As used throughout this Drinking Water State Revolving Fund Loan Contract, the following terms shall have the meaning set forth below:

- A. "Contract" shall mean this Drinking Water State Revolving Fund Loan.
- B. "Contractor" shall mean the Local Government identified on the Contract Face Sheet performing service(s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.
- C. "The Board" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the Contract.
- D. "Department of Health" shall mean the Washington State Department of Health, Office of Drinking Water, who is the recipient of the Drinking Water State Revolving Fund grant and regulates drinking water systems in the State of Washington.
- E. "Department of Commerce" and "Commerce" shall mean the Washington State Department of Commerce.
- F. AWARD YEAR shall mean the calendar year in which the funds were awarded to the Board for use in making loans under this program
- G. PAYMENT MONTH shall mean the day and month of the year in which payments are due.
- H. Unless otherwise amended, the CONTRACT END DATE shall occur in the final year of the LOAN TERM, as counted from the AWARD YEAR. The actual date of contract execution shall have no effect on the CONTRACT END DATE.
- I. "Deferral Period" shall be from the date of contract execution until the date of project completion. The Deferral Period shall not exceed 4 years in length.

#### 1.2. AUTHORITY

Acting under the authority of RCW 70.119A.170 and RCW 43.155.040, the Board has awarded the Contractor a Drinking Water State Revolving Fund loan for an approved project. The Contractor will be a sub-recipient of funds provided by the United States Environmental Protection Agency, CFDA Number 66.468, Title: Safe Drinking Water State Revolving Fund, award year of this contract.

#### 1.3. PURPOSE

The Board and the Contractor have entered into this Contract to undertake a local project that furthers the goals and objectives of the Drinking Water State Revolving Fund Loan Program. The project will be undertaken by the Contractor and will include the activities described in the SCOPE OF WORK shown on the Declarations page. The project must be undertaken in accordance with the loan Program Special Terms and Conditions and all applicable federal, state and local laws and ordinances, including but not limited to those specifically enumerated in Attachment II: Federal and State Requirements, which by this reference are incorporated into this Contract as though set forth fully herein.

#### 1.4. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and State of Washington statutes and regulations.
- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.

**1.5. AMOUNT OF LOAN**

The Board, using funds appropriated from the Drinking Water Assistance Account, shall loan the Contractor a sum not to exceed the amount shown as **LOAN AMOUNT** on the attached Declarations Page. This loan amount includes a loan fee, if applicable, which is shown on the Declarations Page as **LOAN FEE**.

**1.6. LOAN FEE**

If the loan fee applies, it will be assessed at loan execution.

The amount of the loan fee (if applicable) represents one percent (e loan request and shall not be reduced, regardless of the actual final loan amount at project completion. If the loan fee applies and the total loan amount is increased by amendment, an additional loan fee equal to one percent (1%) of the additional loan amount will be assessed at amendment execution. The amount of any loan fee will be displayed on the Declarations Page as **LOAN FEE**.

**1.7. TERM OF LOAN**

Unless otherwise amended, the term of the loan shall not exceed the period shown on the Declarations Page as **LOAN TERM**. The term shall start in the **AWARD YEAR**.

**1.8. RATE AND LOAN FORGIVENESS**

The interest rate shall be the declared **INTEREST RATE** per annum on the outstanding principal balance, based on a three hundred and sixty (360) day year composed of twelve (12) thirty (30) day months. The amount of loan forgiveness (if applicable) shall be as stated on the attached Declarations Page, and identified therein as **LOAN FORGIVENESS %**.

This loan forgiveness shall be applied at project completion and shall apply to the lesser of the loan amount or the actual eligible costs and that declared percent on any accrued interest. The percent of loan forgiveness and interest rate shall not be changed, regardless of the actual cost of the project and the Affordability Index at project completion.

**1.9. DISBURSEMENT OF LOAN PROCEEDS AND REQUIRED DOCUMENTATION**

If funding or appropriation is not available at the time the Contractor submits a request for a loan disbursement, the issuance of a warrant will be delayed or suspended until such time funds become available. Therefore, subject to availability of funds, warrants shall be issued to the Contractor for payment of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with the declared **SCOPE OF WORK**.

The loan funds will be disbursed to the Contractor as follows:

Ten percent (10%) of loan proceeds will be held until project completion. The total Drinking Water State Revolving Fund Loan shall not exceed one hundred percent (100%) of the actual eligible project costs.

When requesting reimbursement for costs incurred, the Contractor shall submit a signed and completed Invoice Voucher (Form A19), referencing the declared **SCOPE OF WORK** project activity performed, and any appropriate documentation such as bills, invoices, and receipts. The purchase of any land necessary and integral to the project must be included in the declared **SCOPE OF WORK** and be documented with an appraisal or other market valuation and a valid purchase and sale agreement. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Each A19 Reimbursement Voucher must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the project since the last invoice was submitted, as well as a report

of project status to date. The Department of Commerce (Commerce) will not release payment for any reimbursement request received until the Project Status Report is received. After approving the Voucher and the Project Status Report, Commerce shall promptly release funds to the Contractor.

Construction expenses incurred after the date shown as **EARLIEST DATE FOR CONSTRUCTION REIMBURSEMENT** on the Declarations Page are eligible for reimbursement. Requests for reimbursements for costs related to construction activities will not be accepted until the Contractor has met the following conditions:

- A. Issued a Notice to Proceed which follows the formal award of a construction contract;
- B. Completed the State Environmental Review Process;
- C. Complied with all provisions of Section 106 of the National Historic Preservation Act of 1966;
- D. Complied with Section 1.19: Prevailing Wage;
- E. Obtained approval from the Department of Health of the project report and related construction documents for all applicable activities described in the declared **SCOPE OF WORK**; and
- F. Complied with any other loan conditions required by Department of Health or The Board.

An electronic copy (emailed PDF or a FAX) of a signed A19 Reimbursement Voucher and other required documentation is the preferred method for requesting reimbursement. Submit the electronic requests to your Contracts Administration Unit (CAU) representative or fax to 360-586-8440. This electronic submittal may be 25 pages or less. If you choose to send your vouchers and backup documentation electronically, please DO NOT mail in the original. You will receive email notification from your CAU representative that the electronic request has been received.

Commerce will pay the Contractor upon acceptance of the work performed and receipt of properly completed invoices. Invoices may be submitted to Commerce not more often than monthly.

Payment shall be considered timely if made by Commerce within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

The Board may, at its sole discretion, withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the Board.

In the event that the Contractor receives reimbursement for costs that are later determined by the Board to be ineligible, these funds shall be repaid to the Drinking Water Assistance Account by payment to the Department of Commerce, or its successor, together with the submission of the Project Completion Amendment.

At the time of project completion, the Contractor shall submit to the Board a Certified Project Completion Request certifying the total actual project costs, and a final voucher for the remaining eligible funds. The Certified Project Completion Request shall include a copy of the Construction Completion Report as submitted to Department of Health.

#### **1.10. TIME OF PERFORMANCE**

The Contractor shall begin the activities identified within the declared **SCOPE OF WORK** no later than thirty (30) days after Contract execution. The Contractor must reach project completion within the period specified on the Declarations Page as **TIME OF PERFORMANCE**.

Failure to meet Time of Performance within the time frame described in this section shall constitute default under this Contract, and as a result, this Contract may be terminated. In the event of extenuating

circumstances, the Contractor may request, in writing, at least 90 days prior to the expiration of project completion date that the Board extend the deadline for project completion. The Board may extend the time of project completion.

#### **1.11. PROJECT COMPLETION AMENDMENT AND THE CERTIFIED PROJECT COMPLETION REPORT**

The Contractor shall initiate a Project Completion Amendment by submitting a Certified Project Completion Report when activities identified in the declared **SCOPE OF WORK** are complete and the Contractor agrees that no additional eligible costs will be reimbursed.

In the Project Completion Amendment, the Contractor will provide the following information to the Board:

- A. A certified statement of the actual dollar amounts spent, from all fund sources, in completing the project as described in the declared **SCOPE OF WORK**.
- B. Certification that all costs associated with the project have been incurred. Costs are incurred when goods and services are received and/or contract work is performed.
- C. A copy of the Department of Health Construction Completion Report as submitted to Department of Health.
- D. Evidence documenting compliance with audit requirements as referenced in Section 1.27.
- E. A final voucher for the remaining eligible funds.

The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount and term of the loan.

#### **1.12. REPAYMENT**

Pursuant to 40 CFR, Section 35.3525 (a)(1)(i), an assistance recipient begins annual repayment of principal and interest no later than one year after the **DEFERRAL PERIOD** end date. The first repayment installment of principal and any interest accrued to date under this Contract is due on the month declared as **PAYMENT MONTH** on the Declarations Page, of the first twelve (12) months following the **DEFERRAL PERIOD**. All subsequent payments shall consist of principal and accrued interest due on that month of each year during the remaining term of the loan.

Repayment of the loan under this Contract shall include the declared **INTEREST RATE** per annum. Interest will begin to accrue from the date each payment is issued to the Contractor. The final payment shall be on or before the completion of the declared **LOAN TERM**, payable on or before the declared **PAYMENT MONTH** of an amount sufficient to bring the loan balance to zero. Under no circumstances shall the loan repayment period exceed 20 years from the **DEFERRAL PERIOD** end date.

The Contractor has the right to repay the unpaid balance of the loan in full at any time or make accelerated payments without penalty.

The Contractor will repay the loan in accordance with the preceding conditions through the use of a check, money order, or equivalent means made payable to the Washington State Department of Commerce, or its successor.

#### **1.13. DEFAULT IN REPAYMENT**

Loan repayments shall be made in accordance with Section 1.12 of this Contract. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a monthly penalty beginning on the first (1<sup>st</sup>) day past the due date. The penalty will be one percent (1%) per month or twelve percent (12%) per annum of the delinquent payment amount. These same penalty terms shall apply if the repayment of loan funds determined to be ineligible costs are not repaid within thirty (30) days as provided for in Section 1.9.

The Contractor acknowledges and agrees to the Board's right, upon delinquency in the payment of any annual installment, to notify any other entity, creditors, or potential creditors of the Contractor of such

delinquency. Contractor shall be responsible for all legal fees incurred by the Board in any action undertaken to enforce its rights under this section.

#### **1.14. LOAN SECURITY**

Loan Security may be required as a performance condition of this contract. If such performance condition is required it shall be indicated on the attached Declarations Page and identified therein as **LOAN SECURITY CONDITION**.

The BOARD grants the Contractor the right to issue future bonds and notes that constitute a lien and charge on the revenue source superior to the lien and charge of this Loan Contract. Nothing in this section shall absolve the Contractor of its obligation to make loan repayments when due, and to adjust rates, fees, or surcharges, if necessary, to meet its obligations under this Contract.

#### **1.15. HISTORICAL AND CULTURAL ARTIFACTS**

The Contractor acknowledges that the project funded by this Contract is subject to Section 106 of the National Historic Preservation Act of 1966.

Contractor agrees that Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts and agrees to hold harmless the State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of Contractor's public works project funded under this Contract.

The Contractor agrees that, in no case shall construction activities, ground disturbance, or excavation of any sort, begin until the Contractor has complied with all provisions of Section 106 of the National Historic Preservation Act of 1966, as amended.

In addition, the Contractor shall not conduct or authorize destructive project planning activities before completing compliance with Section 106 of the National Historic Preservation Act of 1966, as amended.

If historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and implement reasonable measures to protect the discovery site from further disturbance, take reasonable steps to ensure confidentiality of the discovery site, restrict access to the site, and notify the concerned tribe's cultural staff or committee, Tribal Historical Preservation Officer (THPO), Cultural Resources Program Manager at Washington State Department of Health, and the State's Historical Preservation Officer (SHPO) at the Washington State Department of Archaeology and Historic Preservation (DAHP). If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact the concerned tribe's cultural staff or committee and DAHP.

The Contractor shall require the above provisions to be contained in all contracts for work or services related to the declared **SCOPE OF WORK**. In no case shall construction activities begin until the Contractor has complied with all provisions of Section 106 of the National Historic Preservation Act of 1966.

In addition to the requirements set forth in this Contract, the Contractor agrees to comply with Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, Revised Code of Washington (RCW) 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and Washington Administrative Code (WAC) 25-48 regarding Archaeological Excavation and Removal Permits.

#### **1.16. FEDERAL AND STATE REQUIREMENTS**

The Contractor assures compliance with all applicable federal, state and local laws, requirements, and ordinances as they pertain to the design, implementation, and administration of the approved project, including but not limited to those listed in Attachments II, III, and IV.

### **1.17. COMPETITIVE BIDDING REQUIREMENTS**

Pursuant to 40 CFR, Section 33.501(b) and (c), the Contractor also agrees to create and maintain a bidders list for both Disadvantaged Business Enterprises (DBE) and Non-Disadvantaged Business Enterprises (non-DBE). The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of DBE and non-DBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts on Environmental Protection Agency assisted projects, including both DBE and non-DBE. The bidders list must be kept at least until the grant project period has expired and the recipient is no longer receiving Environmental Protection Agency funding under the grant. For entities receiving identified loans, the bidders list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors: entity's name with point of contact; entity's mailing address, telephone number, and e-mail address; the procurement on which the entity bid or quoted, and when; and entity's status as a DBE or non-DBE.

The Contractor agrees to provide Environmental Protection Agency Form 6100-2 DBE Subcontractor Participation and Environmental Protection Agency Form 6100-3 DBE Subcontractor Performance to all its Disadvantaged Business Enterprise subcontractors.

The Contractor shall require Disadvantaged Business Enterprise provisions are contained in all contracts with any subcontractors for work or services related to the declared **SCOPE OF WORK**.

The Contractor shall comply with the provisions of RCW 43.155.060 regarding competitive bidding requirements for projects assisted in whole or in part with money from the Drinking Water State Revolving Fund program.

### **1.18. ELIGIBLE PROJECT COSTS**

The Contractor assures compliance with Attachment V: DWSRF Eligible Project Costs, which identifies eligible costs for projects funded by Drinking Water State Revolving Fund loans.

### **1.19. PREVAILING WAGE**

These terms supersede the terms in Section 2.31. Prevailing Wage Laws in General Terms and Conditions.

All contractors and subcontractors performing work on a construction project funded through this Contract shall comply with prevailing wage laws by paying the higher of state or federal prevailing wages according to:

State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for Board's review upon request; or

The Davis Bacon Act, 40 U.S.C. 276a-276a-5 and related federal acts provide that all laborers and mechanics employed by contractors or subcontractors in the performance shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

The Contractor agrees that the Contractor is legally and financially responsible for compliance with the prevailing wage requirements. Contractor is advised to consult the United States Department of Labor and Washington State Department of Labor and Industries websites to determine the federal and State prevailing wages that must be paid.

The Contractor shall ensure that all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK** shall insert in full, in any contract, the labor standards provisions listed in Attachment VI: Labor Standard Provisions For Subrecipients That Are

Governmental Entities. Contractor shall report to the Board and/or the Department of Health that this requirement has been met as stated in this Contract.

#### **1.20. FEDERAL EXCLUSION**

These Terms add to the terms in Section 2.11. Certification Regarding Debarment, Suspension or Ineligibility and Voluntary Exclusion – Primary and Lower Tier Covered Transactions in General Terms and Conditions. The Contractor also agrees to access the Federal Exclusion List at [www.sam.gov](http://www.sam.gov) and provide Federal Exclusion documentation to the Board and to keep a copy on file with the Contractor's project records.

#### **1.21. REGISTRATION WITH CENTRAL CONTRACTOR REGISTRATION (CCR)**

By signing this Contract, the Contractor accepts the requirements stated in 48 CFR 52.204-7 to register with the Central Contractor Registration (CCR) database at the System for Awards Management (SAM) website. To register in SAM, a valid Data Universal Numbering System (DUNS) Number is required. The Contractor is responsible for the accuracy and completeness of the data within the SAM database and for any liability resulting from the Government's reliance on inaccurate or incomplete data. The Contractor must remain registered in the SAM database after the initial registration. The Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in SAM to ensure it is current, accurate and complete. The Contractor shall provide evidence documenting registration and renewal of SAM registration to the Board.

In the event of the Contractor's noncompliance or refusal to comply with the requirement stated above, the Board reserves the right to suspend payment until the Contractor cures this noncompliance.

#### **1.22. RECORDKEEPING AND ACCESS TO RECORDS**

These terms supersede the terms in Section 2.36. Records Maintenance in General Terms and Conditions.

The Board, the Board's agents, and duly authorized officials of the state and federal governments shall have full access and the right to examine, copy, excerpt, or transcribe any pertinent documents, papers, records, and books of the Contractor and of persons, firms, or organizations with which the Contractor may contract, involving transactions related to this project and this Contract.

The Contractor agrees to retain these records for a period of six (6) years from the date that the debt is retired. This includes but is not limited to financial reports. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

#### **1.23. REPORTS**

The Contractor, at such times and on such forms as the Board may require, shall furnish the Board with such periodic reports as it may request pertaining to the activities undertaken pursuant to this Contract including, but not limited to:

- A. Prevailing Wage decisions and/or changes;
- B. Disadvantaged Business Enterprises utilization;
- C. Project Status Reports with each Invoice Voucher,
- D. Certified Project Completion Report at project completion (as described in Section 1.11), and
- E. Other reports as the Board may require.

In the event of the Contractor's noncompliance or refusal to comply with the requirement stated above, the Board reserves the right to suspend payment until the Contractor cures this noncompliance.

#### **1.24. AMENDMENTS, MODIFICATIONS, ASSIGNMENTS, AND WAIVERS**

Amendments, modifications, assignments, and waivers to any of the terms of this contract supersede those terms as found in the original contract.

The Contractor may request an amendment of this Contract for the purpose of modifying the declared **SCOPE OF WORK** or for extending the time of performance as provided for in Section 1.10. Any revision to the scope of work or location of the project must be approved by the Department of Health. No modification or amendment resulting in an extension of time shall take effect until a request has been received and approved by the Board in accordance with Section 1.10.

***During the term of this loan, any change in ownership of the water system(s) improved with funds received by the Contractor under this Contract must be approved in writing by the Board. As a condition of approval, the Board reserves the right to demand payment in full of the outstanding principal balance of the loan.***

No conditions or provisions of this Contract may be waived unless approved by the Board in writing. No waiver of any default or breach by any party shall be implied from any failure to take action upon such default or breach, if the default of breach persists or repeats.

#### **1.25. TERMINATION FOR CONVENIENCE**

These terms supersede the terms in Section 2.45. Termination for Convenience in General Terms and Conditions.

The Board may terminate this Contract in the event that federal or state funds are no longer available to the Board, or are not appropriated for the purpose of meeting the Board's obligations under this Contract. The Board shall notify the Contractor in writing of its determination to terminate and the reason for such termination. The effective date of the termination will be determined by the Board. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination. Nothing in this section shall affect Contractor's obligations to repay the unpaid balance of the loan.

#### **1.26. TERMINATION FOR CAUSE**

These terms supersede the terms in Section 2.44. Termination for Cause/Suspension in General Terms and Conditions.

If the Board concludes that the Contractor has failed to comply with the terms and conditions of this Contract, or has failed to use the loan proceeds only for those activities identified in the declared **SCOPE OF WORK**, or has otherwise materially breached one or more of the covenants in this Contract, the Board may at any time, at its discretion, upon notice to the Contractor, terminate the Contract and/or its attached agreements in whole or in part and declare the entire remaining balance of the loan, together with any interest accrued, immediately due and payable in full.. Such Notice of Termination for Cause shall be in writing, shall state the reason(s) for such termination, and shall specify the effective date of the termination. The effective date of the termination will be determined by the Board. Such notice shall inform the Contractor of the breach of the relevant covenant and shall allow the Contractor at least thirty (30) business days to cure such breach, if curable. The notice shall instruct the Contractor that, if the breach is not cured or cannot be cured within thirty (30) business days, the outstanding balance of the loan shall be due and payable. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination. Nothing in this section shall affect the Contractor's obligations to immediately repay the unpaid balance of the loan as prescribed in the Washington Administrative Code (WAC) 246-296-150

### **1.27. AUDIT**

These terms supersede the terms in Section 2.10. Audit in General Terms and Conditions.

#### **Municipal and Not-For-Profit entities:**

Audits of the Contractor's project activities may be conducted by the State Auditor Office (SAO). Audit costs are eligible project costs. The Contractor shall maintain its records and accounts so as to facilitate the audit requirements of the Board or its successor. The Contractor is responsible for any audit findings incurred by its own organization. The Board reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

In addition, Contractor's expending \$500,000 or more in any fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

#### **For-Profit entities:**

A report on the internal control related to the federal program, which should describe the scope of testing of the internal control and the results of the tests.

A report on compliance, which includes an opinion (or disclaimer of opinion) on whether the auditee complied with laws, regulations and the provisions of the award agreement that could have a direct and material effect on the federal program.

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

Department of Commerce  
ATTN: Public Works Board  
P.O. Box 42525  
1011 Plum Street SE  
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the Board.
- Copy of the Management Letter.

### **1.28. PROJECT SIGNS**

If the Contractor displays, during the period covered by this Contract, any signs or markers identifying those entities participating financially in the approved project, the sign or marker must identify the Washington State Public Works Board Drinking Water State Revolving Fund, and the Washington State Department of Health, as participants in the project.

### **1.29. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

As mandated by the Environmental Protection Agency, the Contractor agrees to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises in procurement under this Contract. The Contractor is required to follow the requirements identified in Attachment III: Disadvantaged Business Enterprise Requirements.

