

CITY OF ABERDEEN
200 East Market Street, Aberdeen, Washington 98520

NOTICE: RCW 42.30 Open Public Meetings Act compliance during the COVID-19 public health crisis has been altered as long as the Governor’s “Stay Home, Stay Safe” Order is in place. In compliance with that Order as amended, and under the guidance of the Washington State Attorney General, as amended, the City Council meeting will be held using telephone audio conferencing. This will allow the public to listen into the meeting.

To listen to this meeting:

DAY/DATE: Wednesday May 13, 2020
TIME: 7:00 PM (Meeting will be called to order at 7:15 PM)
DIAL-IN NUMBER: (425) 585-6257
ACCESS CODE: 618-313-093 # (you must include the # symbol)

For the immediate future under the Order and associated Guidance, the City Council meeting will not include public comment periods. **If you wish to submit any comments in advance, please email your comments to Cliff Frederickson, cfrederickson@aberdeenwa.gov and they will be provided to City Council.** Please be sure to put “CITY COUNCIL PUBLIC COMMENT” in the subject line.

The City of Aberdeen requests that you provide your full name. If you reside in Aberdeen, please also include your Ward Number; if you do not reside in Aberdeen please let us know where you live.



ABERDEEN CITY COUNCIL

May 13, 2020

COUNCIL MEETING AGENDA

7:15 PM – Via Telephonically

COMMITTEE OF THE WHOLE

- A. Department Heads
- B. Mayor's Report
- C. Non-Standing Committee Reports

COUNCIL MEETING

I. ROLL CALL

II. APPROVAL OF MINUTES

III. ADDITIONS / DELETIONS

IV. PUBLIC COMMENT SUBMITTED TO CITY CLERK ON ALL TOPICS

V. FINANCE COMMITTEE

- A. Committee Chair Report
- B. Approval of expenditures
 - 1. Recommend approval of expenditures and payroll.
- C. Public Hearings
- D. Reports & Communications
 - 1. Report from Finance and the Fire Chief recommending that the Aberdeen City Council authorize an inter-fund loan from Fund 417 in the amount of \$870,000.00 for a 3-year term, with semi-annual debt payments and a 0.81% interest rate to be used for final payment of the purchase of one (1) Pierce Enforcer Pumper and one (1) Pierce Enforcer Skyboom.
 - 2. Report from Finance and the Interim Finance Director recommending that the City Council rescind Resolution 2019-12 and all previous related Resolutions, and approve the Resolution identifying Mayor, Finance Director, Deputy (or Assistant) Finance Director, and Corporation Counsel as authorized individuals for financial actions on behalf of the City.
- E. Resolutions
 - 1. A Resolution designating and authorizing certain officers to act on behalf of the City of Aberdeen with U.S. Bank N.A. for investment and other banking purposes.
- F. Ordinances

VI. PUBLIC WORKS

- A. Committee Chair Report
- B. Public Hearings

C. Reports & Communication

1. Report from Public Works and the Public Works Director recommending that the City Council shall authorize the Mayor to sign the Washington State Public Works Board (PWB) loan agreement for reconstruction and repairs of Basich Boulevard.
2. Report from Public Works and the Public Works Director recommending that the City shall submit for a 2020 Better Utilizing Investments to Leverage Development (BUILD) grant for up to \$2 million for the Aberdeen US 12 Highway-Rail Separation Project and the City Engineer shall be the City's authorized agent for the grant submission.

CI. Resolutions

CII. Ordinances

VII. PUBLIC SAFETY

A. Committee Chair Report

B. Reports & Communications

1. Report from Public Safety and the Chief of Police recommending that the City Council authorize execution of the Rental Agreement for storage of the MRAP at Port of Grays Harbor property, and to issue the first rental check in the amount of \$150.00.

VIII. SPECIAL AGENDA ITEMS

A. Reports & Communication

1. This report is offered as informational only, and no action is recommended. On May 08, 2020 Councilwoman Karen Rowe resigned via email, effective immediately. Under City and State law, the City Council members are charged with replacing a vacancy in the Council. All interested persons from Ward 5 should provide letters of interest, along with a resume, to Mayor Schave by Friday June 26, 2020 to allow City Council to review and make a selection for a qualified person to fill the vacant position.
2. Report from the Parks Director, Secretary to the Board of Museum and History recommending that the City Council approve access to the collection to the Board of Museum and History's Collections Committee.