By signing this Contract, the Contractor accepts the applicable MBE/WBE fair share objectives/goals negotiated with Environmental Protection Agency by the Washington State Office of Minority and Women's Business Enterprises. The Contractor attests to the fact that it is purchasing the same or similar

construction, supplies, services and equipment, in the same or similar relevant geographic buying market as Washington State Office of Minority and Women's Business Enterprises. The goals for the utilization of disadvantaged businesses are stated in ATTACHMENT III: DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS.

The Contractor is required to furnish the Board and the Department of Health with such periodic reports as the Department may request pertaining to the utilization of disadvantaged businesses.

### **1.30. NONDISCRIMINATION PROVISION**

During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, including, but not limited to Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the Contractor's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Board. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance.

The Contractor must also include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK:**

"The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract."

### **1.31. PROHIBITION STATEMENT**

Pursuant to Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the Contractor's contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK** may not engage in severe forms of trafficking in persons during the period of time the Contract is in effect, procure a commercial sex act during the period of time the Contract is in effect, or use forced labor during the performance of this Contract. The Contractor shall require this prohibition statement in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK.**

The Contractor must also include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK:**

"Prohibition Statement- You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the awards is in effect; or use forced labor in the performance of the award or subawards under the award."

In the event that the Contractor or any of its employees is determined to have violated the terms of this section, this Contract may be terminated.

### **1.32. FALSE, INCORRECT, OR INCOMPLETE INFORMATION OR CLAIM**

The Contractor warrants that the Contractor neither has submitted nor shall submit any information that is materially false, incorrect, or incomplete to the Board.

The Contractor is advised that providing false, fictitious, or misleading information with respect to the receipt and disbursements of Environmental Protection Agency funds is basis for criminal, civil, or administrative fines and/or penalties.

**1.33. Litigation**

The Contractor warrants that there is no threatened or pending litigation, investigation, or legal action before any court, arbitrator, or administrative agency that, if adversely determined, would have a materially adverse effect on the Contractor's ability to repay the loan.

**1.34. ESTABLISHMENT OF ADEQUATE RATES AND RESERVES**

The Contractor agrees to provide a resolution adopting rate increases, capital assessments, or both, for the services of the system that shall be sufficient to provide funds which, along with other revenues of the system, will pay all operating expenses and debt repayments during the term of the loan. In addition, the Contractor shall create, fund and maintain reserves at least as required by the Water System Plan or Small Water System Management Plan. The Board reserves the right, at anytime, to request proof of compliance of these requirements from the Contractor.

**1.35. SPECIAL CONDITIONS**

If **SPECIAL CONDITIONS** are listed on the Contract Declarations Page then these conditions are herein incorporated as part of the terms and requirements of this contract.

**1.36. INVESTMENT GRADE AUDIT**

For projects involving repair, replacement, or improvement of a wastewater treatment plant, or other public works facility for which energy efficiency is obtainable, Contractor must undertake an investment grade audit per ESHB 1497.

Costs incurred as part of the investment grade audit are eligible project costs.



## Part 2. GENERAL TERMS AND CONDITIONS

### 2.1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- C. "BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Contract
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

### 2.2. ADMINISTRATIVE COST ALLOCATION

Administrative costs that may be allowed are set forth in the Specific Terms and Conditions. Administrative services shared by other programs shall be assigned to this Contract based on an allocation plan that reflects allowable administrative costs that support services provided under each Contract administered by the Contractor. An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed.

### 2.3. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

### 2.4. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

### 2.5. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### 2.6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

### 2.7. APPROVAL

This contract shall be subject to the written approval of the BOARD's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

## 2.8. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the BOARD.

## 2.9. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

## 2.10. AUDIT

### A. General Requirements

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.

THE BOARD reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to the BOARD requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

### B. Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations

Contractors expending \$500,000 or more in a fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations." Revised OMB A-133 requires the Contractor to provide the auditor with a schedule of Federal Expenditure for the fiscal year(s) being audited. When state funds are also to be paid under this Agreement a Schedule of State Financial Assistance must also be included. Both schedules include:

- Grantor agency name
- Federal agency
- Federal program name
- Other identifying contract numbers
- Catalog of Federal Domestic Assistance (CFDA) number (if applicable)
- Grantor contract number
- Total award amount including amendments (total grant award)
- Current year expenditures

If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by the BOARD.

### **C. Documentation Requirements**

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) by sending a scanned copy to [auditreview@commerce.wa.gov](mailto:auditreview@commerce.wa.gov) or by sending a hard copy to:

Department of Commerce  
ATTN: Audit Review and Resolution Office  
1011 Plum Street  
PO Box 42525  
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by the BOARD.
- Copy of the Management Letter.

### **2.11. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS**

- A. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
  2. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section; and
  4. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.
- B. Where the Contractor is unable to certify to any of the statements in this contract, the Contractor shall attach an explanation to this contract.
- C. The Contractor agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the BOARD.
- D. The Contractor further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

#### **LOWER TIER COVERED TRANSACTIONS**

- a) The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - b) Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
- E. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the

meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the BOARD for assistance in obtaining a copy of these regulations.

## **2.12. CODE REQUIREMENTS**

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990, 28 C.F.R. Part 35 will be required, as specified by the local building Department.

## **2.13. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

A. "Confidential Information" as used in this section includes:

2. All material provided to the Contractor by the BOARD that is designated as "confidential" by the BOARD;
3. All material produced by the Contractor that is designated as "confidential" by the BOARD; and
4. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the BOARD or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the BOARD with its policies and procedures on confidentiality. The BOARD may require changes to such policies and procedures as they apply to this Contract whenever the BOARD reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the BOARD. Upon request, the Contractor shall immediately return to the BOARD any Confidential Information that the BOARD reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify the BOARD within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

## **2.14. CONFORMANCE**

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

## **2.15. COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the BOARD. The BOARD shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the BOARD effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the BOARD a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the BOARD.

The Contractor shall exert all reasonable effort to advise the BOARD, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide the BOARD with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. The BOARD shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

#### **2.16. DISALLOWED COSTS**

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

#### **2.17. DISPUTES**

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of the the BOARD, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

#### **2.18. DUPLICATE PAYMENT**

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

#### **2.19. ETHICS/CONFLICTS OF INTEREST**

In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

#### **2.20. GOVERNING LAW AND VENUE**

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## **2.21. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, the BOARD, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, THE BOARD, the state of Washington, its officers, employees and authorized agents.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

## **2.22. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the State of Washington or the BOARD. The Contractor will not hold itself out as or claim to be an officer or employee of the BOARD or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

## **2.23. INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, The BOARD may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The BOARD may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the BOARD under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

## **2.24. LAWS**

The Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

### **United States Laws, Regulations and Circulars (Federal)**

- A. Audits  
Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."
- B. Environmental Protection and Review  
Coastal Barrier Resources Act of 1982, 16 U.S.C. 3501 et seq.  
HUD's implementing regulations at 24 CFR parts 50 or 58, as appropriate.  
Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4821-4846 also 24 CFR 982.401(j).  
National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. and the Implementing Regulations of 24 CFR 58 (HUD) and 40 CFR 1500-1508 (Council on Environmental Quality) Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 USC 4851-4856.
- C. Flood Plains  
Flood Disaster Protection Act of 1973, 42 USC 4001-4128.
- D. Labor and Safety Standards  
All Rental Units Assisted with Federal Funds Must Meet the Section 8 Housing Quality Standards (HQS) and Local Housing Code Requirements for the duration of the Affordability Period.

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.

Davis Bacon Act, 40 U.S.C. 276a-276a-5.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

Title IV of the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4831, 24 CFR Part 35.

E. Laws against Discrimination

Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90  
Nondiscrimination in Federally Assisted Programs.

Americans with Disabilities Act of 1990, Public Law 101-336.

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100. Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8.

Fair Housing, Title VIII of the Civil Rights Act of 1968, Public Law 90-284, 42 U.S.C. 3601-19.

Handicapped Employees of Government Contractors, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.

Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794.

Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in Benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq, 24 CFR Part 1.

Nondiscrimination in Employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Programs.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 U.S.C. 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

F. Office of Management and Budget Circulars

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A-122, (if the Contractor is a nonprofit organization).

Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-102, (if the Contractor is a local government or federally recognized Indian tribal government).

Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, OMB Circular A-110.

G. Other

Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243 Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352 (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that Contractors who apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

H. Privacy

Privacy Act of 1974, 5 U.S.C. 522a.

I. Relocation

Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 and implementing regulations at 49 CFR part 24.

Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR part 570.

Washington State Laws and Regulations

- A. Affirmative action, RCW 41.06.020 (11).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Housing assistance program, Chapter 43.185 RCW
- G. Interlocal cooperation act, Chapter 39.34 RCW.
- H. Noise control, Chapter 70.107 RCW.
- I. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open public meetings act, Chapter 42.30 RCW.
- K. Prevailing wages on public works, Chapter 39.12 RCW.
- L. Public records act, Chapter 42.56 RCW.
- M. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.
- N. Shoreline management act of 1971, Chapter 90.58 RCW.
- O. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- P. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State environmental policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05 Archeological and Cultural Resources.

**2.25. LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

**2.26. LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

## **2.27. LOCAL PUBLIC TRANSPORTATION COORDINATION**

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

## **2.28. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the BOARD. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

## **2.29. NOTIFICATION OF TENANT RIGHTS/RESPONSIBILITIES**

The Contractor shall provide all tenants, if any, with information outlining tenant rights and responsibilities under the Washington State Landlord Tenant laws, Title 59, Revised Code of Washington.

The Contractor shall also provide all occupants of property acquired with U.S. Department of Housing and Urban Development (HUD) funds notice regarding their eligibility for relocation assistance. Such notices will be provided as required by the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended and referenced in 49 CFR part 24 and Section 104(d) of the Housing and Community Development Act of 1974, as amended and referenced in 24 CFR 570 and noted in HUD's Handbook No. 1378. Notifications will include but not be limited to:

- General Information Notice
- Notice of Displacement/Non-Displacement

## **2.30. POLITICAL ACTIVITIES**

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

## **2.31. PREVAILING WAGE LAWS**

All contractors and subcontractors performing work on a construction project funded through this agreement shall comply with prevailing wage laws by paying the higher of state or federal prevailing wages according to:

State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for THE BOARD's review upon request; or

The Davis Bacon Act, 40 U.S.C. 276a-276a-5 and related federal acts provide that all laborers and mechanics employed by contractors or subcontractors in the performance shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

## **2.32. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS**

A Contractor which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Contract.

A Contractor which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Contract.

The Contractor's procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
3. Minimum procedural requirements, as follows:
  - a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
  - b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
  - c. Positive efforts shall be made to use small and minority-owned businesses.
  - d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
  - e. Contracts shall be made only with reasonable subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
  - f. Some form of price or cost analysis should be performed in connection with every procurement action.
  - g. Procurement records and files for purchases shall include all of the following:
    - 1) Contractor selection or rejection.
    - 2) The basis for the cost or price.
    - 3) Justification for lack of competitive bids if offers are not obtained.
  - h. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
4. Contractor and Subcontractor must receive prior approval from the BOARD for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this contract is expected to exceed \$5,000.

Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

### **2.33. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

### **2.34. PUBLICITY**

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or the BOARD's name is mentioned, or language used from which the connection with the state of Washington's or the BOARD's name may reasonably be inferred or implied, without the prior written consent of the BOARD.

### **2.35. RECAPTURE**

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, The BOARD reserves the right to recapture funds in an amount to compensate the BOARD for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the BOARD. In the alternative, The BOARD may recapture such funds from payments due under this contract.

#### **2.36. RECORDS MAINTENANCE**

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

#### **2.37. REGISTRATION WITH DEPARTMENT OF REVENUE**

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

#### **2.38. RIGHT OF INSPECTION**

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the BOARD, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

#### **2.39. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, The BOARD may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

#### **2.40. SEVERABILITY**

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

#### **2.41. SUBCONTRACTING**

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of the BOARD.

If THE BOARD approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the BOARD in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the BOARD if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the BOARD for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the BOARD and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

#### **2.42. SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

#### **2.43. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

#### **2.44. TERMINATION FOR CAUSE/SUSPENSION**

In event the BOARD determines that the Contractor failed to comply with any term or condition of this Contract, the BOARD may terminate the Contract in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, the BOARD upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the BOARD may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the BOARD to terminate the Contract upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when the BOARD determines that the Contractor did not fail to comply with the terms of the Contract or when the BOARD determines the failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated for cause, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original contract and the replacement contract, as well as all costs associated with entering into the replacement contract (i.e., competitive bidding, mailing, advertising, and staff time).

#### **2.45. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Contract, the BOARD may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the BOARD shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

#### **2.46. TERMINATION PROCEDURES**

After receipt of a notice of termination, except as otherwise directed by the BOARD, the Contractor shall:

- A.** Stop work under the Contract on the date, and to the extent specified, in the notice;
- B.** Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C.** Assign to the BOARD all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the BOARD has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of the BOARD; and
- D.** Preserve and transfer any materials, contract deliverables and/or the BOARD property in the Contractor's possession as directed by the BOARD.

Upon termination of the Contract, the BOARD shall pay the Contractor for any service provided by the Contractor under the Contract prior to the date of termination. The BOARD may withhold any amount due as the BOARD reasonably determines is necessary to protect the BOARD against potential loss or liability resulting from the termination. The BOARD shall pay any withheld amount to the Contractor if the BOARD later determines that loss or liability will not occur.

The rights and remedies of the BOARD under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

**2.47. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of THE BOARD.

**2.48. WORK HOURS AND SAFETY STANDARDS**

The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)-Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Contract Work Hours Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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# ATTACHMENT I: ATTORNEY'S CERTIFICATION

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## DRINKING WATER STATE REVOLVING FUND (MUNICIPAL)

**City of Spokane**  
**DM13-952-123**

I, \_\_\_\_\_, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the Contractor identified on the Declarations Page of the Contract identified above; and

I have also examined any and all documents and records, which are pertinent to the Contract, including the application requesting this financial assistance.

Based on the foregoing, it is my opinion that:

1. The Contractor is a public body, properly constituted and operating under the laws of the State of Washington, empowered to receive and expend federal, state and local funds, to contract with the State of Washington, and to receive and expend the funds involved to accomplish the objectives set forth in their application.
2. The Contractor is empowered to accept the Drinking Water State Revolving Fund financial assistance and to provide for repayment of the loan as set forth in the loan agreement.
3. There is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the Contractor from repaying the Drinking Water State Revolving Fund loan extended by the Public Works Board with respect to such project. The Contractor is not a party to litigation, which will materially affect its ability to repay such loan on the terms contained in the loan agreement.
4. Assumption of this obligation would not exceed statutory and administrative rule debt limitations applicable to the Contractor.

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address



# ATTACHMENT II: FEDERAL AND STATE REQUIREMENTS

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## 1) Environmental Authorities

- a) Archeological and Historic Preservation Act of 1974, Public Law 86-523 as amended
- b) Clean Air Act, Public Law 84-159 as amended
- c) Coastal Barrier Resources Act, Public Law 92-583 as amended
- d) Endangered Species Act, Public Law 93-205 as amended
- e) Environmental Justice, Executive Order 12898
- f) Floodplain Management, Executive Order 11934 as amended by Executive Order 12148
- g) Protection of Wetlands, Executive Order 11990
- h) Farmland Protection Policy Act, Public Law 97-98
- i) Fish and Wildlife Coordination Act, Public Law 85-624 as amended
- j) National Historic Preservation Act of 1966, Public Law 89-665 as amended
- k) Safe Drinking Water Act, Public Law 93-523 as amended
- l) Wild and Scenic Rivers Act, Public Law 90-542 as amended

## 2) Economic and Miscellaneous Authorities

- a) Demonstration Cities and Metropolitan Development Act of 1996, Public Law 89-754 as amended, Executive Order 12372
- b) Procurement Prohibitions under Section 306 of the Clean air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- c) Uniform Relocation and Real Property Policies Act, Public Law 91-646 as amended
- d) Debarment and Suspension, Executive Order 12549

## 3) Social Policy Authorities

- a) Age Discrimination Act of 1975, Public Law 94-135
- b) Title VI of the Civil Rights Act of 1964, Public Law 88-352
- c) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500 (the Clean Water Act)
- d) Section 504 of the Rehabilitation Act of 1973, Public Law 93-112 (including Executive Orders 11914 and 11250)
- e) Equal Employment Opportunity, Executive Order 11246
- f) Disadvantaged Business Enterprise, Public Law 101-549 (the Clean Air Act), and Public Law 102-389 (the Clean Water Act)
- g) Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Public Law 100-590

## 4) State Laws

- a) Chapter 36.70A RCW, Growth Management Act
- b) Chapter 39.80 RCW, Contracts for Architectural and Engineering Services
- c) Chapter 39.12 RCW, Washington State Public Works Act
- d) Chapter 43.20 RCW, State Board of Health
- e) Chapter 43.70 RCW, Department of Health
- f) Chapter 43.155 RCW, Public Works Project
- g) Chapter 70.116 RCW, Public Water Systems Coordination Act of 1977
- h) Chapter 70.119 RCW, Public Water Supply Systems Certification and Regulation of Operations
- i) Chapter 70.119A RCW, Public Water Systems, Penalties & Compliances
- j) Chapter 246-290 WAC, Group A Public Water Systems
- k) Chapter 246-291 WAC, Group B Public Water Systems
- l) Chapter 246-292 WAC, Waterworks Operator Certification Regulations
- m) Chapter 246-293 WAC, Water Systems Coordination Act
- n) Chapter 246-294 WAC, Drinking Water Operating Permits
- o) Chapter 246-295 WAC, Satellite System Management Agencies
- o) Chapter 246-296 WAC Drinking Water State Revolving Fund Loan Program
- p) Chapter 173-160 WAC, Minimum Standards for Construction & Maintenance of Wells
- q) Title 173 WAC, Department of Ecology Rules
- r) Title 40 Part 141 Code of Federal Regulations, Federal National Primary Drinking Water Regulations (Section Adopted by Reference)



# ATTACHMENT III: DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

## GENERAL COMPLIANCE, 40 CFR, Part 33

The Contractor agrees to comply with the requirements of Environmental Protection Agency's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under this Contract, contained in 40 CFR, Part 33.

## FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

The following are exemptions from the fair share objective Requirements:

- Grant and loan recipients receiving a total of \$250K or less in EPA financial assistance in a given fiscal year.
- Tribal recipients of Performance Partnership Eligible grants under 40 CFR Part 35, Subpart B.
  - There is a 3-year phase in period for the requirement to negotiate fair share goals for Tribal and Insular Area recipients.
- Recipients of Technical Assistance Grants.

The Fair Share Objectives or goals for the utilization of disadvantaged businesses negotiated with EPA by the WA Office of Minority Women Business are stated below.

Construction	10% MBE	6% WBE
Supplies	8% MBE	4% WBE
Equipment	8% MBE	4% WBE
Purchased Services	10% MBE	4% WBE

By signing this Contract, the Contractor is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as WA Office of Minority Women Business goal is being adopted.

## SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the Contractor agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply.

Records documenting compliance with the six good faith efforts shall be retained. The six good faith efforts shall include:

- A. Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local Government recipients, this will include placing the Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- B. Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- C. Consider in the contracting process whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State and Local Government recipients, this will include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- D. Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- E. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

- F. If the prime contractor awards subcontracts, also require the prime contractor to take the five good faith efforts in paragraphs A through E above.

**MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503**

Contractor is required to submit MBE/WBE participation reports to the Board and/or the Department of Health, on a quarterly basis, beginning with the Federal fiscal year reporting period the Contractor receives the award and continuing until the project is completed.

**CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The Contractor agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

The Contractor agrees to require all general contractors to provide forms: EPA Form 6100-2 DBE Subcontractor Participation Form and EPA Form 6100-3 DBE Subcontractor Performance Form to all its Disadvantaged Business Enterprise subcontractors, engineers, vendors, and any other entity for work or services listed in the declared **SCOPE OF WORK**. These two (2) forms may be obtained from the EPA Office of Small Business Program's website on the internet at <http://www.epa.gov/osbp/grants.htm>.

The Contractor agrees to require all general contractors to complete and submit to the Contractor and Environmental Protection Agency EPA Form 6100-4 DBE Subcontractor Utilization Form beginning with the Federal fiscal year reporting period the Contractor receives the award and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a Contractor's MBE/WBE accomplishments.

**BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

The Contractor is also required to create and maintain a bidders list if the Contractor of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

Section 33.501(b) of the rule is as follows:

A recipient of a Continuing Environmental Program Grant or other annual grant must create and maintain a bidders list. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts or bid or quote on subcontracts under EPA assisted projects, including both MBE/WBEs.

The bidders list must be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. For entities receiving identified loans, the bidders list must be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors:

- (1) Entity's name with point of contact;
- (2) Entity's mailing address, telephone number, and e-mail address;
- (3) The procurement on which the entity bid or quoted, and when; and
- (4) Entity's status as a MBE/WBE<sup>1</sup> or non-MBE/WBE.

The exemption found at § 33.501(c) is as follows:

A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the paragraph (b) of this section requirement to create and maintain a bidders list. Also, a recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the paragraph (b) of this section bidders list requirement of this subpart to an entity receiving an identified loan in an amount of \$250,000 or less, or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year. This exemption is limited to the paragraph (b) of this section bidders list requirements of this subpart.

<sup>1</sup> Qualified Women and Minority business enterprises may be found on the Internet at [www.omwbe.wa.gov](http://www.omwbe.wa.gov) or by contacting the Washington State Office of Minority and Women's Enterprises at 360-704-1181.

# ATTACHMENT IV: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS



United States Environmental Protection Agency  
Washington, DC 20460

EPA Project Control Number

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

\_\_\_\_\_  
Typed Name & Title of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

I am unable to certify to the above statements. My explanation is attached.

**EPA Form 5700-49 (11-88)**



# ATTACHMENT V: DWSRF ELIGIBLE PROJECT COSTS

Must be directly attributable to the project.

1. The costs for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
2. DWSRF loan fees.
3. The purchase of a portion of another system's capacity, if it is the most cost effective solution (limited to publicly owned (municipal) systems).
4. Construction of reservoirs (clear wells) that are part of the treatment process and are collocated with the treatment facility.
5. Construction of distribution reservoirs (finished water).
6. Cost associated with restructuring or consolidation of existing water systems by publicly owned water systems.
7. Main extensions to connect to safe and reliable sources of drinking water.
8. Cost associated with collecting and preparing environmental assessment documents to obtain local permits.
9. Direct labor including related employee benefits:
  - a. Salaries and wages (at actual or average rates) covering productive labor hours of employees of the borrower (excluding the administrative organization of the operating unit involved) for periods of time actively or incidentally engaged in pre-design engineering, design engineering, construction engineering, acquisition of rights of way, and the cleaning, sterilization or bacteriological testing of water system components prior to public use. The costs of services rendered by employees generally classified as administration/project management of the loan are considered a direct cost only when such employees are assigned the types of services described above and shall be limited to 3% or less of the project loan amount.
  - b. Employee benefits relating to labor are considered a direct cost of construction projects. The following items may be included as employee benefits:
    - F.I.C.A. (Social Security) –employer's share.
    - Retirement benefits.
    - Hospital, health, dental, and other welfare insurance.
    - Life insurance.

- Industrial and medical insurance.
- Vacation.
- Holiday.
- Sick leave.
- Military leave and jury duty.

Employee benefits must be calculated as a percentage of direct labor dollars. The computation of predetermined percentage rates to be applied to current labor costs must be based on the average of total employee benefits and total labor costs for the prior fiscal year and adjusted by known current year variations.

- c. Other than work identified in Number 9.a, no costs associated with labor performed by the borrower's employees, including force account work, are eligible for financing assistance.
10. Contract engineering, planning, design, legal, and financial planning services. The Board reserves the right to declare ineligible legal costs that are unreasonable and disproportionate to the project.
11. Contract construction work.
12. Direct vehicle and equipment charges at the actual rental cost paid for the equipment or, in the case of city or county-owned equipment, at the rental rates established by the local government's "equipment rental and revolving fund" following the methods prescribed by the division of municipal corporations. However, such costs must be charged on a uniform basis to equipment used for all projects regardless of the source of funding. Cities with a population of eight thousand or less not using this type of fund are allowed the same rates as used by the State Department of Transportation.
13. Direct materials and supplies.
14. Other direct costs incurred for materials or services acquired for a specific project are eligible costs and may include, but are not limited to such items as:
  - a. Telephone charges.
  - b. Reproduction and photogrammetry costs.
  - c. Video and photography for project documentation.
  - d. Computer usage.
  - e. Printing and advertising.
15. Other project related costs include:
  - Competitive Bidding.
  - Audit.
  - Insurance.
  - Prevailing wages.
  - Attorney fees.

- Environmental Review.
- Archaeological Survey.

Water system plan costs are not eligible for reimbursement.  
Small water system management program and plan amendments costs are eligible for reimbursement.

Projects may be designed to accommodate reasonable growth. This is generally the 20-year projection included in the system's water system plan or small water system management program.



# ATTACHMENT VI: LABOR STANDARD PROVISIONS FOR SUBRECIPIENTS THAT ARE GOVERNMENTAL ENTITIES

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## Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2011 appropriation, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site

of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### (4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman

wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act.

These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## 5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient

must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract . Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.



ATTACHMENT VII: EPA COMPLIANCE REVIEW

**United States Environmental Protection Agency  
Washington, DC 20460**

**Preadward Compliance Review Report for  
All Applicants and Recipients Requesting EPA Financial Assistance**

**Note: Read instructions on other side before completing form.**

I. Applicant/Recipient (Name, Address, State, Zip Code).	DUNS No.		
II. Is the applicant currently receiving EPA assistance?			
III. List all civil rights lawsuits and administrative complaints pending against the applicant/recipient that allege discrimination based on race, color, national origin, sex, age, or disability. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)			
List all civil rights lawsuits and administrative complaints decided against the applicant/recipient within the last year that allege discrimination based on race, color, national origin, sex, age, or disability and enclose a copy of all decisions. Please describe all corrective action taken. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)			
V. List all civil rights compliance reviews of the applicant/recipient conducted by any agency within the last two years and enclose a copy of the review and any decisions, orders, or agreements based on the review. Please describe any corrective action taken. (40 C.F.R. § 7.80(c)(3))			
VI. Is the applicant requesting EPA assistance for new construction? If no, proceed to VII; if yes, answer (a) and/or (b) below.			
<table style="width:100%; border: none;"> <tr> <td style="width:50%; text-align: center;">YES</td> <td style="width:50%; text-align: center;">NO</td> </tr> </table>		YES	NO
YES	NO		
a. If the grant is for new construction, will all new facilities or alterations to existing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities? If yes, proceed to VII; if no, proceed to VI(b). <span style="float: right;">Yes      No</span>			
b. If the grant is for new construction and the new facilities or alterations to existing facilities will not be readily accessible to and usable by persons with disabilities, explain how a regulatory exception (40 C.F.R. § 7.70) applies. <span style="float: right;">Yes      No</span>			
VII.* Does the applicant/recipient provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs or activities? (40 C.F.R. § 5.140 and § 7.95) <span style="float: right;">Yes      No</span>			
a. Do the methods of notice accommodate those with impaired vision or hearing? <span style="float: right;">Yes      No</span>			
b. Is the notice posted in a prominent place in the applicant's offices or facilities or, for education programs and activities, in appropriate periodicals and other written communications? <span style="float: right;">Yes      No</span>			
c. Does the notice identify a designated civil rights coordinator? <span style="float: right;">Yes      No</span>			
VIII.* Does the applicant/recipient maintain demographic data on the race, color, national origin, sex, age, or handicap of the population it serves? (40 C.F.R. § 7.85(a))			
IX.* Does the applicant/recipient have a policy/procedure for providing access to services for persons with limited English proficiency? (40 C.F.R. Part 7, E.O. 13166)			
X.* If the applicant/recipient is an education program or activity, or has 15 or more employees, has it designated an employee to coordinate its compliance with 40 C.F.R. Parts 5 and 7? Provide the name, title, position, mailing address, e-mail address, fax number, and telephone number of the designated coordinator.			
XI* If the applicant/recipient is an education program or activity, or has 15 or more employees, has it adopted grievance procedures that assure the prompt and fair resolution of complaints that allege a violation of 40 C.F.R. Parts 5 and 7? Provide a legal citation or Internet address for, or a copy of, the procedures.			
<b>For the Applicant/Recipient</b>			
I certify that the statements I have made on this form and all attachments thereto are true, accurate and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law. I assure that I will fully comply with all applicable civil rights statutes and EPA regulations.			
A. Signature of Authorized Official	B. Title of Authorized Official		
<b>For the U.S. Environmental Protection Agency</b>			
I have reviewed the information provided by the applicant/recipient and hereby certify that the applicant/recipient has submitted all preaward compliance information required by 40 C.F.R. Parts 5 and 7; that based on the information submitted, this application satisfies the preaward provisions of 40 C.F.R. Parts 5 and 7; and that the applicant has given assurance that it will fully comply with all applicable civil rights statutes and EPA regulations.			
A. Signature of Authorized EPA Official See ** note on reverse side.	B. Title of Authorized EPA Official		
C. Date			

EPA Form 4700-4 (Rev. 03/2008). Previous editions are obsolete.

## Instructions for EPA FORM 4700-4 (Rev. 03/2008)

### General

Recipients of Federal financial assistance from the U.S. Environmental Protection Agency must comply with the following statutes and regulations.

Title VI of the Civil Rights Acts of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Act goes on to explain that the statute shall not be construed to authorize action with respect to any employment practice of any employer, employment agency, or labor organization (except where the primary objective of the Federal financial assistance is to provide employment). Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act provides that no person in the United States shall on the ground of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the Federal Water Pollution Control Act, as amended. Employment discrimination on the basis of sex is prohibited in all such programs or activities. Section 504 of the Rehabilitation Act of 1973 provides that no otherwise qualified individual with a disability in the United States shall solely by reason of disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Employment discrimination on the basis of disability is prohibited in all such programs or activities. The Age Discrimination Act of 1975 provides that no person on the basis of age shall be excluded from participation under any program or activity receiving Federal financial assistance. Employment discrimination is not covered. Age discrimination in employment is prohibited by the Age Discrimination in Employment Act administered by the Equal Employment Opportunity Commission. Title IX of the Education Amendments of 1972 provides that no person in the United States on the basis of sex shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Employment discrimination on the basis of sex is prohibited in all such education programs or activities. Note: an education program or activity is not limited to only those conducted by a formal institution.

40 C.F.R. Part 5 implements Title IX of the Education Amendments of 1972.

40 C.F.R. Part 7 implements Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and Section 504 of The Rehabilitation Act of 1973. The Executive Order 13166 (E.O. 13166) entitled; "Improving Access to Services for Persons with Limited English Proficiency" requires Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

### Items

"Applicant" means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance. 40 C.F.R. §§ 5.105, 7.25.

"Recipient" means any entity, other than applicant, which will actually receive EPA assistance. 40 C.F.R. §§ 5.105, 7.25. "Civil rights lawsuits and administrative complaints" means any lawsuit or administrative complaint alleging discrimination on the basis of race, color, national origin, sex, age, or disability pending or decided against the applicant and/or entity which actually benefits from the grant, but excluding employment complaints not covered by 40 C.F.R. Parts 5 and 7. For example, if a city is the named applicant but the grant will actually benefit the Department of Sewage, civil rights lawsuits involving both the city and the Department of Sewage should be listed. "Civil rights compliance review" means any review assessing the applicant's and/or recipient's compliance with laws prohibiting discrimination on the basis of race, color, national origin, sex, age, or disability. Submit this form with the original and required copies of applications, requests for extensions, requests for increase of funds, etc. Updates of information are all that are required after the initial application submission. If any item is not relevant to the project for which assistance is requested, write "NA" for "Not Applicable." In the event applicant is uncertain about how to answer any questions, EPA program officials should be contacted for clarification. \* Questions VII – XI are for informational use only and will not affect an applicant's grant status. However, applicants should answer all questions on this form. (40 C.F.R. Parts 5 and 7). \*\* Note: Signature appears in the Approval Section of the EPA Comprehensive Administrative Review For Grants/Cooperative Agreements & Continuation/Supplemental Awards form. Approval indicates, in the reviewer's opinion, questions I – VI of Form 4700-4 comply with the preaward administrative requirements for EPA assistance.

### "Burden Disclosure Statement"

EPA estimates public reporting burden for the preparation of this form to average 30 minutes per response. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to U.S. EPA, Attn: Collection Strategies Division (MC 2822T), Office of Information Collection, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. The information on this form is required to enable the U.S. Environmental Protection Agency to determine whether applicants and prospective recipients are developing projects, programs and activities on a nondiscriminatory basis as required by the above statutes and regulations.



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	OPR 2013-0647
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	COMMUNITY, HOUSING & HUMAN SERVICES
<b>Contact Name/Phone</b>	GEORGE DAHL 625-6036
<b>Contact E-Mail</b>	GDAHL@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	1680 HUD CONTINUUM OF CARE PROGRAM RENEWAL AWARD

**Agenda Wording**  
 Accept awards from the Dept of Housing and Urban Development (HUD) Continuum of Care (CoC) Program and authorize the CHHS Dept to enter into contract with multiple non-profit agencies. (list attached)

**Summary (Background)**  
 Jan 15, 2013 the CHHS Dept applied for funding through HUD's annual CoC competition. Funds were requested to renew 28 existing and 2 new programs within Spokane County. The Dept has already received Council approval to enter into contract with HUD for 27 existing projects. Due to HUD's staggered funding the Dept received notification that additional funding has been awarded to support 1 additional renewal and 2 new programs. A portion of the funds are retained by the Dept to administer,

<b>Fiscal Impact</b>	<b>Budget Account</b>
Expense \$ 168,899.50	# 1540 95465 51200 54201
Revenue \$ 223,876.00	# 1540 95465 99999 33114
Select \$	# BudgetAccount3
Select \$	#

<b>Approvals</b>		<b>Council Notifications</b>	
<b>Dept Head</b>	ALLARD, JERRIE	<b>Study Session</b>	
<b>Division Director</b>	MALLAHAN, JONATHAN	<b>Other</b>	PCED 9/9/'13
<b>Finance</b>	LESESNE, MICHELE	<b>Distribution List</b>	
<b>Legal</b>	BURNS, BARBARA		gdahl
<b>For the Mayor</b>	SANDERS, THERESA		jchaffins
<b>Additional Approvals</b>			mhughes
<b>Purchasing</b>			

# **BRIEFING PAPER**

## **City of Spokane**

### **Community and Neighborhood Services Division**

### **Community, Housing and Human Services Department**

**September 9, 2013**

#### **Subject**

The Department of Housing and Urban Development (HUD) provides funding through the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act to fund 3 additional grants administered by the City (\$223,876.00). Each grant is subject to annual renewal through HUD's national Continuum of Care (CoC) competition.

#### **Background**

Renewal applications were reviewed and ranked by a work group of the CHHS Board. The Board approved renewal requests at their December 5, 2012 meeting.

The City is responsible for meeting the national objectives set by HUD. (1) Create new permanent housing beds for chronically homeless persons; (2) Increase percentage of participants remaining in permanent housing for at least six months to 80% or more; (3) Increase percentage of participants in transitional housing that move into permanent housing to 65% or more; (4) Increase percentage of participants that are employed at program exit to 20% or more; (5) Increase percentage of participants that obtained mainstream benefits at program exit to 20% or more; (6) Decrease number of homeless individuals and families; (7) Intent to fund programs helping the CoC meet or exceed national objectives.

#### **Impact**

Funds from the Continuum of Care Program provide local agencies with funds needed to maintain a housing inventory exclusive for homeless individuals and families. Without these funds the local support network would not be able to sustain the need for affordable housing and the services tied to that housing.

#### **Action**

The CHHS Department is seeking City Council approval to enter into contract with the Department of Housing and Urban Development in the sum of \$223,876.00. Upon City Council approval the Department will enter into individual contacts with our partner agencies and disperse funding accordingly.

#### **Funding**

(See attached)

Project Name	Project	City	Total
YWCA Women's Opportunity Center (renewal)	\$ 82,403.50	\$ 9,241.50	\$ 91,645.00
Transitions Family Permanent Housing Program (new)	\$ 86,496.00	\$ 3,165.00	\$ 89,661.00
City of Spokane Planning (new)	-	\$ 42,570.00	\$ 42,570.00
	<b>\$ 168,899.50</b>	<b>\$ 54,976.50</b>	<b>\$ 223,876.00</b>



**Agenda Sheet for City Council Meeting of:**  
09/09/2013

<b>Date Rec'd</b>	08/28/2013
<b>Clerk's File #</b>	OPR 2013-0648
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	CR 13738

<b>Submitting Dept</b>	COMMUNITY, HOUSING & HUMAN SERVICES
<b>Contact Name/Phone</b>	KRISTINE WILLIAMS 625-6815
<b>Contact E-Mail</b>	KWILLIAMS@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	1680 CONSULTATION AGREEMENT

**Agenda Wording**

Contract with John Epler & Assoc to provide consulting srvc for 3 CHHS Planning Docs (Regional Homeless Prevention & Reduction Strategy, Analysis of Impediments to Fair Housing & the 2015-20 Consolidated Plan).50% to be encumbered in 2013 50% in 2014

**Summary (Background)**

Through a competitive selective review process the CHHS Board approved the selection of a consultant to assist the CHHS Dept prepare three HUD planning docs for the City of Spokane. The consultant will work with CHHS staff to complete these documents over the next 12-18 months.

**Fiscal Impact**

Expense	\$ 6,750
Expense	\$ 10,000
Expense	\$ 15,000
Select	\$

**Budget Account**

#	1540-53513-51200-54201
#	0300-53010-51200-54201
#	BudgetAccount3
#	

**Approvals**

<b>Dept Head</b>	ALLARD, JERRIE
<b>Division Director</b>	MALLAHAN, JONATHAN
<b>Finance</b>	LESESNE, MICHELE
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	PCED 9/9/13

**Additional Approvals**

<b>Purchasing</b>	

**Distribution List**

kwilliams
mhughes
jchaffins
johneppler@comcast.net
mlesesne@spokanecity.org

**BRIEFING PAPER**  
**City of Spokane**  
**Community and Neighborhood Services Division**  
**Community, Housing and Human Services Department**  
**September 9, 2013**

---

**Subject**

The City's 2010 Consolidated Community Development and Housing Plan, the Spokane Regional 10-Year Plan to End Homelessness (2005-2015), and the 2008 City of Spokane Analysis of Impediments are due to be updated. The CHHS Board will need to begin the planning process in September 2013. An RFP was issued for consultant services necessary to assist CHHS staff to prepare the documents. One proposal was received, reviewed and selected by an evaluation committee and approved by the CHHS Board at the August 7, 2013 Board meeting.

**Background**

The Consolidated Plan is intended to help state and local jurisdictions to assess their affordable housing and community development needs and market conditions, and to make data-driven, place-based investment decisions. The consolidated planning process serves as the framework for a community-wide dialogue to identify housing and community development priorities that align and focus funding from the City's three CPD formula block grant programs: the Community Development Block Grant (CDBG), the HOME Investment Partnership (HOME), and the Emergency Solutions Grant (ESG) program.

The 10-Year Plan to End Homelessness is a guide for state and local governments to pursue activities leading to the end of homelessness. The Plan draws on local data and research to define strategies to address the issue of homelessness. HUD, along with the US Interagency Council on Homelessness, has endorsed this planning effort and has published its own planning document, "Opening Doors – Federal Strategic Plan to Prevent and End Homelessness" in 2010.

The Analysis of Impediments identifies impediments to fair housing choice based on seven federal and three state protected classes and is used by the City of Spokane to develop its Fair Housing Plan. The Fair Housing Plan includes strategies to address impediments. Entitlement jurisdictions that receive federal funds are required to certify that they will affirmatively further fair housing and undertake Fair Housing Planning.

**Impact**

The planning process will include coordination with, and input from, other CHHS subcommittees, community stakeholders, elected officials, and citizens. The estimated timeline to produce all three documents is expected to range between 12 – 24 months.

**Action**

The CHHS Department is seeking City Council approval to enter into contract with John Epler and Associates in the sum of \$63,500.00.

**Funding**

Community Development Block Grant (CDBG) - \$30,000  
Homeless Housing & Assistance Act (Recording Fees) - \$13,500  
Human Services Grant (General Fund) - \$20,000

## CONSULTATION AGREEMENT

THIS AGREEMENT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City" and JOHN EPLER & ASSOCIATES, whose address is 2615 Mt. St. Helens Place South, Seattle, WA 98144, as "Consultant."

The parties agree as follows:

1. DESCRIPTION OF WORK. The Consultant shall provide professional services for the City to include collaboration with the City of Spokane's Community, Housing and Human Services Department in the identification, scheduling and implementation of activities designed to complete three critical planning documents as required by the Department of Housing and Urban Development (see attached "Scope of Work" for detailed planning project components).
2. CONTRACT TERM. The agreement shall begin on September 1, 2013 and end on April 30, 2015, unless terminated earlier.
3. COMPENSATION. The City shall pay the Consultant SIXTY THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$63,500) plus expenses. This is the maximum amount to be paid under this agreement and shall not be exceeded without the prior written authorization of the City in the form of an executed amendment to this agreement.
4. PAYMENT. The Consultant shall submit monthly applications for payment to the Community, Housing and Human Services Department, 808 W. Spokane Falls Blvd., Spokane, WA 99201. Payment will be made within thirty (30) days after receipt of the Consultant's application. If the City objects to all or any portion of the invoice, it shall notify the Consultant and reserves the right to only pay that portion of the invoice not in dispute. In that event, the parties shall immediately make every effort to settle the disputed amount.
5. TERMINATION. Either party may terminate this agreement, with or without cause, but ten (10) days' written notices to the other party. In the event of such termination, the City shall pay the Consultant for all work previously authorized and performed prior to the termination date.
6. STANDARD OF PERFORMANCE. The standard of performance applicable to Consultant's services will be the degree of skill and diligence normally employed by professional Consultants performing the same or similar services at the time the services under this agreement are performed.
7. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS. Original documents, drawings, designs, reports, or any other records developed or created

under this agreement shall belong to and become the property of the City. All records submitted by the City to the Consultant shall be safeguarded by the Consultant. The Consultant shall make such data, documents and files available to the City upon the City's request. If the City's use of the Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

8. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state, and local laws and regulations.

9. INDEPENDENT CONTRACTOR. The parties intend that an independent contractor – employer relationship will be created by this agreement.

10. INDEMNIFICATION. The Consultant shall defend, indemnify and hold harmless the City, its officers and employees, from and against all claims for damages, liability, cost and expense arising out of the negligent conduct of the Consultant's performance of this agreement, except to the extent of those claims arising from the negligence of the City, its officers and employees.

**The Consultant waives its immunity under Industrial Insurance, title 51 RCW, to the extent necessary to protect the City's interests under this indemnification. This provision has been specifically negotiated.**

11. INSURANCE. During the term of this agreement, the Consultant shall maintain in force at its own expense, the following types and amount of insurance:

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers;
- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$500,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract. It shall provide that the City, its agents, officers and employees are Additional Insureds but only with respect to the Consultant's services to be provided under this agreement; and
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$300,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Consultant or its insurer(s) to the City. As evidence of the insurance coverage required by this agreement, the Contractor shall furnish acceptable insurance certificates to the City at the time it returns the signed agreement.