B. Proclamation

C. Resolutions

D. Ordinances

E. Appointments

1. Selection by City Council of new member for Ward 5 (replacing Jerrick Rodgers who resigned March 12,2020). 2 candidates (Debbie Perrocini and Alan Richrod).

IX. CITY COUNCIL COMMENT PERIOD

X. EXECUTIVE SESSION

The City of Aberdeen does not discriminate against or exclude anyone from participation in public meetings. Requests for assistance should be made by contacting the Human Resources Department at 360-537-3207, 24 hours in advance of the meeting.

Thank you.

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Aberdeen Fire Department Legislative Report

Mr. Mayor:

The Members Of Your Committee On: Finance, and the Fire Chief,

To Whom Was Referred: Final payment arrangements for Pierce Enforcer Pumper and Pierce Enforcer Skyboom (fire apparatus)

Report As Follows: On June 12, 2019 the City of Aberdeen entered into a Purchase Agreement with Hughes Manufacturing to purchase one (1) Pierce Enforcer Pumper (Job# 34120) and one (1) Pierce Enforcer Skyboom (Job# 34119). In December 2019, the city processed prepayment for two chassis and the aerial ladder totaling \$820,273.00. The funds were expensed from the General Fund. The construction of both fire apparatuses have been completed and are undergoing final inspection at the factory in Appleton, WI. Per the purchase contract, once both apparatus are accepted as complete by the Aberdeen Fire Department personnel at the factory, final payment will be due within 10 days.

The 2019 and 2020 City of Aberdeen adopted budgets containing an expenditure line item from the General Fund for the purchase of the fire apparatus. The final invoice and voucher for both fire apparatuses will be included in the May 13, 2020 council meeting for approval. The 2020 budgeted amount for final payment is \$870,000.00. This amount may change based on final inspection and corrections currently taking place at the factory.

In anticipation that the City of Aberdeen will experience decreased revenues due to the COVID-19 pandemic, city staff are recommending that the final General Fund expenditure for the fire apparatus be off-set with an inter-fund loan from the Public Works Department. The loan will be issued from Fund 417 "Industrial Water Reserve" for \$870,000 with a loan term of three (3) years. Principle and interest payments are due semi-annually. The rate of interest charged will be (0.81%) which is the current rate available to the City as of April 2020 in the Washington State Treasurers LGIP pool. The loan status shall be reviewed annually by the Council in an Open Public Meeting.

Recommend As Follows: That the Aberdeen City Council authorize an inter-fund loan from Fund 417 in the amount of \$870,000.00 for a 3-year term, with semi-annual debt payments and a 0.81% interest rate to be used for final payment of the purchase of one (1) Pierce Enforcer Pumper and one (1) Pierce Enforcer Skyboom.

Public Safety Committee



Tom Hubbard, Fire Chief

Committee Chairperson

| Reported, May 13, 2020

Committee Member

Adopted _____ 2020

Committee Member

Committee Member

**LEGISLATIVE DEPARTMENT
CITY OF ABERDEEN**

Mr. Mayor: Hon. Pete Schave

The Members of: Finance Committee

To whom was Referred: **Resolution identifying authorized individuals for US Bank financial actions on behalf of the City**

Reports and Recommends as Follows:

The City of Aberdeen currently utilizes investment and credit card services with US Bank. Resolution 2019-12 identifies the Mayor, Finance Director, and Corporation Counsel as authorized individuals for financial actions on behalf of the City. The City of Aberdeen does not currently have a Finance Director, and previously the authorizing resolution included the Deputy Finance Director.

This action is necessary to maintain adequate financial management controls in the Finance Department.

It is recommended that: City Council rescind Resolution 2019-12 and all previous related Resolutions, and approve the Resolution identifying Mayor, Finance Director, Deputy (or Assistant) Finance Director, and Corporation Counsel as authorized individuals for financial actions on behalf of the City.

Reported by:
Donald McMaster
(Interim Deputy Finance Director)

Committee Chair

Committee Vice-chair

Reported _____, 2020

Committee Member

Adopted _____, 2020

Committee Member

RESOLUTION No. 2019 - 12

A RESOLUTION DESIGNATING AND AUTHORIZING CERTAIN OFFICERS TO ACT ON BEHALF OF THE CITY OF ABERDEEN WITH U. S. BANK N. A. FOR INVESTMENT AND OTHER BANKING PURPOSES.