12. NONDISCRIMINATION. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this agreement because of age, sex, race, color,

religion, creed, marital status, familial status, sexual orientation, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities.

13. BUSINESS REGISTRATION REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid business registration. The Consultant shall be responsible for contacting the State of Washington Business Licenses Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Consultant does not believe they are required to obtain a business registration, they may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

14. ANTI-KICKBACK. No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this agreement shall have or acquire any interest in the agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the agreement.

15. AUDIT / RECORDS. The Consultant and its sub-Consultants shall maintain for a minimum of three (3) years following final payment all records related to its performance of the agreement. The Consultant and its sub-consultants shall provide access to authorized City representatives, or, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the agreement, the federal law shall prevail.

16. MISCELLANEOUS PROVISIONS.

- A. ASSIGNMENTS. Neither party may assign, transfer or subcontract its interest, in whole or in part, without the other party's prior written consent. In the event of an assignment or transfer, the terms of this agreement shall continue to be in full force and effect.
- B. DISPUTES. This agreement shall be performed under the laws of the State of Washington. Any litigation to enforce this agreement or any of its provisions shall be brought in Spokane County, Washington.
- C. SEVERABILITY. In the event any provision of this agreement should become invalid, the rest of the agreement shall remain in full force and effect.
- D. AMENDMENTS. This agreement may be amended at any time by mutual written agreement.

Dated on \_\_\_\_\_

JOHN EPLER & ASSOCIATES

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

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

E-Mail address: johneppler@comcast.net

DUNS #: \_\_\_\_\_

Dated on \_\_\_\_\_

CITY OF SPOKANE

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

Mayor

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney



**Agenda Sheet for City Council Meeting of:**

09/09/2013

		<b>Date Rec'd</b>	DocDate
		<b>Clerk's File #</b>	OPR 2010-0671
		<b>Renews #</b>	
<b>Submitting Dept</b>	INFORMATION TECHNOLOGY	<b>Cross Ref #</b>	
<b>Contact Name/Phone</b>	MICHAEL SLOON 625-6468	<b>Project #</b>	
<b>Contact E-Mail</b>	MSLOON@SPOKANECITY.ORG	<b>Bid #</b>	RFP 3687-10
<b>Agenda Item Type</b>	Contract Item	<b>Requisition #</b>	MASTER CONTRACT
<b>Agenda Item Name</b>	5300 COCHRAN MASTER 3RD YR EXT (2013)		

**Agenda Wording**

Third of four one-year extensions to Master Contract OPR2010-0671 with Cochran Technologies (Spokane Valley, WA) for design, products, installation and testing of Inside Plant Communications Infrastructure-annual est. exp. not to exceed \$100,000.00.

**Summary (Background)**

This contract is based on a response to RFP3687-10. There were four respondents to the RFP. Staff recommends this extension to the existing master contract with Cochran Technologies for Inside Plant Communications Infrastructure. See attachment for additional agenda wording and background.

**Fiscal Impact**

Expense \$ 100,000.00 including tax  
 Select \$  
 Select \$  
 Select \$

**Budget Account**

# Various Accounts  
 #  
 # BudgetAccount3  
 #

**Approvals**

**Dept Head** DOLAN, PAM  
**Division Director** DOLAN, PAM  
**Finance** BUSTOS, KIM  
**Legal** BURNS, BARBARA  
**For the Mayor** SANDERS, THERESA

**Council Notifications**

**Study Session**  
**Other**  
**Distribution List**  
 Accounting - pdolan@spokanecity.org  
 Contract Accounting - mlesense@spokanecity.org

**Additional Approvals**

**Purchasing** PRINCE, THEA  
 Taxes & Licenses  
 Purchasing - cwahl@spokanecity.org  
 IT - jhamilton@spokanecity.org  
 Cochran - kmeehan@cochraninc.com

MASTER CONTRACT – EXTENSION #3

THIS MASTER CONTRACT EXTENSION is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City," and COCHRAN INC., whose address is 11115 East Montgomery Avenue, Suite E, Spokane Valley, Washington 99206 (*Remittance address: P.O. Box 33524, Seattle, Washington 98133*) as "Contractor".

The parties agree as follows:

1. PERFORMANCE. The Contractor shall provide DESIGN, PRODUCTS, INSTALLATION AND TESTING OF INSIDE PLANT COMMUNICATIONS INFRASTRUCTURE, in accordance with the City Request for Proposals and the Contractor's response to the request. This is a non-exclusive master contract for services requested by various City departments, with the prior approval of the Management Information Services Department.
2. CONTRACT TERM. This is the third of four (4) additional one (1) year terms, as allowed is the original contract. This contract extension shall begin September 1, 2013 and run through August 31, 2014, unless terminated earlier.
3. COMPENSATION. The City shall pay the Contractor a maximum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00). The prices shall include applicable sales tax and freight costs.
4. PAYMENT. The Contractor will send its application for payment to the Director of Information Technology, Seventh Floor, City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington 99201. Payment will be made within thirty (30) days after receipt of the Contractor's application except as provided in RCW 39.76. Five percent (5%) of the contract price may be retained by the Owner, in accord with RCW 60.28, as a trust fund for the protection of materialmen and laborers.
5. WAGES. The Contractor and all subcontractors will submit a "Statement of Intent to Pay Prevailing Wages," certified by the industrial statistician of the Department of Labor and Industries, prior to any payments. The "Statement of Intent to Pay Prevailing Wages" shall include: (1) the Contractor's registration number; and (2) the prevailing wages under RCW 39.12.020 and the number of workers in each classification. 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 City. Prior to the payment of funds held under RCW 60.28, the Contractor and subcontractors must submit an

"Affidavit of Wages Paid," certified by the industrial statistician.

6. STATEMENT OF INTENT TO PAY PREVAILING WAGES TO BE POSTED. The Contractor and each subcontractor required to pay the prevailing rate of wages shall post in a location readily visible at the job site: (1) a copy of a "Statement of Intent to Pay Prevailing Wages" approved by the industrial statistician of the Department of Labor and Industries; 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.

7. BONDS. The Contractor may not commence work until it obtains all insurance, permits and bonds required by the contract documents and applicable law. This includes the execution of a performance bond and a payment bond on the forms attached, each equal to one hundred percent (100%) of the contract price, and written by a corporate surety company licensed to do business in Washington State.

8. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state, and local laws and regulations.

9. ASSIGNMENTS. This contract is binding on the parties and their heirs, successors, and assigns. Neither party may assign, transfer or subcontract its interest, in whole or in part, without the other party's prior written consent.

10. DISPUTES. This contract shall be performed under the laws of the State of Washington. Any litigation to enforce this contract or any of its provisions shall be brought in Spokane County, Washington.

11. AMENDMENTS. This contract may be amended at any time by mutual written agreement.

12. ANTI-KICKBACK. No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this contract shall have or acquire any interest in the contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this contract.

13. TERMINATION. Either party may terminate this contract by ten (10) days written notice to the other party. In the event of such termination, the City shall pay the Contractor for all work previously authorized and performed prior to the termination date.

14. INDEMNIFICATION. The Contractor shall indemnify, defend, and hold harmless the City, its officers and employees, from all claims, demands, or suits in law or equity arising from the Contractor's negligence or breach or its obligations under the contract. The Contractor's duty to indemnify shall not apply to liability caused by the sole negligence of the City, its officers, and employees. The Contractor's duty to indemnify

for liability arising from the concurrent negligence of the City, its officers and employees and the Contractor, its officers and employees shall apply only to the extent of the negligence of the Contractor, its officers, and employees. The Contractor's duty to indemnify shall survive termination or expiration of the contract. The Contractor waives, with respect to the City only, its immunity under RCW Title 51, Industrial Insurance.

15. INSURANCE. During the term of the contract, the Contractor shall maintain in force at its own expense, each insurance coverage noted below:

- A. Worker's Compensation Insurance in compliance with RCW 51.12.020, which requires subject employers to provide workers' compensation coverage for all their subject workers and Employer's Liability Insurance in the amount of \$1,000,000;
- B. General Liability Insurance on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under this contract. It shall provide that the City, its officers and employees are additional insureds but only with respect to the Contractor's services to be provided under this contract; and
- C. Automobile Liability Insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired and non-owned vehicles.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without sixty (60) days written notice from the Contractor or its insurer(s) to the City.

As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to the City at the time it returns the signed contract. The certificate shall specify all of the parties who are additional insured, and include applicable policy endorsements, the sixty (60) day cancellation clause, and the deductible or retention level, as well as policy limits. Insuring companies or entities are subject to City acceptance and must have a rating of A- or higher by Best. Copies of all applicable endorsements shall be provided and, if requested complete copies of insurance policies shall be provided to the City. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

16. SEVERABILITY. In the event any provision of this contract should become invalid, the rest of the contract shall remain in full force and effect.

17. STANDARD OF PERFORMANCE. The silence or omission in the contract regarding any detail required for the proper performance of the work, means that the Contractor shall perform the best general practice and that only material and workmanship of the best quality are to be used.

18. NONDISCRIMINATION. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities.

19. BUSINESS REGISTRATION REQUIREMENT. Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid annual business registration. The Contractor shall be responsible for contacting the State of Washington Business License Services at <http://bls.dor.wa.gov> or 1-800-451-7985 to obtain a business registration. If the Contractor does not believe it is required to obtain a business registration, it may contact the City's Taxes and Licenses Division at (509) 625-6070 to request an exemption status determination.

Dated: \_\_\_\_\_

CITY OF SPOKANE

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

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

Attest: \_\_\_\_\_

City Clerk

Dated: \_\_\_\_\_

COCHRAN INC.

City of Spokane Business License No.

\_\_\_\_\_

E-Mail address, if available: \_\_\_\_\_

\_\_\_\_\_

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

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

Approved as to form:

  
\_\_\_\_\_  
Assistant City Attorney

Attachments that are a part of this contract:

Payment Bond  
Performance Bond

12-289

PAYMENT BOND

We, COCHRAN, INC., as principal, and \_\_\_\_\_, as surety, are held and firmly bound to the City of Spokane, Washington, in the sum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00), for the payment of which we bind ourselves, our legal representatives and successors, jointly and severally by this document.

The principal has entered into a contract with the City of Spokane, Washington, to do all work and furnish all materials for the DESIGN, PRODUCTS, INSTALLATION AND TESTING OF INSIDE PLANT COMMUNICATIONS INFRASTRUCTURE. If the principal shall:

- A. pay all laborers, mechanics, subcontractors, materialmen and all person(s) who shall supply such person or subcontractors; and pay all taxes and contributions, increases and penalties as authorized by law; and
- B. comply with all applicable federal, state and local laws and regulations;

then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of and consents to any contract alteration or extension of time made by the City. Any judgment obtained against the City, which relates to or is covered by the contract or this bond, shall be conclusive against the principal and the surety, as to the amount of damages, and their liability, if reasonable notice of the suit has been given.

SIGNED AND SEALED on \_\_\_\_\_.

COCHRAN, INC., AS PRINCIPAL

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

A valid POWER OF ATTORNEY for the surety's agent must accompany this bond.

\_\_\_\_\_  
AS SURETY

By: \_\_\_\_\_  
Its Attorney in Fact



PERFORMANCE BOND

We, COCHRAN, INC., as principal, and \_\_\_\_\_, as surety, are held and firmly bound to the City of Spokane, Washington, in the sum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for the payment of which, we bind ourselves and our legal representatives and successors, jointly and severally by this document.

The principal has entered into a contract with the City of Spokane, Washington, to do all the work and furnish all materials for the DESIGN, PRODUCTS, INSTALLATION AND TESTING OF INSIDE PLANT COMMUNICATIONS INFRASTRUCTURE. If the principal shall:

- A. promptly and faithfully perform the contract, and any contractual guaranty and indemnify and hold harmless the City from all loss, damage or claim which may result from any act or omission of the principal, its agents, employees, or subcontractors; and
- B. comply with all applicable federal, state and local laws and regulations;

then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The surety hereby waives notice of and consents to any contract alteration or extension of time made by the City. Any judgment obtained against the City, which relates to or is covered by the contract or this bond, shall be conclusive against the principal and the surety, not only as to the amount of damages, but also as to their liability, if reasonable notice of the suit has been given.

SIGNED AND SEALED on \_\_\_\_\_

COCHRAN, INC., AS PRINCIPAL

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

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

\_\_\_\_\_  
AS SURETY

A valid POWER OF ATTORNEY for the surety's agent must accompany this bond.

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

Its Attorney in Fact

STATE OF WASHINGTON        )  
  ) ss.  
County of \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
\_\_\_\_\_ signed this document; on oath  
stated that he/she was authorized to sign the document and acknowledged it as the agent  
or representative of the named surety company which is authorized to do business in the  
State of Washington, for the uses and purposes mentioned in this document.

DATED on \_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary

My appointment expires \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	OPR 2008-0493
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	CR13760000

<b>Submitting Dept</b>	INFORMATION TECHNOLOGY
<b>Contact Name/Phone</b>	MICHAEL SLOON 625-6468
<b>Contact E-Mail</b>	MSLOON@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	5300 XEROX PRINTER LEASE EXT (2013)

**Agenda Wording**

One year extension to Lease Agreement OPR2008-0493 with Xerox Corporation (Tukwila, WA) for two Xerox 4112 Printers. Extension term is June 1, 2013 through May 31, 2014. Payments will be made monthly. Annual fee not to exceed \$48,000.00 including tax.

**Summary (Background)**

This Lease Agreement is for printers used for Utility Bills and Payroll as well as other various systems. The printers interface with our HP3000 and HP9000 Systems without any additional software or hardware modifications. This lease also includes all software, hardware, and emergency repair service on the equipment. IT Staff will be reviewing print requirements during the extension period.

**Fiscal Impact**

Expense	\$ 48,000.00 including tax
Select	\$
Select	\$
Select	\$

**Budget Account**

#	5300-73500-18880-54501
#	
#	BudgetAccount3
#	

**Approvals**

<b>Dept Head</b>	DOLAN, PAM
<b>Division Director</b>	DOLAN, PAM
<b>Finance</b>	BUSTOS, KIM
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	
<b>Distribution List</b>	
	Accounting - pdolan@spokanecity.org
	Contract Accounting - mlesense@spokanecity.org
	Legal - bburns@spokanecity.org
	Taxes & Licenses
	Purchasing - cwahl@spokanecity.org
	IT - jhamilton@spokancity.org
	Xerox Corp - rudy.martinez@xerox.com

**Additional Approvals**

<b>Purchasing</b>	

LEASE AGREEMENT EXTENSION

THIS LEASE AGREEMENT EXTENSION is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City," and XEROX CORPORATION, whose address is 6400 Southcenter Boulevard, Tukwila, Washington 98188, as "Xerox".

WHEREAS, the parties entered into a lease agreement wherein Xerox agreed to lease two (2) Xerox 4112 printers to the City; and

WHEREAS, the City would like to extend the lease agreement while it explores various options regarding the printers' usage; -- Now, Therefore,

The parties agree as follows:

- 1. LEASE AGREEMENT DOCUMENTS. The lease agreement dated May 14, 2008 and May 28, 2008, any previous amendments, addendums and / or extensions / renewals thereto are incorporated by reference into this document as though written in full and shall remain in full force and effect except as provided herein
- 2. EXTENSION. The lease agreement documents are hereby extended and shall run through May 31, 2014.

Dated: \_\_\_\_\_

CITY OF SPOKANE

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

Attest:

Approved as to form:

\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Assistant City Attorney

Dated: \_\_\_\_\_

XEROX CORPORATION

E-Mail address, if available:

\_\_\_\_\_

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

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



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	OPR 2013-0649
<b>Renews #</b>	
<b>Cross Ref #</b>	OPR 2012-0836
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	CR13761000

<b>Submitting Dept</b>	INFORMATION TECHNOLOGY
<b>Contact Name/Phone</b>	MICHAEL SLOON 625-6468
<b>Contact E-Mail</b>	MSLOON@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	5300 ASSETWORKS MAINT (2013)

**Agenda Wording**

Contract with AssetWorks (Wayne, PA) for Annual Maintenance and Support on the Fleet Services equipment system, to also include the Software Upgrade Assistance Package from October 1, 2013 through September 30, 2014-amount \$79,740.15 (including tax).

**Summary (Background)**

This contract for the M-5 equipment management system is needed to continue ongoing maintenance of the system. The maintenance fee provides Fleet Services with corrections for any defect in the software, unlimited telephone/e-mail support, report writing and all updates and enhancements as they become available. The software upgrade assistance package provides remote technical assistance, upgrade of components, pages and reports as well as the Oracle database. Assetworks in the current vendor.

**Fiscal Impact**

Expense	\$ 79,740.15 including tax
Select	\$
Select	\$
Select	\$

**Budget Account**

#	5300-73300-18850-54820
#	
#	BudgetAccount3
#	

**Approvals**

<b>Dept Head</b>	DOLAN, PAM
<b>Division Director</b>	DOLAN, PAM
<b>Finance</b>	BUSTOS, KIM
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	
<b>Distribution List</b>	
	Accounting - pdolan@spokanecity.org
	Contract Accounting - mlesense@spokanecity.org
	Legal - bburns@spokanecity.org
	Taxes & Licenses
	Purchasing - cwahl@spokanecity.org
	IT - jhamilton@spokancity.org
	Assetworks - kimberly.hamiter@assetworks.com

**Additional Approvals**

<b>Purchasing</b>	

# AssetWORKS

# MAINTENANCE RENEWAL

998 Old Eagle School Road | Suite 1215 | Wayne PA 19087-1805  
Tel (610) 687-9202 Fax (858) 452-0478

Number 8366 M5FL MNT13

**TO: City of Spokane**  
**FROM: AssetWorks Inc., successor in interest to MAXIMUS, Inc.**  
**DATE: August 6, 2013**  
**RE: FleetFocus M5 Maintenance and Support Renewal**

*Prices valid through September 30, 2013*

**Annual Software Maintenance and Support - for period 10/1/2013 - 9/30/2014**

FleetFocus M5	\$	48,341.00
Crystal Reports Licenses added in 2012	\$	1,035.00
FuelFocus Software	\$	7,702.00

*Includes product updates and enhancements, unlimited email and telephone support for 12 months*

**Subtotal, Current Maintenance, not including tax \$ 57,078.00**

**Software Upgrade Assistance**

AssetWorks will provide remote technical assistance to upgrade the FleetFocus M5 application. This includes the upgrade of components, pages and reports as well as the Oracle database. Spokane must provide appropriate required access to test and production FleetFocus M5 environments. AssetWorks will not be responsible for additional database administration services such as export and import functions nor back-up and recovery processes.

Product Releases - Estimated 2 per year	32 hours	\$185 / hour	\$	5,920.00
Patch Upgrades - Estimated 2 per year	16 hours	\$185 / hour	\$	2,960.00
Remote Training and PM Services	40 hours	\$185 / hour	\$	7,400.00

**Subtotal, Software Upgrade Assistance, not including tax \$ 16,280.00**

*For Visa, MasterCard, and American Express payments, an additional 4% fee will be added.*

AssetWorks Inc. US Tax ID # 46-0521049	WA Sales Tax: 8.70%	\$	6,382.15
GST # 834113896 RT0001			

**Please REMIT to:**

**GRAND TOTAL DUE, \$ US \$ 79,740.15**

AssetWorks Inc.  
P. O. Box 202525  
Dallas TX 75320-2525

**Billable monthly, including WA tax \$ 6,645.00**

**Or ACH:**

Wells Fargo, 8601 N. Scottsdale Rd., Scottsdale AZ 85253  
ABA # 122105278  
Account # 5076434348

OR, if you require a separate invoice, please sign below and fax back this renewal and AssetWorks will issue an invoice. If your organization requires you to issue a purchase order to renew, please provide that PO **with a signed copy of this renewal** by fax to (858) 452-0478 or email to Kimberly.Hamiter@AssetWorks.com.

**Terms**

This maintenance renewal is issued pursuant to the terms of the current AssetWorks contract with your organization. The parties will continue to be bound by those terms during any renewal period unless otherwise agreed by both parties through a signed amendment. Notification of termination of maintenance is required 90 days prior to annual renewal date.

**FleetFocus M4 and M5 are proprietary property of AssetWorks Inc. and protected by law. Another party cannot alter, modify, change, manipulate or provide maintenance for these products without infringing upon AssetWorks' ownership rights. Accordingly, AssetWorks is the sole source for software, maintenance and services of its products.**

I, the undersigned, accept this maintenance renewal described above.

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

PO REQUIRED: # \_\_\_\_\_  NO PO REQUIRED  WILL PAY BY QUOTE - NO SEPARATE INVOICE NEEDED

Please MAIL invoice to: \_\_\_\_\_

Please E-MAIL invoice to: \_\_\_\_\_

→ If you have any questions, please contact Kimberly Hamiter at (858) 866-9022 or Kimberly.Hamiter@AssetWorks.com. **Thank You!** ←

## Hamilton, Joan

---

**From:** Kimberly Hamiter [Kimberly.Hamiter@AssetWorks.com]  
**Sent:** Tuesday, August 06, 2013 2:57 PM  
**To:** Hamilton, Joan  
**Subject:** 2013 M5 & FuelFocus Maintenance Renewal  
**Attachments:** Spokane M5 FL Maint Renewal Oct 2013.pdf

Joan,

Here is the renewal advice for the year beginning October 1, 2013, with monthly billing. Please let me know if you need any additional information.

Thank you!

Regards,

---  
Kimberly Hamiter / Specialist - Project/Program (Admin)  
AssetWorks Inc. / [www.assetworks.com](http://www.assetworks.com) / [Kimberly.Hamiter@AssetWorks.com](mailto:Kimberly.Hamiter@AssetWorks.com)  
4275 Executive Square Suite 330 / La Jolla CA 92037  
Office: (858) 866-9022 / Fax: (858) 452-0478



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	OPR 2013-0650
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	PLANNING & DEVELOPMENT
<b>Contact Name/Phone</b>	AURORA CROOKS 477-7540
<b>Contact E-Mail</b>	ACROOKS@SPOKANECOUNTY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	0650- COMMUTE TRIP REDUCTION INTERGOVERNMENTAL AGREEMENT

**Agenda Wording**

Intergovernmental Agreement Between Spokane County and the City of Spokane Regarding Commute Trip Reduction Implementation

**Summary (Background)**

The State mandates that the City and County implement a Commute Trip Reduction Plan for all major employers to promote a reduction in the number of vehicle miles traveled. The State has allocated \$225,287.54 to the City of Spokane to implement its CTR plan for the next two years. Since 1994, Spokane County has implemented the City's CTR Plan in exchange for the City's share of the allocated funds. The County is proposing an updated agreement to extend this arrangement though June 30, 2015.

**Fiscal Impact**

**Budget Account**

Select	\$	#
Select	\$	#
Select	\$	# BudgetAccount3
Select	\$	#

**Approvals**

**Council Notifications**

<b>Dept Head</b>	CHESNEY, SCOTT	<b>Study Session</b>	
<b>Division Director</b>	CHESNEY, SCOTT	<b>Other</b>	
<b>Finance</b>	DOLAN, PAM	<b>Distribution List</b>	
<b>Legal</b>	BURNS, BARBARA		kweinand@spokanecity.org
<b>For the Mayor</b>	SANDERS, THERESA		lmeuler@spokanecity.org

**Additional Approvals**

<b>Purchasing</b>		

**INTERGOVERNMENTAL AGREEMENT**  
**Between Spokane County and the City of Spokane**  
**Regarding Commute Trip Reduction Implementation**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between the City of Spokane, a municipal corporation of the State of Washington, having offices for the transaction of business at 808 W. Spokane Falls Blvd., Spokane, WA, 99201, hereinafter referred to as the "City" and Spokane County, a political subdivision of the State of Washington, having offices for the transaction of business at West 1026 Broadway Avenue, Spokane, Washington, 99260, hereinafter referred to as the "County," jointly hereinafter referred to as the "Parties."

**WITNESSETH**

**WHEREAS**, the Washington State Legislature has adopted legislation codified in RCW 70.94.521 through 551, the purpose of which is to improve air quality, improve transportation system efficiency and reduce the consumption of petroleum fuels through employer-based programs that encourage the use of alternatives to the single occupant vehicle for commute trips and reduce vehicle miles traveled (VMT); and

**WHEREAS**, RCW 70.94.527 requires counties containing urban growth areas and cities and towns with "major employers," that are located within urban growth areas with a state highway segment exceeding the threshold of one hundred person hours of delay or jurisdictions that are located in contiguous urban growth areas, or are within an urban growth area with a population greater than seventy thousand people that adopted an ordinance before the year 2000 or jurisdictions that are located in contiguous urban growth areas, or contain a major employment installation in an affected county to develop ordinances, plans and programs to reduce Vehicle Miles Traveled (VMT) and Single Occupant Vehicle (SOV) commute trips, and thereby reduce vehicle-related air pollution, traffic congestion and energy use, and

**WHEREAS**, the County and each affected city within Spokane County have adopted Commute Trip Reduction Ordinances and must implement a Commute Trip Reduction (CTR) Plan for all major employers; and

**WHEREAS** the WSDOT Public Transportation Division is responsible for administering funds on behalf of the state legislature and is desirous of making available to Spokane County certain funds and requiring Spokane County to enter into agreements through the Interlocal Cooperation Act or by Resolution or Ordinance as appropriate with other jurisdictions, local transit agencies, or regional transportation planning organizations to coordinate the development, implementation and administration of CTR Plans and Ordinances as described in RCW 70.94.521-551

**WHEREAS**, Spokane County has entered into an agreement with the Washington State Department of Transportation under Agreement No. GCB1570, hereinafter referred to as "WSDOT Agreement," pursuant to which Spokane County is eligible to receive a reimbursable amount of funds which the County will distribute to itself and cities to implement and administer Commute Trip Reduction Plans and Ordinances; and

**WHEREAS**, pursuant to the provisions of RCW 70.94.527 (5), counties and cities may enter into agreements through the Interlocal Cooperation Act to coordinate the development and implementation of Commute Trip Reduction Plans and Ordinances; and

**WHEREAS**, Spokane County has allocated \$225,287.54 to the City from the grant Agreement No. GCB1570 which the City is now desirous of making available to the County to perform those tasks which are the responsibility of the City.

**NOW, THEREFORE**, for and in consideration of the mutual promises set forth hereinafter, and as authorized under chapter RCW 70.94.527 (5), the parties hereto do mutually agree as follows:

**Section 1: PURPOSE**

The County has entered into a WSDOT Agreement with the Washington State Department of Transportation under which it will receive \$367,001 for two years. This funding is to be allocated to the County and cities within Spokane County for their use in the implementation and administration of their Commute Trip Reduction Plans and Ordinances. The County, based upon an allocation formula established by the Washington State Department of Transportation, has determined that the City shall receive \$225,287.54 from the WSDOT Agreement from which it shall perform certain tasks. The City agrees to its proportionate share of the monies made available to the County in the WSDOT Agreement and agrees to allow Spokane County to retain its proportionate share in consideration of the County performing those tasks as more particularly set forth in Attachment "A" attached hereto and incorporated herein by reference. In conjunction with allowing the County to retain its proportionate share of monies, the City will execute any and all necessary documents which may be required by the Washington State Department of Transportation.

It is understood by the parties hereto, that in order for the County to perform those tasks as set forth in Attachment "A" for the City, the City must perform certain tasks. Attached hereto as Attachment "B" and incorporated herein by reference, is a listing of tasks which the City agrees to perform in conjunction with the County performing those tasks set forth in Attachment "A."

**Section 2: DURATION**

The County agrees to provide those tasks set forth in Section 1 and complete performing such tasks on or before June 30, 2015.

**Section 3: TERMINATION**

The parties agree that this Agreement may be terminated by either party for material breach of any provision set forth herein, upon ninety (90) days advance written notice to the other party at the address set forth hereinabove. Provided, however, the parties agree that any notification of termination shall set forth the specific provision(s) for which such notification is being provided and additionally, advise that if such default is cured within such ninety (90) day time frame, said termination notification shall be of no force and effect.

In the event of termination, the County agrees to provide to the City all written documentation which it has completed to the date of termination under the terms of this Agreement. Additionally, the County agrees to return to the City that portion of the monies set forth in Section 1 hereinabove, which has not been expended by the county, prior to the date of termination, on the City's behalf in providing those tasks as set forth in Attachment "A."

Provided, further, the parties recognize that the Washington State Department of Transportation in Agreement No. GCB1570, has retained the right to unilaterally terminate all or a part of such contract if there is a reduction of funds from the funding source. Accordingly, in the event that the Washington State Department of Transportation terminates all or part of the WSDOT Agreement with Spokane County, and such action affects the allocation of funds by the County to the City herein, and/or modifies the tasks to be performed hereunder, the parties will immediately meet to renegotiate the provisions of this Agreement.

#### **Section 4: DESIGNATION OF ADMINISTRATOR**

The County hereby designated Ms. Aurora J. Crooks, the Spokane County Transportation Demand Management Manager, as its designee for the purpose of administering and coordinating the County's responsibilities under the terms of this Agreement.

#### **Section 5: ACQUISITION/DISPOSITION OF PROPERTY**

The parties hereto agree that any real or personal property acquired by the County with those monies made available to the County by the City under Section 1 hereinabove shall be and remain the sole property of the County upon acquisition and/or termination of this Agreement.

#### **Section 6: COMPLIANCE WITH LAWS**

The County agrees to observe all applicable federal, state and local laws, ordinances and regulations including, but not necessarily limited to, the Americans with Disabilities Act and chapter 49.60 RCW, to the extent that they may have any bearing on performing those tasks for the City as set forth in Section 1 hereinabove. Additionally, the County agrees to comply with all applicable funding audit requirements of the Washington State Department of Transportation in conjunction with performing those tasks for the City. The County agrees to make available to the City or its duly authorized representative during normal County business hours and all records which it has kept in conjunction with providing those services for the City as set forth herein above.

**Section 7: NOTICES**

All notices or other communications given under this Agreement shall be considered given on the day such notices or other communications are received when sent by personal delivery; or the third day following the day on which the notice or communication has been mailed by certified mail delivery, receipt requested and postage prepaid addressed to the other Party at the address set forth below, or at such other address as the Parties shall from time-to-time designate by notice in writing to the other Party:

CITY: Mayor or designee  
City of Spokane  
Seventh Floor, City Hall  
808 West Spokane Falls Boulevard  
Spokane, Washington 99201

COUNTY: Board of County Commissioners  
Spokane County Courthouse  
1116 West Broadway Avenue  
Spokane, Washington 99260

**Section 8: HEADINGS**

The section headings in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to, define, limit or extend the scope or intent of the sections to which they appertain.

**Section 9: MODIFICATION**

No modification or amendment of this Agreement shall be valid until the same is reduced to writing and executed with the same formalities as this present Agreement.

**Section 10: ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto. The City has read and understands all of this Agreement, and now states that no representation, promise or agreement not expressed in this Agreement has been made to induce the City to execute the same.

**Section 11: LIABILITY**

The County shall indemnify, defend and hold harmless the City, its officers and employees from all claims, demands, or suits in law or equity arising from the County's

intentional or negligent acts or breach of its obligations under the Agreement. The County's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the City, its officers and employees.

The City shall indemnify, defend and hold harmless the County, its officers and employees from all claims, demands, or suits in law or equity arising from the City's intentional or negligent acts or breach of its obligations under the Agreement. The City's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the County, its officers and employees.

If the comparative negligence of the Parties and their officers and employees is a cause of such damage or injury, the liability, loss, cost, or expense shall be shared between the Parties in proportion to their relative degree of negligence and the right of indemnity shall apply to such proportion.

Where an officer or employee of a Party is acting under the direction and control of the other Party, the Party directing and controlling the officer or employee in the activity and/or omission giving rise to liability shall accept all liability for the other Party's officer or employee's negligence.

Each Party's duty to indemnify shall survive the termination or expiration of the Agreement.

Each Party waives, with respect to the other Party only, its immunity under RCW Title 51, Industrial Insurance. The Parties have specifically negotiated this provision.

#### **Section 12: ANTI-KICKBACK**

No officer or employee of the City, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the Agreement.

#### **Section 13: VENUE STIPULATION**

This Agreement has been and shall be construed as having been made and delivered within the State of Washington. This Agreement shall be governed by the laws of the State of Washington both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement, or any of its provisions, shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

#### **Section 14: COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

**Section 15: SEVERABILITY**

If any parts, terms or provisions of this Agreement are held by the courts to be illegal, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the Parties shall not be affected in regard to the remainder of the Agreement. If it should appear that any part, term or provision of this Agreement is in conflict with any statutory provision of the State of Washington, then the part, term or provision thereof that may be in conflict shall be deemed inoperative and null and void insofar as it may be in conflict therewith and this Agreement shall be deemed to modify to conform to such statutory provision.

**Section 16: RCW 39.34 REQUIRED CLAUSES**

- A. PURPOSE: See Section 1.
- B. DURATION: See Section 2.
- C. ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS: No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
- D. RESPONSIBILITIES OF THE PARTIES: See Agreement provisions.
- E. AGREEMENT TO BE FILED: The City shall file this Agreement with its City Clerk. The County shall file this Agreement with its County Auditor or place it on its web site or other electronically retrievable public source.
- F. FINANCING: See Section 1.
- G. TERMINATION: See Section 3.
- H. PROPERTY UPON TERMINATION: See Section 5.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals the day and year first above written.

**BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON**

CITY OF \_\_\_\_\_

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

ATTEST:

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

\_\_\_\_\_  
Shelly O'Quinn, Chair

\_\_\_\_\_  
Al French, Vice Chair

\_\_\_\_\_  
Todd Mielke, Commissioner

ATTEST:

By \_\_\_\_\_  
Daniela Erickson  
Clerk of the Board

**Exhibit I**  
**Funding Allocation Methodology**

RCW 70.94.544 authorizes the CTR Board to determine the allocation of program funds made available for the purpose of implementing CTR plans. The funding allocated for local implementation of CTR activities in July 1, 2013 through June 30, 2015 is based on the decision taken by the CTR Board at its April 26, 2013 meeting.

**ATTACHMENT "A"**  
**STATEMENT OF WORK**

The County will:

1. Promote consistency within all affected local government jurisdictions within Spokane County, while serving the City's specific needs.
2. Maintain and administer the City's CTR Ordinances and Plan.
3. Employ a full-time Transportation Demand Management Manager to administer the County's and City's CTR Plans and Ordinances.
4. Take reasonable measures to identify and notify all affected employers within the City.
5. Assist each affected employer within the City in preparing a program and promoting the principles of Transportation Demand Management (TDM) with the employer's employees.
6. Maintain an appeals process consistent with RCW 70.94.537(2)(e) by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain a waiver or modification of those requirements and criteria for determining eligibility for waiver or modification. Within 30 days from the date of approval, submit to WSDOT the name and employer identification code for any worksite that has been granted an exemption. Include information about the duration of all exemptions and information on the type of modification granted.
7. Submit to Washington State Department of Transportation periodic progress reports summarizing the overall CTR implementation costs incurred by the County and shall be reported in a format provided by WSDOT.
8. Provide WSDOT with a public hearing notice and copies of any proposed amendments to the CTR ordinance, plan, and/or administrative guidelines within the first week of the public review period and final copies of all actions within one (1) month of adoption.
9. Coordinate and administer baseline and measurement CTR employer surveys. Provide employer survey assistance, training and state-supplied survey forms.
10. Notify Washington State Department of Transportation prior to sending any surveys to University of Washington for processing. The notification must include the name of the worksite, employer identification code and type of survey for each survey being submitted for processing. The notification shall be submitted as an electronic spreadsheet

via electronic mail. The County agrees to wait for confirmation from WSDOT prior to sending or delivering the surveys for processing.

11. Provide WSDOT with updated lists of affected worksites and jurisdiction contacts on a periodic basis or as requested by WSDOT. These updates will be submitted electronically in a format specified by WSDOT.
12. Continue to monitor the programs of each of the affected employers in the City to determine compliance with the CTR Ordinance and Plan. Complete annual review of employer CTR programs including a determination as to whether the employer is acting in good faith to meet the goals established by the CTR Law.
13. Provide on-going support to all employer designated Employee Transportation Coordinators (ETCs) and assist ETCs in facilitating regular employer networking opportunities and obtaining information necessary to perform their duties including information materials that explain a range of measures and activities to encourage employee use of commute alternatives.
14. Market available services to affected employers to assist in accomplishing CTR goals.
15. Work collaboratively with and provide technical guidance and support to employers in developing successful CTR programs.
16. Conduct at least one Basic ETC Training Course per year, using WSDOT-provided ETC Handbook and other training materials reviewed and approved by WSDOT.
17. Provide employers with written information on basic requirements of the CTR ordinance and goals set forth in approved CTR plans.
18. Attend transportation or health/benefits fairs at affected employer worksites to encourage high-occupancy vehicle commuting and promote the employer's CTR program.
19. Design, construct and distribute worksite Commuting Options Boards. Provide professional materials such as brochures, flyers, posters, newsletters, clip art and other tools to assist employer implementation of worksite CTR programs.
20. Provide all affected employers with the WSDOT-approved "Program Description & Employer Annual Report" form. Ensure completed reports are submitted by affected employers to meet applicable deadlines.
21. Submit to Washington State Department of Transportation periodic invoices along with progress reports that accurately assess the progress made by County, on behalf of City, in implementing RCW 70.94.521-551.  
Report contents include:
  - a. Detailed summary of CTR events and projects, including implementation assistance provided to affected employers within the City;

- b. Actual total CTR expenditures used by the County for all state CTR funds expended by the County during the previous quarter for the purpose of CTR implementation using WSDOT pre-approved format;
  - c. Updated list of affected employers and worksites (electronic);
  - d. Total number of worksites by jurisdiction;
  - e. List of sites which have applied for exemptions or modifications;
- 
- 22. Establish and maintain books, records, documents and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred solely for the performance of this Agreement. Establish and maintain a separate "CTR Account" within Spokane County along with supporting documentation such as payroll and time records, invoices, contracts, vouchers or products proving in proper detail the nature and propriety of the charges.
  - 23. Participate in local implementation of statewide CTR public awareness and recognition programs developed by Washington State Department of Transportation.
  - 24. Offer recommendations to the City for policies on parking and site design which will encourage the use of alternative transportation modes.
  - 25. Encourage employers to develop site designs and improvements to office and industrial sites that promote the use of alternative transportation modes.
  - 26. Assist Washington State Department of Transportation with CTR evaluation.
  - 27. Serve as liaison between Washington State Department of Transportation and cities, towns, transit agencies and regional transportation planning organizations for the purpose of RCW 70.94.521-551.
  - 28. Continue applying for funding opportunities to further encourage the use of commute alternatives.

**ATTACHMENT "B"**  
**STATEMENT OF WORK**

The City will:

1. Provide Spokane County with copies of any proposed amendments to the CTR Plan and Ordinance.
2. Provide Spokane County with copies of any CTR-related amendments to parking ordinances prior to public review.
3. Develop, implement and maintain its own CTR Program as an affected employer or as otherwise specified in the CTR Board Guidelines or RCW 70.94.521-551.
4. Reimburse the County for the services provided by this Agreement in an amount equal to the City's share of the CTR funding as provided in RCW 70.94.544.



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	OPR 2013-0651
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	PLANNING & DEVELOPMENT
<b>Contact Name/Phone</b>	SCOTT CHESNEY 625-6061
<b>Contact E-Mail</b>	SCHESENEY@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Contract Item
<b>Agenda Item Name</b>	0650-PURCHASE & SALE-KENDALL YARDS 4TH ADDITION

**Agenda Wording**

Purchase and Sale Agreement for Kendall Yards 4th Addition Tendered Improvements

**Summary (Background)**

In 2007, City Council adopted Ordinance C34032 forming the "West Quadrant Increment Area" including the Kendall Yards Sub-Area and approving a "Reimbursement Agreement." Thereafter, the City Council adopted Ordinance C34758 authorizing an "Amended and Restated Reimbursement Agreement." Under Article V of that agreement, the developer may offer to sell the City certain public improvements according to the terms of a "Form of Purchase and Sale Agreement."

**Fiscal Impact**

Expense	\$ 818,236.91
Select	\$
Select	\$
Select	\$

**Budget Account**

# ----
#
# BudgetAccount3
#

**Approvals**

<b>Dept Head</b>	CHESNEY, SCOTT
<b>Division Director</b>	CHESNEY, SCOTT
<b>Finance</b>	LESESNE, MICHELE
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	PCED 4/8/13

**Distribution List**

schesney@spokanecity.org
aworlock@spokanecity.org
rromero@spokanecity.org
pdolan@spokanecity.org
jrichman@spkanecity.org
jwheaton@greenstonehomes.com
bscandelis@greenstonehomes.com

**Additional Approvals**

<b>Purchasing</b>	

## PURCHASE AND SALE AGREEMENT

### Kendall Yards 4th Addition Tendered Improvements

This PURCHASE AND SALE AGREEMENT, dated as of \_\_\_\_\_, 20\_\_ (this "Agreement"), is by and among the CITY OF SPOKANE, WASHINGTON, a Washington municipal corporation and first-class charter city (the "City"), NORTH GORGE RESIDENTIAL PARTNERS, LLC, a Washington limited liability company (the "Seller"), and GREENSTONE CORPORATION, a Washington corporation (the "Guarantor").