WHEREAS, the Aberdeen City Council deems it prudent to designate the officials authorized to act on behalf of the city in managing its investment accounts with U. S. Bank in a form approved by the Corporate Treasury Division of said bank; **NOW, THEREFORE,**

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF ABERDEEN:
That any one of the officers of the City of Aberdeen ("City") designated below:

Mayor
Finance Director
Corporation Counsel

is authorized, on behalf of and in the name of the City of Aberdeen to:

- (a) direct, orally or in writing or electronically or through any other medium agreed to by said officer and the Corporate Treasury Division of U.S. Bank N.A. ("Treasury"), the opening of an investment account and the investment of municipal funds in securities and/or time deposits with and/or through Treasury through such account;
- (b) execute, on behalf of the City of Aberdeen, contracts or agreements in connection with such investment account in the usual form provided by Treasury for such accounts generally;
- (c) receive in respect of said Investment account confirmations, receipts, notices, demands, reports, and communications of any kind;
- (d) receive in respect of said investment account money, securities, time deposits, and property of every kind, and to dispose of same;
- (e) endorse and deliver for deposit, negotiation, transfer, pledge, or sale, and to identify or guarantee signatures or endorsements on, notes, certificates of deposit, checks, and securities of all kinds, either belonging to or coming into the possession of the City of Aberdeen; and
- (f) authorize, orally or in writing or through any other medium agreed to by said officer and Treasury, the debiting and/or crediting by Treasury of the City of Aberdeen's deposit account(s) at any financial institution for the purpose of effecting such transaction.

BE IT FURTHER RESOLVED, that the Finance Director is authorized and directed to certify to Treasury the foregoing resolutions and that the provisions thereof are in conformity with the Charter and ordinances of the City of Aberdeen and to certify to Treasury the names of the

persons now holding the offices referred to above and any changes hereafter in the persons holding said offices together with specimens of the signature of such present and future officers.

BE IT FURTHER RESOLVED, that the authority granted to the officers designated herein shall continue in full force and effect, and Treasury may rely thereon in dealing with such officers, unless and until written notice of any change in or revocation of such authority shall be delivered to Treasury by an officer of this City of Aberdeen, and any action taken by said officers and relied on by Treasury pursuant to the authority granted herein to its receipt of such written notice shall be fully and conclusively binding on this City of Aberdeen.

BE IT FURTHER RESOLVED, that the actions of any officer of the City of Aberdeen heretofore taken in opening an investment account with Treasury and in the investment of City of Aberdeen funds through such account, be, and the same hereby are in all respects, ratified, confirmed, and approved.

BE IT FURTHER RESOLVED, that all prior resolutions of the City of Aberdeen authorizing the opening of an investment account with Treasury and the investment of City of Aberdeen funds through such account, be, and the same hereby are, rescinded and superseded as to all such transactions with respect thereto effected after the date of adoption of these resolutions.

PASSED and APPROVED on 10th day of July, 2019.



Erik Larson, Mayor

ATTESTED:



Clifford Frederickson, Finance Director

RESOLUTION No. 2020 - _____

A RESOLUTION DESIGNATING AND AUTHORIZING CERTAIN OFFICERS TO ACT ON BEHALF OF THE CITY OF ABERDEEN WITH U. S. BANK N. A. FOR INVESTMENT AND OTHER BANKING PURPOSES.

WHEREAS, the Aberdeen City Council deems it prudent to designate the officials authorized to act on behalf of the city in managing its investment accounts with U. S. Bank in a form approved by the Corporate Treasury Division of said bank; **NOW, THEREFORE**,

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF ABERDEEN:
That any one of the officers of the City of Aberdeen (“City”) designated below:

Mayor
Finance Director
Deputy Finance Director
Corporation Counsel

is authorized, on behalf of and in the name of the City of Aberdeen to:

- (a) direct, orally or in writing or electronically or through any other medium agreed to by said officer and the Corporate Treasury Division of U.S. Bank N.A. (“Treasury”), the opening of an investment account and the investment of municipal funds in securities and/or time deposits with and/or through Treasury through such account;
- (b) execute, on behalf of the City of Aberdeen, contracts or agreements in connection with such investment account in the usual form provided by Treasury for such accounts generally;
- (c) receive in respect of said Investment account confirmations, receipts, notices, demands, reports, and communications of any kind;
- (d) receive in respect of said investment account money, securities, time deposits, and property of every kind, and to dispose of same;
- (e) endorse and deliver for deposit, negotiation, transfer, pledge, or sale, and to identify or guarantee signatures or endorsements on, notes, certificates of deposit, checks, and securities of all kinds, either belonging to or coming into the possession of the City of Aberdeen; and
- (f) authorize, orally or in writing or through any other medium agreed to by said officer and Treasury, the debiting and/or crediting by Treasury of the City of Aberdeen’s deposit account(s) at any financial institution for the purpose of effecting such transaction.