#### RECITALS:

WHEREAS, pursuant to Ordinance No. C-34032, enacted on May 14, 2007 (the "Formation Ordinance"), the City established an increment area pursuant to chapter 39.89 RCW (the "Increment Area") to encourage private development and to provide for the acquisition, construction and installation of certain public improvements within the Increment Area;

WHEREAS, the Formation Ordinance delineates certain public improvements (the "Kendall Yards Sub-Area Improvements") to be acquired within the Kendall Yards Sub-Area of the Increment Area (the "Kendall Yards Sub-Area");

WHEREAS, the Seller has received preliminary approval (the "Approval") of a plat and planned unit development to be developed by the Seller within the boundaries of the Kendall Yards Sub-Area (the "Project");

WHEREAS, the Seller is preparing to finalize a portion the Project referred to as Kendall Yards 4th Addition (the "Plat");

WHEREAS, in preparing to finalize the Plat, the Seller has completed certain Kendall Yards Sub-Area Improvements within the boundaries of the Plat, which, if acquired by the City, would constitute public improvements (the "Tendered Improvements," as further defined in Section 1 of this Agreement);

WHEREAS, RCW 39.89.070 and Section 6 of the Formation Ordinance authorize the City to use the regular property tax revenue allocated to it pursuant to RCW 39.89.070(1)(b) to finance "public improvement costs," including "the costs of . . . acquisition . . . of public improvements" (which "public improvements" may include Kendall Yards Sub-Area Improvements);

WHEREAS, the establishment and maintenance of public streets and appurtenances, waste water and storm water systems and other related improvements, such as the Tendered Improvements, are fundamental purposes of city government;

WHEREAS, pursuant to an Amended and Restated Reimbursement Agreement (the "TIF Agreement") dated as of \_\_\_\_\_, 2011, between the City and the Seller, the City and the Seller have provided methods by which Kendall Yard Sub-Area Public Improvements may be constructed, acquired and financed with "Incremental Revenues" (as defined in the Formation

Ordinance and used herein) generated within the Kendall Yards Sub-Area, subject to receipt of such revenues and the satisfaction of the terms and conditions set forth in the TIF Agreement;

WHEREAS, pursuant to the TIF Agreement, the City has created and agreed to maintain the “Kendall Yards Fund” (as defined in the TIF Agreement and used herein), into which “Pledged Tax Allocation Revenues” (as defined in the TIF Agreement and used herein) will be deposited, which Pledged Tax Allocation Revenues have been pledged in the TIF Agreement for the purposes of paying certain costs, including amounts payable pursuant to this Agreement; and

WHEREAS, in exchange for the contingent promise of payments from the City, the Seller has offered to sell the City the Tendered Improvements, which improvements are located in the Plat, are owned by the Seller, and will become public improvements only upon the City’s acquisition thereof pursuant to this Agreement;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the City and the Seller agree as follows:

1. Purchase and Sale. Upon the terms and conditions set forth herein, the City agrees to acquire from the Seller, and the Seller agrees to sell to the City the following improvements (collectively, the “Tendered Improvements”):

- (a) The improvements listed in Exhibit A attached hereto, which are located within the area reflected in the map attached hereto as Exhibit B; and
- (b) all of the Seller’s right, title and interest in and to all permits, licenses, approvals, studies, surveys, bonds, warranties, and other documents associated with the improvements listed in Section 1(a).

2. Purchase Price. The purchase price for the Tendered Improvements shall be Eight Hundred, Eighteen Thousand & Two Hundred, Thirty-Six and 91/100 Dollars (\$818,236.91) (such dollar amount, as the same may be reduced pursuant to Section 5(c) of this Agreement, is referred to herein as the “Purchase Price”). The Purchase Price will be paid by the City, together with interest thereon calculated at the rate of \_\_\_\_% *per annum* from the date of Closing (computed on the basis of a 365/366-day year, actual days elapsed), payable semiannually on the fifteenth day of each June and December (or, if such day is not a business day, then on the first business day thereafter), commencing on the Initial Payment Date (as defined below), to the earlier of (a) the date the City has paid the Purchase Price and all accrued interest thereon, and (b) December 15, 2032. Notwithstanding the foregoing, the Purchase Price and interest accrued thereon will be payable only to the extent Pledged Tax Allocation Revenues are available to make such payment and all other payments required to be made from Pledged Tax Allocation Revenues on such date. Payments hereunder will be applied first to interest, then to the principal sum of the Purchase Price. Interest will not be compounded. For purposes of this Agreement, the phrase “Initial Payment Date” means the June 15 or December 15, (or, if such day is not a business day, then on the first business day thereafter) whichever occurs first, occurring immediately after the Seller provides the City’s Chief Financial Officer with a duly-executed certificate in the form attached as Exhibit C hereto (which payment date shall not be sooner than five business days after the City’s Chief Financial Officer is tendered such certificate).

Exhibit “C”

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The City's obligation to pay the Purchase Price and interest accrued thereon shall expire, without recourse against the City, at midnight on December 15, 2032. The City will acquire the Tendered Improvements at Closing notwithstanding the fact the Purchase Price and interest accrued thereon may never be paid in full.

The City's obligation to pay the Purchase Price and interest accrued thereon is a special, limited and contingent obligation of the City payable only from Pledged Tax Allocation Revenues in the Kendall Yards Fund, subject to the priority of payment specified in Section 3.03 of the TIF Agreement, and is not an obligation of the state of Washington or any other political subdivision thereof other than the City. This Agreement does not constitute a charge upon any fund (other than the Kendall Yards Fund) or upon any money (other than money in the Kendall Yards Fund) or other property of the City, the state of Washington, or any other political subdivision thereof. The City's full faith, credit and resources are not pledged for the payments specified in this Section.

The Seller and the City acknowledge that they have agreed in Section 3.03 of the TIF Agreement that payments from the Kendall Yards Fund are subject to priorities based on the purpose of payment, and that payments under this Agreement are subordinate in priority to other payments described in Section 3.03 of the TIF Agreement.

3. Closing; Closing Costs; Fees. Closing shall occur on Jan, 3 2014 (or the first business day thereafter that all of the conditions to Closing are satisfied). As used herein, "Closing" or "date of Closing" means the date on which all appropriate documents are recorded, including without limitation the Plat. At Closing, the Seller shall pay: the costs of recording any documents to be recorded pursuant to this Agreement; any real estate transfer taxes; and any sales/use taxes on tangible personal property transferred to the City hereunder. Each party shall be responsible for its own legal, accounting and consultant fees.

4. Deliverables at Closing.

- (a) At Closing, the Seller shall deliver to the City's Chief Financial Officer, and file with the City Clerk a duplicate copy of, the following (collectively, the "Seller Deliverables"): (1) a conformed copy of the Plat recorded with the Spokane County Auditor reflecting a dedication to the City of the Tendered Improvements; (2) evidence that the Tendered Improvements have been completed to the City's satisfaction; (3) evidence that such Tendered Improvements have been accepted by the City; (4) lien waivers from contractors who performed work comprising the Tendered Improvements; (5) evidence from contractors or subcontractors, as applicable, that the construction, installation and equipping of the Tendered Improvements were undertaken in compliance with the prevailing wage requirements under chapter 39.12 RCW (applying such requirements as if the Tendered Improvements were a public work); (6) in the event any of the Tendered Improvements constitute personal property, a Bill of Sale in the form attached as Exhibit D hereto transferring such personal property to the City; (7) in the event any of the Tendered Improvements are incomplete at Closing, the Seller shall provide the City with one or more payment and performance bonds (with sureties reasonably acceptable to the City) guaranteeing completion of such Tendered

Improvements (with the costs of completion valued as if such completion was undertaken by the City as a public work); (8) a final closing statement executed by the Seller; (9) all warranties and guarantees affecting any portion of the Tendered Improvements; and (10) notice of any existing or threatened litigation affecting or relating to the Tendered Improvements and copies of any pleadings with respect to that litigation. At Closing, the City shall deliver to the Seller an executed counterpart of such closing statement.

- (b) The City may, in its sole discretion, acquire the Tendered Improvements from the Seller notwithstanding the fact the some or all of the Seller Deliverables have not been furnished as of the date of Closing in form or substance that is reasonably acceptable to the City. The Seller acknowledges, in particular, that the City's ability and obligation to pay the Purchase Price, or any portion thereof, allocable to any particular Tendered Improvement is subject to and contingent upon the City determining, in its sole discretion, that (1) such Tendered Improvement is a public improvement within the meaning of chapter 39.89 RCW and the Formation Ordinance, (2) such Tendered Improvement has been completed as of the date of Closing (or, if such Tendered Improvement is not complete, that no portion of the Purchase Price is allocable to the costs necessary to complete such Tendered Improvement), (3) the construction, installation and equipping of such Tendered Improvement were undertaken in compliance with the prevailing wage requirements under chapter 39.12 RCW (applying such requirements as if the Tendered Improvement was a public work), (4) all lien waivers have been obtained from contractors who performed work comprising the Tendered Improvement, and (5) the amount of the Purchase Price allocable to such Tendered Improvement does not exceed the dollar amount actually paid by the Seller (or its affiliates) to acquire, construct, install and equip the Tendered Improvement (without any allocation of costs for general overhead or land acquisition costs). The Seller will provide to the City, at the City's request, as soon as possible (but in any event no later than ninety (90) days after the date of this Agreement) any and all materials comprising the Seller Deliverables or such materials as are necessary for the City to make the determinations described in this Section 5(b).
- (c) The Purchase Price has been negotiated based on the Seller's representations regarding the matters set forth in Section 5(a) of this Agreement. During the period ending on the date which is one-hundred, fifty (150) days following the date of this Agreement, the City may conduct a review of the Seller Deliverables and Tendered Improvements and satisfy itself with respect to such representations. In the event the City determines, in its sole discretion, that the Seller Deliverables do not support each of the Seller's representations and does not concur with the Purchase Price, the Purchase Price will be reduced by the amount allocable to the cost of any Tendered Improvement (as shown on Exhibit E or as hereafter determined upon review of materials submitted by the Seller after the Closing) for which the City cannot make each of the determinations specified in Section 5(b) of this Agreement. The City's determination under this

Section 5(c) shall not relieve the Seller of any responsibility and shall not constitute a waiver of any of the Seller's responsibilities under this Agreement.

5. Maintenance of Tendered Improvements Pending Closing; Completion Obligation. The Seller agrees to keep the Tendered Improvements in good working order and repair until the Tendered Improvements are acquired by the City hereunder. The Seller further agrees not to defer maintenance unless specifically instructed to do so by the City. If any of the Tendered Improvements are incomplete at Closing, the Seller shall complete such Tendered Improvements at its own costs in a commercially reasonable period of time.

6. Risk of Loss. The Seller shall deliver the Tendered Improvements to the City at Closing in substantially the same condition existing as of the date hereof. Risk of loss of or damage to the Tendered Improvements shall be borne by the Seller until the date of Closing. In the event of loss or damage to the Tendered Improvements or any portion thereof prior to Closing, the City may terminate this Agreement. Notwithstanding the foregoing, the City may elect to purchase the Tendered Improvements in the condition existing on the date of Closing, and the Seller shall assign or transfer to the City all insurance proceeds or insurance claims applicable to any loss or damage occurring prior to Closing and provide the City with a credit for the amount of any deductible thereunder.

7. The Seller's Representations and Warranties. The Seller represents and warrants to the City that:

- (a) As of the date of Closing, the Seller shall have good, marketable, indefeasible title to the Tendered Improvements free and clear of all liens, claims and encumbrances.
- (b) The amounts actually paid by the Seller (or its affiliates) to acquire, construct, install and equip the Tendered Improvements are evidenced by the invoices and receipts attached hereto as Exhibit E. No portion of amounts listed in Exhibit E represents a prepayment for services or materials to be provided after the date of this Agreement.
- (c) The Tendered Improvements comply with the Approval and meet all applicable state and local laws within the meaning of RCW 39.89.040(2). In particular, the construction, installation and equipping of the Tendered Improvements were undertaken in compliance with the prevailing wage requirements under chapter 39.12 RCW (applying such requirements as if the Tendered Improvements were a public work).
- (d) To the best of the Seller's knowledge: (i) the Tendered Improvements do not contain, no activity on the Tendered Improvements has produced, and the Tendered Improvements have not been used in any manner for the storage, discharge, deposit or dumping of hazardous or toxic wastes or substances, whether in the soil, ground water or otherwise; (ii) the Tendered Improvements do not contain underground tanks of any kind except such underground stormwater detention tanks or vaults that the Seller has constructed at the request of the City;

(iii) the Tendered Improvements do not contain and do not produce polychlorinated biphenyls, urea formaldehyde, asbestos or radon gas; and (iv) there are no surface or subsurface conditions that constitute, or with the passage of time may constitute, a public or private nuisance. The Seller has not undertaken any of the foregoing activities and has not caused or allowed any of the foregoing conditions to exist with respect to the Tendered Improvements.

8. Acknowledgements of the Seller. The Seller acknowledges that: (a) the source of money to pay the Purchase Price and interest accrued thereon will be limited to the Pledged Tax Allocation Revenues; (b) the amount of the Pledged Tax Allocation Revenues will depend primarily upon the construction of taxable improvements on taxable property within the Kendall Yards Sub-Area; and (c) the City's receipt of the Pledged Tax Allocation Revenues will be dependent upon factors outside the City's control, such as when property is assessed within the Kendall Yards Sub-Area, when taxes are paid by owners of such property, whether regular property tax rates will increase or decrease, and possible changes to the State laws governing property taxation. The Seller acknowledges that payment of the Purchase Price is subordinate to (a) the payment in full of the outstanding amount of the Payment Obligation on the date of this Agreement, which is \$\_\_\_\_\_ ; (b) the payment of any purchase price or other payments to be made under any other purchase and sale agreement between the City and the Seller for any Kendall Yards Sub-Area Improvements dated prior to the date of this Agreement, which is the principal amount of \$\_\_\_\_\_ ; and (c) the payment of Public Improvement Costs incurred by the City to construct and install any Kendall Yards Sub-Area Improvements prior to the date of this Agreement, together with interest thereon, which costs are \$\_\_\_\_\_. The Seller acknowledges and agrees that this Agreement and the use of community revitalization financing under the Act, as contemplated by the parties, involve legal issues that are not addressed by existing laws, regulations, rulings and court decisions. The Seller has independently evaluated the legal and other risks associated with the agreements set forth herein and hereby acknowledges that it shall not be entitled to rely on the advice (if any) provided to it by the City or the City's counsel, and hereby further acknowledges that no guarantee has been made by the City or the City's counsel regarding outcomes if any of the contemplated arrangements are challenged in a court of competent jurisdiction.

9. Non-Waiver. This Agreement is not intended to address any condition(s) of development approval and shall not be construed in any manner as a waiver of any such conditions. Nor shall this Agreement relieve the Seller from its obligations to: (a) comply with rules and regulations applicable to the design, engineering and construction of public or private improvements constructed in the Kendall Yards Sub-Area; (b) secure such governmental approvals and permits as may be imposed as a condition of any work being performed in the Kendall Yards Sub-Area; or (c) pay all cost and expenses associated with such approvals and permits, including without limitation fees imposed by the City.

10. Indemnification. The Seller and the Guarantor jointly and severally agree to defend, indemnify and save the City, its appointed or elected officials, and its employees (collectively, the "Indemnified Parties"), harmless against and from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the Seller's development and construction of all or any portion of the Tendered Improvements or the City's acquisition of the Tendered Improvements pursuant to this Agreement ("Claims"), including without limitation any

claim that the Tendered Improvements, or the City's acquisition thereof, failed to meet all applicable state and local laws. The indemnification obligations undertaken by the Seller and the Guarantor in this Section shall apply to any legal action or proceeding, and to costs and fees (including reasonable legal fees) incurred in any such action or proceedings commenced with respect to a Claim, whether at trial, on appeal, or otherwise, and upon notice from any Indemnified Party, the Seller and the Guarantor jointly and severally shall defend the Indemnified Parties in any such action or proceeding at the expense of the Seller and the Guarantor. As security for the Seller's obligations under this Section, the City shall have the absolute right to suspend and withhold any and all payments required by Section 2 of this Agreement, and to recover the same from Eligible Tax Allocation Revenues, with interest (calculated in the same manner and at the same rate interest otherwise would be payable to the Seller under Section 2), until the City recovers any and all expenses or costs incurred by the City as a result of any such claims.

Notwithstanding anything to the contrary contained herein, neither the Seller nor the Guarantor shall have any liability to indemnify an Indemnified Party against Claims or damages resulting directly from the negligence, gross negligence or intentional misconduct of the City or its elected, appointed officials, employees or agents.

In the event any Claim is made against an Indemnified Party for which indemnification may be sought from the Seller or the Guarantor under the foregoing provisions, such Indemnified Party shall promptly give written notice thereof to the Seller and the Guarantor; provided that any failure to give or delay in giving such written notice shall not relieve the indemnification obligations of the Seller or the Guarantor as set forth above except to the extent such failure or delay prejudices the ability of the Seller or the Guarantor to defend or settle such claim. Upon receipt of such notice, the Seller and the Guarantor jointly and severally shall assume the defense thereof in all respects and may settle such claim in such manner as they deem appropriate so long as there is no liability, cost or expense to the Indemnified Party.

The obligations of the Seller or the Guarantor under this Section as to Claims related to the design or construction of the Tendered Improvements shall expire if, as of the second anniversary of the Closing Date, either (a) no Claim has been made against an Indemnified Party, or (b) any and all Claims previously made against the Indemnified Parties have been resolved to the City's satisfaction. The obligations of the Seller or the Guarantor under this Section with respect to all other Claims shall expire if, as of the third anniversary of the Closing Date, either (a) no Claim has been made against an Indemnified Party, or (b) any and all Claims previously made against the Indemnified Parties have been resolved to the City's satisfaction.

The Seller and the Guarantor each waives immunity under Title 51 RCW to the extent necessary to protect the City's interests under this indemnification. This provision has been specifically negotiated.

11. Notices. All notices or communications herein required or permitted to be given shall be in writing as set forth in this Section. Notices must be sent by registered or certified mail, postage prepaid, return receipt requested, or sent by commercial delivery service, by hand delivery, or by telecopy, paid for by the sender, to the addressee(s) thereof at the last address(es) designated for such purpose. The date of receipt of such registered mail or certified mail, or the date of actual receipt of such writing by commercial delivery service, hand delivery or telecopy,

Exhibit "C"

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will be deemed for purposes of this Agreement as the date of such notice. As of the date of this Agreement, the addresses of the parties are:

If to the City: City of Spokane  
Chief Operating Officer  
808 West Spokane Falls Boulevard  
Spokane, WA 99201-3303  
Phone: (509) 625-6268  
Fax: (509) 625-6217

With a copy to: City Attorney  
City of Spokane  
5<sup>th</sup> Floor, Municipal Building  
808 W. Spokane Falls Boulevard  
Spokane, WA 99201-3326  
Phone: (509) 625-6238  
Fax: (509) 625-6277

If to the Seller: North Gorge Residential Partners, LLC  
c/o Greenstone Homes  
1421 N. Meadowwood Lane, Suite 200  
Liberty Lake, WA 99019  
Phone: (509) 720-8401  
Fax: (509) 458-5862

With a copy to: Koegen Edwards LLP  
601 West Riverside Avenue, Suite 1700  
Spokane, WA 99201  
Phone: (509) 343-4477  
Fax: (509) 747-4545

If to the Guarantor: Greenstone Corporation  
1421 N. Meadowwood Lane, Suite 200  
Liberty Lake, WA 99019  
Phone: (509) 458-5860  
Fax: (509) 458-5862

The Seller, the Guarantor and the City each may, by notice given to the other parties hereunder, designate any further or different address to which subsequent notices, certificates and other communications shall be sent to it.

12. No Joint Venture or Partnership. In no event shall this Agreement be construed to create a joint enterprise, joint venture or partnership of the City, the Guarantor and the Developer with respect to the Tendered Improvements. The Seller is an independent contractor and not the agent or employee of the City.

13. Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

14. Future Course of Dealing. Notwithstanding the City's agreement to acquire the Tendered Improvements pursuant to this Agreement, the Seller and the City agree that the City may refuse to purchase any future improvements that are tendered by Seller (other than Kendall Yards Sub-Area Improvements for which the City has provided seller with an "Approval Notice" pursuant to Article IV of the TIF Agreement). This Agreement is not intended by the parties to establish a course of dealing, a course of performance, or an implied agreement that the City will acquire or finance improvements in the Increment Area other than by means of the procedures set forth in Article IV of the TIF Agreement.

15. Limitation of Rights. Nothing expressed in or to be implied from this Agreement is intended to give, or shall be construed to give, any person other than the parties hereto, and their permitted successors and assigns, any benefit or legal or equitable right, remedy or claim under or by virtue of this Agreement. No party may assign its interests under this Agreement without the consent of the other party (which consent will not be unreasonably withheld or delayed).

16. Severability of Invalid Provisions. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part thereof.

17. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State applicable to contracts made and performed within the State. The venue for any dispute arising under this Agreement shall be in the Superior Court of the State for Spokane County, Washington.

*[Signatures appear on the following page(s)]*

IN WITNESS WHEREOF, the parties hereto have caused this Purchase and Sale Agreement to be executed in their names and behalf by their duly authorized representatives as of the date first above written.

City: CITY OF SPOKANE, WASHINGTON

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

Seller: NORTH GORGE RESIDENTIAL PARTNERS,  
LLC

By: JMF Management, LLC, its manager



\_\_\_\_\_  
Manager

Guarantor: GREENSTONE CORPORATION



\_\_\_\_\_  
President

Exhibit A

**LIST OF TENDERED IMPROVEMENTS**

**See Attached:**

**“List of Kendall Yards Tendered Improvements,” Dated July 3rd 2013.**

Exhibit B

**MAP REFLECTING LOCATIONS OF TENDERED IMPROVEMENTS**

**See Attached:**

**Kendall Yards 4th Addition Street Plan.**

**Kendall Yards 4th Addition Sewer Plan.**

**Kendall Yards 4th Addition Water Plan.**

**Kendall Yards 4th Addition Landscape Plan.**



Exhibit E

**INVOICES AND RECEIPTS**

**EXHIBIT “D”  
FORM OF PAYMENT OBLIGATION**

STATE OF WASHINGTON  
CITY OF SPOKANE  
WEST QUADRANT INCREMENT AREA PAYMENT OBLIGATION

Interest Rate: \_\_\_\_\_%

Maturity Date: December 31, 2032

Holder: NORTH GORGE RESIDENTIAL PARTNERS, LLC

The CITY OF SPOKANE, WASHINGTON (the “City”), a municipal corporation of the state of Washington, promises to pay to the Holder and any Permitted Assignee the outstanding principal amount set forth from time to time on the Payment Obligation Schedule attached hereto and to pay interest (computed on the basis of a 365/366-day year, actual days elapsed) thereon from the date hereof at the Interest Rate *per annum* as set forth above, payable on each June 15 and December 15 (or, if such day is not a business day, then on the first business day thereafter) to the maturity of this Payment Obligation (each, an “Interest Payment Date”), commencing with the June 15 or December 15 first occurring after the date on which the first Approval Notice is delivered by the City to the Holder pursuant to Section 4.03 of the Kendall Yards Sub-Area Improvements Agreement (Amended and Restated Reimbursement Agreement), dated the \_\_\_ day of \_\_\_\_\_, 2011 between the City and North Gorge Residential Partners, LLC (the “TIF Agreement”); *provided, however*, interest on this Payment Obligation shall be payable only to the extent Pledged Tax Allocation Revenues are available on Interest Payment Date and shall not be compounded to the extent not paid. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the TIF Agreement, as the same may be amended from time to time.

The City shall redeem the principal of this Payment Obligation on each Interest Payment Date to the extent Pledged Tax Allocation Revenues are available under the TIF Agreement on such date in an amount greater than the accrued interest on this Payment Obligation that is due and is payable on such date. The principal amount of this Payment Obligation shall be established in accordance with Section 4.01(a) of the TIF Agreement pursuant to the delivery of Approval Notices by the City, with the principal amount identified in each Approval Notice recorded on the Payment Obligation Schedule; *provided, however* that any inadvertent failure to include an amount on the Payment Obligation Schedule shall not affect on the amount of this Payment Obligation.

The Pledged Tax Allocation Revenues have been pledged by the City in the TIF Agreement for the payment of this Payment Obligation, subject to the limitations and priorities specified in the TIF Agreement.

THE CITY’S OBLIGATIONS TO PAY THE PRINCIPAL OF THIS PAYMENT OBLIGATION AND ALL ACCRUED INTEREST HEREON SHALL EXPIRE, WITHOUT RECOURSE AGAINST THE CITY, AT MIDNIGHT ON THE MATURITY DATE, UNLESS

THE CITY IS IN DEFAULT OF ITS OBLIGATIONS UNDER THE TIF AGREEMENT OR THIS PAYMENT OBLIGATION AS OF THE MATURITY DATE.

Both principal of and interest on this Payment Obligation are payable in lawful money of the United States of America to the Holder at the address Holder provided in writing by the Holder to the City Treasurer, and shall be paid by check of the City, or by wire transfer to the account identified by the Holder in writing.

THIS PAYMENT OBLIGATION IS A SPECIAL, LIMITED AND CONTINGENT OBLIGATION OF THE CITY PAYABLE ONLY FROM PLEDGED TAX ALLOCATION REVENUES. THIS PAYMENT OBLIGATION IS NOT AN OBLIGATION OF STATE OF WASHINGTON OR ANY OTHER POLITICAL SUBDIVISION THEREOF OTHER THAN THE CITY. THIS PAYMENT OBLIGATION DOES NOT CONSTITUTE A CHARGE UPON ANY FUND (EXCEPT THE KENDALL YARDS SUB-AREA FUND) OR UPON ANY MONEY OR OTHER PROPERTY OF THE CITY, THE STATE OF WASHINGTON, OR ANY OTHER POLITICAL SUBDIVISION THEREOF NOT SPECIFICALLY PLEDGED TO THE PAYMENT HEREOF. THE CITY'S FULL FAITH, CREDIT AND RESOURCES ARE NOT PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS PAYMENT OBLIGATION. THIS PAYMENT OBLIGATION DOES NOT CONSTITUTE AN INDEBTEDNESS OR GENERAL OBLIGATION OF THE CITY WITHIN THE MEANING OF THE STATE CONSTITUTION, STATUTORY OR CHARTER DEBT LIMITATIONS OR RESTRICTIONS, INCLUDING WITHOUT LIMITATION: ARTICLE VIII, SECTION 6 OF THE WASHINGTON CONSTITUTION; CHAPTER 39.36 RCW; AND SECTION 85 OF THE CITY CHARTER.

This Payment Obligation may be transferred by the Holder to a Permitted Assignee at the office of the City Treasurer upon surrender and cancellation of this Payment Obligation in the accordance with Section 9.02 of the TIF Agreement. Upon such transfer, a new Payment Obligation in the principal amount of the then-unpaid principal amount hereof will be issued to the new Holder, without charge, in exchange thereof. Transfer shall be subject to the limitations of Section 9.02 of the TIF Agreement and conditioned on the City's receipt from the transferee of a Certificate in the form attached hereto as Attachment A.

It is certified that all acts, conditions and things required to be done precedent to and in the issuance of this Payment Obligation have been done, have happened and have been performed as required by law.

IN WITNESS WHEREOF, the City has caused this Payment Obligation to be executed on behalf of the City by the signatures of its Mayor and City Clerk, and to be imprinted, stamped or impressed with the official seal of the City, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF SPOKANE, WASHINGTON

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

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

Exhibit C

**INITIAL PAYMENT DATE CERTIFICATE**

I, the undersigned, deliver this certificate to the City of Spokane, Washington (the "City"), pursuant to Section 2 of that certain Purchase and Sale Agreement, dated as of \_\_\_\_\_, 20\_\_ (the "Agreement"), among the City, North Gorge Residential Partners, LLC (the "Seller") and Greenstone Corporation (the "Guarantor"). On behalf of the Seller, I hereby certify the truth, accuracy and completeness of the following matters:

1. I am authorized by the Seller to provide these certifications on its behalf.
2. The Initial Payment Date is (June 15)(December 15), 20\_\_, which date is: (a) the June 15<sup>th</sup> or December 15<sup>th</sup>, whichever occurs first, occurring immediately after the Seller provides the City's Chief Financial Officer with this certificate, and (b) not be sooner than five business days after the City's Chief Financial Officer has been provided this certificate.
3. The Seller has not assigned all or any part of its rights under the Agreement or under the Amended and Restated Reimbursement dated \_\_\_\_\_, 2011, between the City and the Seller.
4. Neither the Seller nor the Guarantor have failed to pay any amounts required to have been paid by it under the Agreement prior to the date hereof.
5. All of the representations and warranties of the Seller in Section 8 of the Agreement are true and correct in all material respects as of date hereof as if made thereon.
6. This certificate is made on the date hereof to induce the City to commence paying installments of the Purchase Price pursuant to Section 2 of the Agreement.

Capitalized words and phrases not otherwise defined herein shall have the respective meanings ascribed to such words and phrases in the Agreement

Dated as of \_\_\_\_\_, 20\_\_.

NORTH GORGE RESIDENTIAL PARTNERS,  
LLC

By: JMF Management, LLC, its manager



\_\_\_\_\_  
James F. Frank, Manager

**Preliminary -Projected List of Kendall Yards 4th Addition Tendered Improvements**

**7/3/2013**

Quantity	Units	Description	Unit Price	Cost	Contractor	Invoice #
<b>STREET IMPROVEMENTS</b>						
<i>Sidewalk</i>						
14,000	SF	4" sidewalk (Summit/Nettleton)	2.65	\$37,100.00	Five Star Concrete	
3,750	SF	4" sidewalk (Bridge)	2.65	\$9,937.50	Five Star Concrete	
128	SF	ADA Tactile Warnings	20.00	\$2,560.00	Five Star Concrete	
3,550	LF	Sidewalk Grade	3.46	\$12,283.00	Continental Contractors	
1	EA	Type I inlet-swale pad	100.00	\$100.00	Five Star Concrete	
1	EA	Type II sidewalk inlet	850.00	\$850.00	Five Star Concrete	
Sidewalk Total:				<b>\$62,830.50</b>		
<i>Curb</i>						
2,800	LF	24" Type B curb and gutter	9.00	\$25,200.00	Five Star Concrete	
160	LF	12" Pedestrian curb (handset)	12.00	\$1,920.00	Five Star Concrete	
3,700	LF	Rock Under Curb	1.88	\$6,956.00	Continental Contractors	
3,700	LF	Curb Grade	3.54	\$13,098.00	Continental Contractors	
Curb Total:				<b>\$47,174.00</b>		
<i>Street</i>						
1,600	SF	6" Alley Approaches/sidewalk	4.00	\$6,400.00	Five Star Concrete	
1	LS	Subgrade	18,940.00	\$18,940.00	Continental Contractors	
69,025	SF	Fine Grade	0.22	\$15,185.50	Continental Contractors	
3,618	SY	Paving Summit (5" on 7")	19.6Q	\$70,912.80	Poe Asphalt	
3,767	SY	Paving Nettleton/Alley (3" on 4")	12.05	\$45,392.35	Poe Asphalt	
3,767	SY	Base Rock Nettleton/Alley	4.96	\$18,684.32	Continental Contractors	
3,618	SY	Base Rock Summit	5.48	\$19,826.64	Continental Contractors	
1	LS	Street Signs	4,200.00	\$4,200.00	National Barricade and Sign Co.	
Street Total:				<b>\$199,541.61</b>		
<i>Storm</i>						
2	EA	Storm Manhole Type III	2,564.00	\$5,128.00	Continental Contractors	
6	EA	Type I Catch Basin	1,979.00	\$11,874.00	Continental Contractors	
3	EA	Drywell	2,560.00	\$7,680.00	Continental Contractors	
1	LS	Ponds/Splash pads/Trash Rack (3)	13,635.00	\$13,635.00	Continental Contractors	
140	LF	12" DI Storm	52.52	\$7,352.80	Continental Contractors	
252	LF	18" DI Storm	90.20	\$22,730.40	Continental Contractors	
560	LF	6" Irrigation crossings	14.10	\$7,896.00	Continental Contractors	
Storm Total:				<b>\$76,296.20</b>		
<i>Utilities</i>						
1	LS	Utility trench/crossings	14,693.00	\$14,693.00	Continental Contractors	
Utilities Total:				<b>\$14,693.00</b>		
<i>Inspection/Testing</i>						
1	LS	Inspection Fees for Streets	5,283.00	\$5,283.00	City of Spokane	
1	LS	Inspection Fees for Storm Sewer	336.00	\$336.00	City of Spokane	
1	LS	Compaction Testing/Inspection	3,500.00	\$3,500.00	Allwest	
Inspection/Testing Total:				<b>\$9,119.00</b>		
<i>Survey</i>						
1	LS	Centerline Subgrade Staking	1,500.00	\$1,500.00	RFK Survey	
1	LS	Curb/Asphalt Staking	4,000.00	\$4,000.00	RFK Survey	
1	LS	Storm/Crossings/Utility Staking	3,200.00	\$3,200.00	RFK Survey	
Survey Total:				<b>\$8,700.00</b>		
<b>Street Improvements Total:</b>				<b>\$418,354.31</b>		
<b>SEWER IMPROVEMENTS</b>						
<i>Sewer</i>						
854	LF	8" Sewer	30.48	\$26,029.92	Continental Contractors	
2	EA	48" Manhole	2,583.00	\$5,166.00	Continental Contractors	
1	EA	Dog House Manhole	2,853.00	\$2,853.00	Continental Contractors	
3	EA	6" Clean Out	427.00	\$1,281.00	Continental Contractors	
37	EA	4" Sewer Service	746.00	\$27,602.00	Continental Contractors	
37	EA	City of Spokane Sewer Service PL Permit	40.00	\$1,480.00	Continental Contractors	
Sewer Subtotal:				\$64,411.92		
Sewer Tax:				\$4,401.50		
Sewer Total:				<b>\$68,813.42</b>		
<i>Inspection/Testing</i>						
1	LS	Inspection Fees for Sewer	707.00	\$707.00	City of Spokane	
1	LS	Compaction Testing/Inspection	1,500.00	\$1,500.00	Allwest	
Inspection Total:				<b>\$2,207.00</b>		
<i>Survey</i>						
1	LS	Sewer Staking	3,000.00	\$3,000.00	CLC Associates, Inc	
Survey Total:				<b>\$3,000.00</b>		
<b>Sewer Improvements Total:</b>				<b>\$74,020.42</b>		

Quantity	Units	Description	Unit Price	Cost	Contractor	Invoice #
<b>WATER IMPROVEMENTS</b>						
<i>Water</i>						
1,063	LF	12" Water	75.40	\$80,150.20	Continental Contractors	
200	LF	8" Water	52.16	\$10,432.00	Continental Contractors	
1	LS	12" Tie in Water	1,141.00	\$1,141.00	Continental Contractors	
1	LS	12" Sleeve	1,356.00	\$1,356.00	Continental Contractors	
1	LS	8" Sleeve	638.00	\$638.00	Continental Contractors	
4	EA	Fire Hydrants	4,698.00	\$18,792.00	Continental Contractors	
8	EA	2" Water Service	380.00	\$3,040.00	Continental Contractors	
7	EA	1" Water Service	380.00	\$2,660.00	Continental Contractors	
3	EA	Blow off	1,545.00	\$4,635.00	Continental Contractors	
1	EA	2" Service City of Spokane Tap Fee	789.00	\$789.00	Continental Contractors	
1	EA	2" Irrigation Meter fee	2,328.00	\$2,328.00	Continental Contractors	
5	EA	1" Water Service City of Spokane Tap Permit	730.00	\$3,650.00		
1	EA	Water Meter Permit	2,152.00	\$2,192.00		
1	EA	Water Tap Permit	728.00	\$728.00		
37	EA	Address Permits	10.00	\$370.00		
1	LS	Connect and Chlorinate	3,620.00	\$3,620.00	City of Spokane	
				Water Subtotal	\$136,521.20	
				Water Tax	10,687.45	
				Water Total:	<b>\$147,208.65</b>	
<i>Inspection/Testing</i>						
1	LS	Inspection Fees for Water	1,068.00	\$1,068.00	City of Spokane	
1	LS	Compaction Testing/Inspection	1,500.00	\$1,500.00	Allwest	
				Inspection Total:	<b>\$2,568.00</b>	
<i>Survey</i>						
1	LS	Water Staking	1,500.00	\$1,500.00	CLC Associates, Inc	
				Survey Total:	<b>\$1,500.00</b>	
				Water Improvements Total:	<b>\$151,276.65</b>	
<b>LANDSCAPE IMPROVEMENTS</b>						
<i>Landscaping</i>						
1	LS	Summit/Nettleton Planter (inc islands)	44,822.00	\$44,822.00	Black Diamond Landscape	
1	LS	Bridge Planter	8,768.83	\$8,768.83	Black Diamond Landscape	
1	LS	Street Trees	32,330.00	\$32,330.00	Gibsons Nursery	
1	LS	Perennials	2,743.00	\$2,743.00	Gibsons Nursery	
560	LF	6" Irrigation Crossings	14.10	\$7,896.00	Continental Contractors	
				Landscaping Subtotal:	\$96,559.83	
				Landscaping Tax:	\$8,400.71	
				Landscaping Improvements Total:	<b>\$104,960.54</b>	
<b>DESIGN,ENGINEERING, PLANNING &amp; PERMITTING</b>						
<b>Design, Engineering, Planning &amp; Permitting</b>						
1	LS	Plan Review	4,625.00	\$4,625.00	City of Spokane	
1	LS	Engineering Scope & Fee Project # G-0404	40,000.00	\$40,000.00	Greenstone Corporation	
1	LS	Construction Management Fee	25,000.00	\$25,000.00	Greenstone Corporation	
				Design, Engineering, Planning & Permitting Total:	<b>\$69,625.00</b>	
<b>Total amount requested for reimbursement:</b>				<b>\$818,236.91</b>		



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	ORD C35024
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	POLICE
<b>Contact Name/Phone</b>	CARLY CORTRIGHT 835-4527
<b>Contact E-Mail</b>	CCORTRIGHT@SPOKANEPOLICE.ORG
<b>Agenda Item Type</b>	Emergency Budget Ordinance
<b>Agenda Item Name</b>	0680- DEPUTY DIRECTOR OF BUSINESS SERVICES & CAPTAIN POSITIONS

**Agenda Wording**

Amending Ordinance No. C-34947 and appropriating funds in the Police Department, FROM: Various Accounts \$59,000.00; TO: Various accounts - same amount, for the Deputy Director of Business Services and Captain Positions; effective September 15, 2013.

**Summary (Background)**

The Spokane Police Department is moving to a precinct based model. Each precinct will be run by a captain; thus the need to add another captain position to the budget. The Deputy Director of Business Services will report directly to the Director of Business Services. This position is needed to ensure the efficient operation of the Business Services Department.

**Fiscal Impact**

Neutral	\$ 59,000.00
Select	\$
Select	\$
Select	\$

**Budget Account**

#	Various Accounts - See Ordinance
#	
#	BudgetAccount3
#	

**Approvals**

<b>Dept Head</b>	MEIDL, CRAIG
<b>Division Director</b>	MEIDL, CRAIG
<b>Finance</b>	DOLAN, PAM
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA
<b>Additional Approvals</b>	
<b>Purchasing</b>	

**Council Notifications**

<b>Study Session</b>	Briefing via email Carly C. 6/26/13
<b>Other</b>	
<b>Distribution List</b>	
	agolden
	ccortright
	jfranklin
	achirowamangu

ORDINANCE NO C35024

An ordinance amending Ordinance No. C-34947, passed the City Council December 10, 2012, and entitled, "An ordinance adopting the Annual Budget of the City of Spokane for 2013, making appropriations to the various funds, departments, and programs of the City of Spokane government for the fiscal year ending December 31, 2013, and providing for immediate effectiveness", and declaring an emergency.

WHEREAS, subsequent to the adoption of the 2013 budget Ordinance No. C-34947, as above entitled, and which passed the City Council December 10, 2012, it is necessary to make changes in the appropriations of the General Fund, which changes could not have been anticipated or known at the time of making such budget ordinance; and

WHEREAS, this ordinance has been on file in the City Clerk's Office for five days; - Now, Therefore,

The City of Spokane does ordain:

Section 1. That in the budget of the General Fund, and the budget annexed thereto with reference to the General Fund, the following changes be made:

FROM:	0680-11500	General Fund	
	21360-00880	Police Planner, rg 35	18,508
	21100-00880	Police Planner, rg 35	18,508
		(From 2 to 0 positions)	
	0680-11100	General Fund	
	28100-02820	Police Comm, Supervisor	<u>22,084</u>
		rg 52 (from 5 to 4 positions)	59,100
TO:	0680-11500	General Fund	
	21100-09170	Police Captain, rg 48	38,500
		(from 2 to 3 positions)	
	21100-07740	Deputy Director Business Services	20,600
		rg 40 (from 0 to 1 position)	59,100

Section 2. It is, therefore, by the City Council declared that an urgency and emergency exists for making the changes set forth herein, such urgency and emergency arising from the need to budget for a department reorganization, effective September 15, 2013, the need for which could not reasonably have been anticipated at the time of adoption of the 2013 budget, and because of such need, an urgency and emergency exists for the passage of this ordinance, and also, because the same makes an appropriation, it shall take effect and be in force immediately upon its passage.

Passed the City Council \_\_\_\_\_

\_\_\_\_\_  
Council President

Attest: \_\_\_\_\_  
City Clerk

Approved as to form: \_\_\_\_\_  
Assistant City Attorney

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Mayor

---

Date



**Agenda Sheet for City Council Meeting of:**

08/26/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	RES 2013-0064
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	CITY COUNCIL
<b>Contact Name/Phone</b>	BEN STUCKART 625.6258
<b>Contact E-Mail</b>	BSTUCKART@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Resolutions
<b>Agenda Item Name</b>	0320 RESO RE BALLOT PROPOSITIONS

**Agenda Wording**

A resolution regarding the appointment of committees to prepare statements advocating voters' approval or rejection of Propositions No. 1, No. 2, No. 3, No. 4, No. 5 and No. 6 on the November 5, 2013

**Summary (Background)**

The City Council enacted SMC 1.07.010 regarding the appointment of committees to prepare arguments advocating both voters' approval and rejection of ballot measures. Proposition No. 1, regarding the Envision Spokane Community Bill of Rights proposition, and Proposition No. 2, regarding the Spokane Moves to Amend Voter Bill of Rights proposition, have both been placed on the November 5, 2013 general election ballot pursuant to Resolutions Nos. 2013-0038 and 2013-0039 respectively.

<b><u>Fiscal Impact</u></b>		<b><u>Budget Account</u></b>	
Select	\$		#
Select	\$		#
Select	\$		# BudgetAccount3
Select	\$		#
<b><u>Approvals</u></b>		<b><u>Council Notifications</u></b>	
<b><u>Dept Head</u></b>	WESTFALL, JENNIFER	<b><u>Study Session</u></b>	
<b><u>Division Director</u></b>		<b><u>Other</u></b>	
<b><u>Finance</u></b>	DOLAN, PAM	<b><u>Distribution List</u></b>	
<b><u>Legal</u></b>	PICCOLO, MIKE		
<b><u>For the Mayor</u></b>	SANDERS, THERESA*		
<b><u>Additional Approvals</u></b>			
<b><u>Purchasing</u></b>			



# Continuation of Wording, Summary, Budget, and Distribution

## **Agenda Wording**

General Election and approving rules for preparation of statements.

## **Summary (Background)**

Propositions Nos. 5 and 6, pertaining to advisory votes regarding funding for the voter bill of rights have been placed on the November 5, 2013 general election ballot pursuant to Resolution Nos. 2013-0058 and 2013-0059 respectively. Pursuant to SMC 1.07.010, it is appropriate for the City Council to appoint committees to prepare statements advocating voters' approval or rejection of the propositions. This resolution will appoint those committees and approve the rules for the preparation of the statements.

## **Fiscal Impact**

Select     **\$**

Select     **\$**

AmtType7   **\$** Amount7

AmtType8   **\$** Amount8

## **Budget Account**

**#**

**#**

**#** Budget7

**#** Budget8

## **Distribution List**

Email16

Email17

Email18

Email19

Email20

Email21

Email22

Email23

Resolution No. \_\_\_\_\_

A resolution regarding the appointment of committees to prepare statements advocating voters' approval or rejection of Propositions No. 1, No. 2, No. 3, No. 4, No. 5 and No. 6 on the November 5, 2013 General Election and approving rules for preparation of statements.