BE IT FURTHER RESOLVED, that the Finance Director or Deputy Finance Director is authorized and directed to certify to Treasury the foregoing resolutions and that the provisions thereof are in conformity with the Charter and ordinances of the City of Aberdeen and to certify

to Treasury the names of the persons now holding the offices referred to above and any changes hereafter in the persons holding said offices together with specimens of the signature of such present and future officers.

BE IT FURTHER RESOLVED, that the authority granted to the officers designated herein shall continue in full force and effect, and Treasury may rely thereon in dealing with such officers, unless and until written notice of any change in or revocation of such authority shall be delivered to Treasury by an officer of this City of Aberdeen, and any action taken by said officers and relied on by Treasury pursuant to the authority granted herein to its receipt of such written notice shall be fully and conclusively binding on this City of Aberdeen.

BE IT FURTHER RESOLVED, that the actions of any officer of the City of Aberdeen heretofore taken in opening an investment account with Treasury and in the investment of City of Aberdeen funds through such account, be, and the same hereby are in all respects, ratified, confirmed, and approved.

BE IT FURTHER RESOLVED, that all prior resolutions of the City of Aberdeen authorizing the opening of an investment account with Treasury and the investment of City of Aberdeen funds through such account, be, and the same hereby are, rescinded and superseded as to all such transactions with respect thereto effected after the date of adoption of these resolutions.

PASSED and APPROVED on ____ day of _____ 2020.

Peter Schave, Mayor

ATTESTED:

M. Patrice Kent, City Clerk (Corporation Counsel)

CERTIFICATE

I hereby certify that I am the duly appointed, qualified and acting clerk ex-officio of the City Council, and the custodian of the records of the City of Aberdeen, a first class charter city, organized and existing and in good standing under the laws of the state of Washington.

I further certify that set forth below are the true titles, names and genuine signatures of the duly elected or appointed, qualified and acting officers of the City of Aberdeen presently holding such offices who are authorized under the foregoing resolutions:

Hon. Peter Schave, Mayor

Currently Vacant, Finance Director

Don McMaster, (Interim) Deputy Finance Director

M. Patrice Kent, Corporation Counsel

IN WITNESS WHEREOF, I have affixed by name in my official capacity as clerk ex-officio of the City of Aberdeen on this ____ day of _____, 2020.

M. Patrice Kent, City Clerk (Corporation Counsel)

**LEGISLATIVE DEPARTMENT
CITY OF ABERDEEN**

MAYOR: Pete Schave

**THE MEMBERS OF
YOUR COMMITTEE ON:** Public Works and the Public Works Director

TO WHOM IT WAS REFERRED: Washington State Public Works Board (PWB) Emergency Loan for reconstruction and repairs of Basich Boulevard

REPORTS AS FOLLOWS: The City of Aberdeen applied for and has been approved to receive emergency loan funding from the Washington State Public Works Board for reconstruction and repairs to the destroyed roadway and utilities on Basich Boulevard. The agreement number is PE20-96103-104 in the amount of \$1,000,000 with an interest rate of .79 % for a Loan Term of 20 years with 20% forgiveness once the project is completed. Any eligible costs incurred from the Emergency Proclamation adopted on December 23, 2019 and forward are reimbursable with the Emergency loan fund.

IT IS RECOMMENDED: The City Council shall authorize the Mayor to sign the PWB loan agreement for reconstruction and repairs of Basich Boulevard.

Rick Sangder
Public Works Director

Tim Alstrom, Chair

Nathan Kennedy, Vice-Chair

Reported _____, 2020

Joshua Francy, Member

Adopted _____, 2020



**Washington State
Public Works Board**

Post Office Box 42525
Olympia, Washington 98504-2525

May 8, 2020 **REVISED**

Kris Koski, City Engineer
City of Aberdeen
200 E Market St.
Aberdeen, WA 98520

Dear Mr. Koski,

Thank you for submitting a Public Works Board (PWB) Emergency Loan application for consideration by the Public Works Board (Board). Congratulations, your Basich Boulevard Slide Repair project has been awarded \$1,000,000.

The Board approved your emergency application at their May 1, 2020 board meeting. Any eligible costs incurred from the Emergency Proclamation adopted on December 23, 2019 and forward are reimbursable with the Emergency loan fund. Our office just completed the **revised** underwriting for this project and the loan interest rate is **0.79% and a 20% forgiveness** when you complete the project, with a loan term of 20 years.

The Executive Order 05-05 review has been started. No ground disturbance is allowed until the cultural resources review has been completed. We will request the tribal consultation review to received comments rapidly, due to the emergency.

Once again, thank you for applying to the Public Works Board. Please feel free to contact your Project Manager, Arlene Drewry (360) 725-3015, or email by at arlene.drewry@commerce.wa.gov if you have any questions. Arlene is taking promotion and her last day is May 15th. I will be your contact until we have hired a project manager to take her position with PWB.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Rivera".

Connie Rivera
PWB Program Director

cc: Application File

CONTRACT FACE SHEET

Contract Number: PE20-96103-104

PUBLIC WORKS BOARD EMERGENCY LOAN CONTRACT

1. Contractor City of Aberdeen 200 E. Market ST Aberdeen, WA 98520		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative N/A		4. Public Works Board Representative N/A	
5. Contract Amount \$1,000,000	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Contract Start Date Contract Execution Date	8. Contract End Date June 1, 2040
9. Federal Funds (as applicable) N/A	Federal Agency N/A	CFDA Number N/A	
10. Tax ID # 91-6001226	11. SWV # 0007703-00	12. UBI # 141-000-009	13. DUNS #
14. Contract Purpose Fund a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets, roads, bridges, drinking water systems, stormwater systems, sanitary sewage systems, or solid waste facilities, including recycling facilities.			
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: Contract Terms and Conditions including Declarations Page, and Attachment I: Attorney's Certification.			
FOR THE CONTRACTOR _____ Signature _____ Print Name _____ Title _____ Date		FOR PUBLIC WORKS BOARD _____ Scott Hutsell, Public Works Board Chair _____ Date APPROVED AS TO FORM ONLY _____ October 22, 2018 _____ Signature on file Sandra Adix Assistant Attorney General	



DECLARATIONS

CLIENT INFORMATION

Legal Name: City of Aberdeen
Loan Number: PE20-96103-104

PROJECT INFORMATION

Project Title: Basich Boulevard Slide Repair
Project City: Aberdeen
Project State: Washington
Project Zip Code: 98520

LOAN INFORMATION

Loan Amount: **\$1,000,000.00**
Total Estimated Cost: **\$0.00**
Loan Term: **20**
Interest Rate: **0.79%**
Forgiveness: **20%**
Payment Month: June 1st
Loan Reimbursement Start Date: **December 23, 2019**
Time of Performance: 12 months from Execution Date of this Contract to Project Completion.

SPECIAL TERMS AND CONDITIONS GOVERNING THIS LOAN AGREEMENT

NA

LOAN SECURITY CONDITION GOVERNING THIS LOAN AGREEMENT

This loan is a general obligation of the LOCAL GOVERNMENT.

SCOPE OF WORK

Repairs associated with the Basich Boulevard Slide Repair. Construction includes a stabilized slope, new roadway embankment, resurfaced street, and rebuilt utilities including a water main, sewer main, and storm drainage system.