WHEREAS, the City Council enacted SMC 1.07.010 regarding the appointment of committees to prepare arguments advocating both voters' approval and rejection of ballot measures; and

WHEREAS, on May 20, 2013, the City Council approved Resolution No. 2013-0038, regarding the Envision Spokane Community Bill of Rights proposition, and Resolution No. 2013-0039, regarding the Spokane Moves to Amend Voter Bill of Rights proposition, respectively listed as Propositions No. 1 and No. 2; and

WHEREAS, on August 5, 2013, the City Council approved Resolution Nos. 2013-0056, 2013-0057, 2013-0058 and 2013-0059 regarding advisory votes on the November 5, 2013 General Election pertaining to funding to implement the provisions of the Envision Spokane Community Bill of Rights proposition and the Spokane Moves to Amend Voter Bill of Rights proposition, respectively listed and Propositions No. 3, No. 4, No. 5 and No. 6; and

WHEREAS, the resolutions call for the Spokane County Auditor to place the propositions on the November 5, 2013 General Election; and

WHEREAS, pursuant to SMC 1.07.010, it is appropriate for the City Council to appoint committees to prepare statements advocating voters' approval or rejection of the propositions.

NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of Spokane that the City Council appoints separate committees to prepare arguments advocating voters' approval or rejection of Propositions No. 1, No. 2, No. 3, No. 4, No. 5 and No. 6 consistent with SMC 1.07.010 to be voted on the November 5, 2013 General Election.

BE IT FURTHER RESOLVED that the City Council appoints the following individual to the following committees:

Proposition No. 1: A City Charter Amendment Establishing a Community Bill of Rights.

Committee preparing statement advocating approval:

Committee preparing statement advocating rejection:

Proposition No. 2: A Voters Bill of Rights: A Clean and Fair Elections and Government Ordinance.

Committee preparing statement advocating approval:

Committee preparing statement advocating rejection:

Proposition No. 3: Advisory Vote Regarding Funding for a Community Bill of Rights.

Committee preparing statement advocating approval:

Committee preparing statement advocating rejection:

Proposition No. 4: Advisory Vote Regarding Funding for a Community Bill of Rights.

Committee preparing statement advocating approval:

Committee preparing statement advocating rejection:

Proposition No. 5: Advisory Vote Regarding Funding for a Voter Bill of Rights.

Committee preparing statement advocating approval:

Committee preparing statement advocating rejection:

Proposition No. 6: Advisory Vote Regarding Funding for a Voter Bill of Rights.

Committee preparing statement advocating approval:

Committee preparing statement advocating rejection:

BE IT FURTHER RESOLVED that the City Council adopts the attached Rules for Ballot Measure Statement Committee Members as a guideline for preparation of statements advocating voters' approval or rejection of Proposition Nos. 1, No. 2, No. 3, No. 4, No. 5 and No. 6.

ADOPTED by the City Council \_\_\_\_\_, 2013.

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

## **Rules for Ballot Measure Statement Committee Members**

The City Council enacted SMC 1.07.010 regarding the appointment of committees to prepare arguments advocating both voters' approval and rejection of ballot measures. On May 20, 2013, the City Council approved Resolution No. 2013-0038 regarding the Envision Spokane Community Bill of Rights proposition, and Resolution No. 2013- 0039 regarding the Spokane Moves to Amend Voter Bill of Rights proposition; respectively listed as Propositions No. 1 and No. 2. On August 5, 2013, the City Council approved Resolution Nos. 2013-0056, 2013-0057, 2013-0058 and 2013-0059 regarding advisory votes pertaining to funding to implement the provisions of the Envision Spokane Community Bill of Rights proposition and the Spokane Moves to Amend Voter Bill of Rights proposition, respectively listed and Propositions No. 3, No. 4, No. 5 and No. 6; The resolutions call for the propositions to be placed on the November 5, 2013 General Election. The City Council has established the separate committees to prepare arguments advocating voters' approval or rejection of Propositions No. 1, No. 2, No. 3, No. 4, No. 5 and No. 6 consistent with SMC 1.07.010. The following rules and timeline shall apply to the preparation of the pro/con statements and rebuttal statements.

### **Deadline for completion and submittal of statements to City Council Office:**

Friday, September 20, 2013 at 3pm. Deliver respective pro/con statement in person, mail c/o City Council, 808 W. Spokane Falls Blvd, Spokane 99201, or email to [drobole@spokanecity.org](mailto:drobole@spokanecity.org).

Rebuttal statements must be submitted by Friday, September 27, 2013, in the same manner as set forth above.

Each committee shall have no more than three members; however, a committee may seek the advice of any other person.

The Committee shall elect from its members a chairperson, who shall notify the City Council Office of the names, addresses and telephone numbers of the persons on the Committee.

All statements placed in the Voters' Guide shall contain the name, address and telephone number of the chairperson of the committee submitting the statement, as well as the names of other committee members.

Arguments for and against measures shall not exceed 250 words not counting a maximum of four headings used to summarize and identify major arguments or portions of the statements for the convenience of the readers.

Rebuttals to arguments for and against measures shall not exceed 75 words and must address issues raised in the opposing argument without injecting issues not previously

discussed by either the argument for or against the measure. Headings are not permitted in connection with rebuttal statements.

Statements shall not contain obscene, libelous, or defamatory language.

The Voters' Guide shall contain the text of the ballot propositions and an explanatory statement prepared by the City Attorney's Office, in addition to the pro/con statements and the respective rebuttal statements prepared by the committees. The City Attorney's Office may make formatting changes and corrections to the statements related to spelling, grammar, and punctuation to ensure that the Voters' Guide is accurate as to form and syntax. Corrections may not alter the meaning and substance of the statements.



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	RES 2013-0065
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	RE #16728

<b>Submitting Dept</b>	FIRE
<b>Contact Name/Phone</b>	BRIAN SCHAEFFER 509-625-7002
<b>Contact E-Mail</b>	BSCHAEFFER@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Resolutions
<b>Agenda Item Name</b>	0440- FIRE DEPT. SOLE SOURCE RESOLUTION & PURCHASE - DEFIBRILLATORS

**Agenda Wording**

A resolution declaring Physio-Control (Redmond, WA) sole source for Physio-Control automated and manual defibrillators; and authorizing the purchase of two (2) defibrillators and associated equipment w/o public bidding - \$67,501.22

**Summary (Background)**

The defibrillators are used by the Fire Department to identify and treat life threatening cardiac and other medical conditions. The units are a required piece of equipment by the state regulations and Spokane County Operating Procedures (COPS). The Physio-Control/Medtronic LifePak series of products are institutionalized within the Fire Department and the current 911 ambulance service provider. The Fire Department physician recommends continued use of this piece of equipment at this time.

**Fiscal Impact**

Expense	\$ 67,501.22
Select	\$
Select	\$
Select	\$

**Budget Account**

#	1970-35310-94000-56401
#	
#	BudgetAccount3
#	

**Approvals**

<b>Dept Head</b>	SCHAEFFER, BRIAN
<b>Division Director</b>	SCHAEFFER, BRIAN
<b>Finance</b>	DOLAN, PAM
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	SANDERS, THERESA

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	Public Safety - 8/19/13
<b>Distribution List</b>	
	Purchasing : tprince
	Fire: bschaeffer, dtreichel, kripoley
	taxes & licenses

**Additional Approvals**

<b>Purchasing</b>	PRINCE, THEA

Briefing on  
Fire Department Items  
for  
Public Safety Committee Meeting  
August 19, 2013

- EKG Equipment Enhancement/ Replacement – Chief Schaeffer – In order to provide better protection to our patients, the Spokane Fire Department is requesting two additional LifePak 15 Cardiac Monitor/Defibrillators costing approximately \$33k/device.

Sole source purchasing for the model LP15 has been established prior with City Purchasing through the manufacturer Physio-Control/Medtronic in order to ensure interoperability with all of the EMS Providers operating within the City Spokane.

Community Risk - Cardiac injury and sudden death are highlighted in the medical discipline as a top medical risk to Spokane Citizens. SFD responded to several thousand cardiac related incidents and the statistic continues to grow as our population increases and ages. Even with the increasing volume, the SFD has continuously improved its cardiac arrest survival rate to approximately 52%, thanks in part to a complete transition to the LP15 device and its technology.

Details on the Cost of the Various Elements of the Project - Purchase (2) LifePak 15 manual biphasic 12-lead electrocardiogram (EKG) monitor/defibrillators to replace outdated equipment and simultaneously equip Alternative Response Vehicles with the technology. Budget for this request will come from the EMS Budget.

Cost/Benefit - With over 80% of SFD responses being medical related, new Cardiac Monitor/Defibrillators would be used extensively on EMS calls and relied upon for a providing the “Gold Standard of Cardiac Care”

Purchasing this equipment through our current vendor will allow the Fire Department to maintain a consistent model of biomedical devices (training and improved patient safety) as well as the maintaining ability continue to use ancillary equipment (EKG patches, cables, disposables, et.al.) that has been purchased over the years for the existing defibrillators.

LifePak 15



- Fire Service Task Team – Bobby Williams – the Team completed its work and submitted their report to Mayor Condon. Chief Williams will answer questions of the committee.
- Alternative Response Unit Overview – Chief Williams will provide an overview of the program.
- SAFER Grant Application – Chief Williams will provide an overview of the City’s application.

RESOLUTION NO. \_\_\_\_\_

A resolution declaring PHYSIO-CONTROL, INC. a sole source for Physio-Control, Inc. automated and manual defibrillators; and authorizing the purchase of two (2) defibrillators and associated equipment without public bidding for \$67,501.22 including tax.

WHEREAS, in 1998 the City issued a request for bids and awarded a contract to Physio-Control, Inc. for the purchase of automated and manual defibrillators; and has purchased the same brand of units since then; and

WHEREAS, the defibrillators are used by the Fire Department to identify and treat life threatening cardiac and other medical conditions; and

WHEREAS, the Physio-Control/Medtronics LifePak series of products are institutionalized within the Fire Department and the current 911 ambulance service provider. The existing disposables (patches, EKG defibrillation pads, 12-leads) must be interoperable between all Fire Departments and the 911 ambulance service provider. Other defibrillators and similar medical devices have different connectors and are not interoperable, which will cause delays in patient care; and

WHEREAS, the Fire Department physician recommends continued use of the Physio-Control defibrillators at this time; and

WHEREAS, the cost of two (2) units and associated equipment exceeds the 2013 public bid limit of \$46,200 -- Now, Therefore,

BE IT RESOLVED by the City Council for the City of Spokane that it hereby declares PHYSIO CONTROL, INC. a sole source for Physio-Control automated and manual defibrillators; and authorizes the purchase of two (2) defibrillators and associated equipment without public bidding for \$67,501.22 including tax and shipping.

ADOPTED BY THE CITY COUNCIL ON \_\_\_\_\_

\_\_\_\_\_  
City Clerk

Approved as to form:

  
Assistant City Attorney



**Agenda Sheet for City Council Meeting of:**

09/09/2013

<b>Date Rec'd</b>	DocDate
<b>Clerk's File #</b>	RES 2013-0066
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	CITY COUNCIL
<b>Contact Name/Phone</b>	BEN STUCKART 625.6258
<b>Contact E-Mail</b>	BSTUCKART@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Resolutions
<b>Agenda Item Name</b>	0320 MANN CENTER RESOLUTION

**Agenda Wording**

A resolution regarding the redevelopment of the PFC. Joe E. Mann US Army Reserve Center USARC/AMSA 80 (Spokane), approving the Redevelopment Plan for the Mann Center,

**Summary (Background)**

The City has previously made a recommendation to the Department of Defense approving the Redevelopment Plan and Homeless Submittal for the Mann Center to provide a public benefit conveyance of the property to the Spokane Public School. Extensive vandalism to the property caused the Spokane Public School to withdraw its application for the transfer of the Mann Center. After consultation with the Department of Defense and community meetings with the public,

**Fiscal Impact**

Select	\$

**Budget Account**

#
#
# BudgetAccount3
#

**Approvals**

<b>Dept Head</b>	WESTFALL, JENNIFER
<b>Division Director</b>	
<b>Finance</b>	LESESNE, MICHELE
<b>Legal</b>	BURNS, BARBARA
<b>For the Mayor</b>	GEMMILL, GERRY

**Council Notifications**

<b>Study Session</b>	
<b>Other</b>	
<b>Distribution List</b>	

**Additional Approvals**

<b>Purchasing</b>	

Resolution No. \_\_\_\_\_

A resolution regarding the redevelopment of the PFC. Joe E. Mann US Army Reserve Center USARC/AMSA 80 (Spokane), approving the Redevelopment Plan for the Mann Center, and authorizing the Mayor or his designee to submit the same to the appropriate federal agency and to take any necessary actions to implement the Plan upon approve by the federal agency.

WHEREAS, through the BRAC process, the Department of Defense had designated the Mann Center for closure; and

WHEREAS, on approximately September 1, 2006, the United States Department of Defense, as the administering BRAC agency, recognized the City of Spokane as the Local Redevelopment Authority for the Mann Center; and

WHEREAS, the City created an LRA Advisory Committee (LRAAC) to guide the Mann Center disposal process, by planning and implementing a community involvement process, and by preparing a recommendation for the content of a local redevelopment plan for Mann Center; and

WHEREAS, the City Council approved Resolution No. 2008-0046 on May 5, 2008 approving the Redevelopment Plan and Homeless Submittal for the Mann Center, which was subsequently modified on February 15, 2010 pursuant to Resolution No. 2010-0003 to provide for a Public Benefit Conveyance of the property to Spokane Public Schools; and

WHEREAS, prior to the Mann Center being transferred to Spokane Public Schools, the property was extensively damaged due to vandalism, which cause Spokane Public Schools to withdraw its application for the transfer of the Mann Center pursuant to Resolution No. 2013-06 approved by the Board of Directors on February 13, 2013; and

WHEREAS, the City Council sponsored a community meeting on April 4, 2013 to solicit information and public comment regarding the preferred future use of the Mann Center and to established a process to follow for the redevelopment of the Mann Center pursuant to the federal regulations and guidelines for a recognized Local Redevelopment Authority; and

WHEREAS, after consultation with the Department of Defense, the City proceeded with issuing a second Notice of Intent to develop a proposal to submit to the Department of Defense utilizing in part the HUD homeless assistance use screening process utilized from the first initiative in 2008; and

WHEREAS, on March 18, 2013, the City Council passed Resolution No. 2013-0022 establishing a process regarding the redevelopment of the Mann Center and the acceptance of proposals regarding public benefit conveyance of the Mann Center; and

WHEREAS, a public hearing was conducted on September 9, 2013 to review the responses to the City's request for proposals regarding redevelopment of the Mann Center; --Now, Therefore,

BE IT RESOLVED by the City Council for the City of Spokane that:

- 1) the City Council, as the Local Redevelopment Authority, recommends to the Department of Defense the Mann Center Redevelopment Proposal submitted by \_\_\_\_\_ as the Redevelopment Plan and Homeless Submittal for the Mann Center, a copy of which is attached to this resolution,
- 2) the Mayor or his designee is authorized to submit the Redevelopment Plan and Homeless Submittal for the Mann Center on behalf of the City of Spokane to the appropriate federal agencies, following federal Base Realignment and Closure Act (BRAC) guidelines, and
- 3) the Mayor or his designee is authorized to take necessary action to implement the Redevelopment Plan and Homeless Submittal for the Mann Center once the Plan is approved by the federal agencies.

ADOPTED by the City Council \_\_\_\_\_, 2013.

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

**Agenda Sheet for City Council Meeting of:**

08/26/2013

**Date Rec'd** 8/14/2013**Clerk's File #** ORD-635023 *C34925*  
*FW 8/22/13***Renews #****Cross Ref #****Project #****Bid #****Requisition #****Submitting Dept**

PLANNING &amp; DEVELOPMENT

**Contact Name/Phone**

ELDON BROWN 625-6305

**Contact E-Mail**

EBROWN@SPOKANECITY.ORG

**Agenda Item Type**

First Reading Ordinance

**Agenda Item Name**

0650 FIRST READING ORDINANCE VACATION OF OHIO AVE/SUMMIT BLVD

**Agenda Wording**

Ordinance vacating Ohio Avenue and Summit Boulevard from College Avenue to Nettleton Street.

**Summary (Background)**

City Council considered the above vacation petition at its legislative session held October 8, 2012. First Reading of the Ordinance was held at that time. Since that time it has become necessary to modify the easement retained in the ordinance requiring a new first reading.

**Fiscal Impact****Budget Account**

Select \$

#

Select \$

#

Select \$

#

Select \$

#

**Approvals****Council Notifications****Dept Head**

CHESNEY, SCOTT

**Study Session****Division Director**

CHESNEY, SCOTT

**Other****Finance**

LESESNE, MICHELE

**Distribution List****Legal**

BURNS, BARBARA

lhattenburg@spokanecity.org

**For the Mayor**

SANDERS, THERESA

ebrown@spokanecity.org

**Additional Approvals**

sbarham@spokanecity.org

**Purchasing**

FIRST READING OF THE ABOVE ORDINANCE WAS HELD

ON *8/26/2013*

AND FURTHER ACTION WAS DEFERRED

*Jim Hoff*  
CITY CLERK

C 34925

RECEIVED

AUG 28 2013

CITY CLERK'S OFFICE  
SPOKANE, WA

TRANSMITTAL OF FIRST READING ORDINANCE

DATE: August 28, 2013

TO: Sandy Decker  
Engineering Services

Clerk's File No.  
ORD C34925

FROM: Terri Pfister, City Clerk

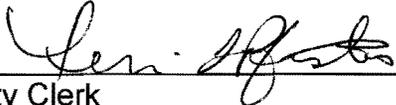
RE: Vacation of Ohio Avenue and Summit Boulevard from College Avenue to  
Nettleton Street

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Attached is a copy of Ordinance C34925 for the vacation of:

Ohio Avenue and Summit Boulevard from College Avenue to Nettleton Street

This ordinance was read for the first time on August 26, 2013, and will be read for the final time when the necessary conditions have been met and this transmittal, signed and dated by the Engineering Services Director, is returned to the City Clerk's Office.

  
\_\_\_\_\_  
City Clerk

8/28/13  
\_\_\_\_\_  
Date

---

Precedent conditions have been met and Ordinance C34925 is hereby returned for Final Reading.

for   
\_\_\_\_\_  
Engineering Services Director

Dated: 8/28/13  
\_\_\_\_\_

City of Spokane  
Department of Engineering Services  
808 West Spokane Falls Blvd.  
Spokane, WA 99201-3343  
(509) 625-6700

ORDINANCE NO. C34925 (as modified)

An ordinance vacating Ohio Avenue and Summit Boulevard from College Avenue to Nettleton Street

WHEREAS, a petition for the vacation of Ohio Avenue and Summit Boulevard from College Avenue to Nettleton Street has been filed with the City Clerk representing of the abutting property owners, and a hearing has been held on this petition before the City Council as provided by RCW 35.79; and

WHEREAS, the City Council has found that the public use, benefit and welfare will best be served by the vacation of said public way; -- NOW, THEREFORE,

The City of Spokane does ordain:

Section 1. That Ohio Avenue and Summit Boulevard from College Avenue to Nettleton Street is hereby vacated. Parcel number not assigned. SW ¼ and SE ¼ of S13 T25 R42

Section 2. An easement is reserved and retained over and through the vacated area as described in attached Exhibit A for the utility services of Avista Utilities, CenturyLink, and the City of Spokane to protect existing and future utilities.

Passed the City Council \_\_\_\_\_

\_\_\_\_\_  
Council President

Attest: \_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor

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

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

## EXHIBIT A

### Legal Description For Ohio Ave. Utility Easement

A portion of Ohio Avenue and Summit Boulevard of the Final Plat of the MAP OF NETTLETON'S 1<sup>ST</sup> ADDITION TO SPOKANE FALLS, recorded in Book A of Plats, Pages 98 and 99, located in the Southeast Quarter of Section 13, Township 25N, Range 42E, W.M. in the City of Spokane, Spokane County, Washington more particularly described as follows:

COMMENCING at the Southeast corner of Lot 16, Block 23 of said Final Plat of the MAP OF NETTLETON'S 1<sup>ST</sup> ADDITION TO SPOKANE FALLS; thence S00°12'36"E a distance of 30.87 feet to the POINT OF BEGINNING; thence continuing S00°12'36"E a distance of 53.72 feet to the South Right of Way line of Ohio Avenue/Summit Boulevard; thence along said South Right of Way line the following two (2) courses:

- 1.) S89°39'53"W a distance of 636.64 feet;
- 2.) S68°46'22"W a distance of 131.14 feet;

thence N19°55'15"W a distance of 16.44 feet; thence S70°04'45"W a distance of 333.26 feet;

thence S49°26'04" W a distance of 487.03 feet to a point on said South Right of Way line of Ohio Avenue/ Summit Boulevard and a point on a 250.00 foot radius non-tangent curve concave to the North having a radial bearing of S13°56'07"E; thence Westerly along said curve through a central angle of 42°32'24" an arc distance of 185.62 feet; thence leaving said Right of Way line N90°00'00"E a distance of 153.13 feet; thence N49°26'04"E a distance of 498.68 feet; thence N70°04'45"E a distance of 462.95 feet; thence N88°44'19"E a distance of 660.42 feet to the POINT OF BEGINNING.

Containing 1.62 acres more or less.



Date: May 3, 2012

### Vacation of Ohio Avenue and Summit Boulevard from College Avenue to Nettleton Street



**THIS IS NOT A LEGAL DOCUMENT.**  
 The information shown on this map is compiled from various sources and is subject to constant revision. Information shown on this map should not be used to determine the location of facilities in relationship to property lines, section lines, streets, etc.