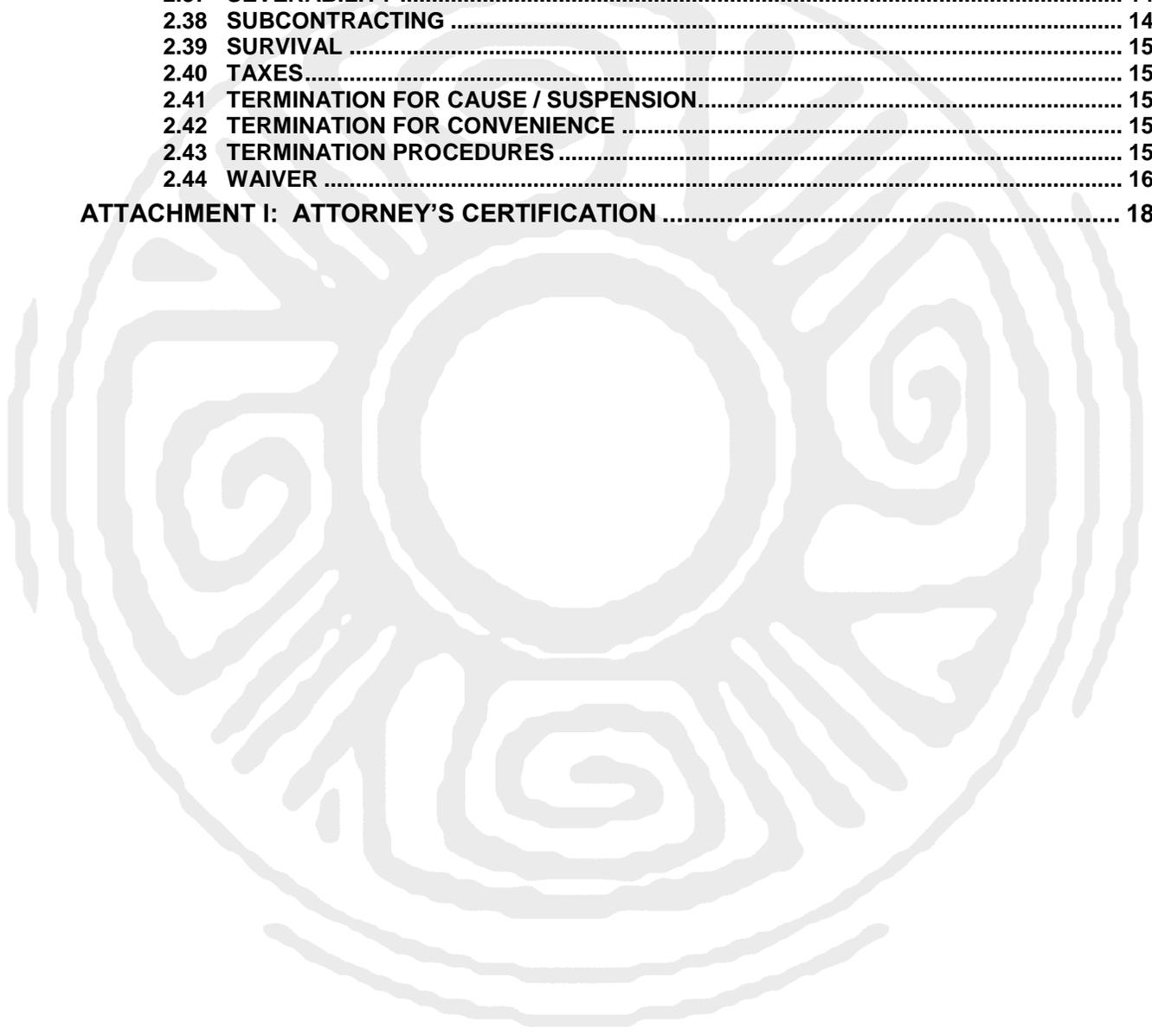
The project costs may include but are not limited to: engineering, cultural and historical resources, environmental documentation, review, permits, public involvement, bid documents and construction. The project needs to meet all applicable Local, State, and/or Federal standards.



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CONTRACT TERMS AND CONDITIONS

PUBLIC WORKS BOARD EMERGENCY LOAN PROGRAM

Part 1. SPECIAL TERMS AND CONDITIONS

1.1 Definitions

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

- A. "Contract" shall mean this Emergency Loan Contract.
- 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. "Declarations " and "Declared" shall refer to the project information, loan terms and conditions as stated on the Declarations Page of this Loan Contract, displayed within the contract in **THIS STYLE** for easier identification.

1.2 Authority

Acting under the authority of Chapter 43.155 RCW, the Board has awarded the Contractor a Public Works Board emergency loan for an approved public works project.

1.3 Purpose

The Board and the Contractor have entered into this Contract to undertake a local public works project that furthers the goals and objectives of the Washington State Public Works 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 terms and conditions, and all applicable federal, state and local laws and ordinances, 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 Competitive Bidding Requirements

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 Public Works Program.

1.6 Default in Repayment

Loan repayments shall be made on the loan in accordance with Section 1.18 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 (1st) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be one percent (1%) per month or twelve percent (12%) per annum. The same penalty terms shall apply at project completion if the repayment of loan funds in excess of eligible costs are not repaid at the time the Project Completion Amendment is submitted, as provided for in Section 1.13.

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.

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

1.7 Sub-Contractor Data Collection

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Contract performed by sub-contractors and the portion of the Contract funds expended for work performed by sub-contractors, including but not necessarily limited to minority-owned, women-owned, and veteran-owned business sub-contractors. "Sub-Contractors" shall mean sub-contractors of any tier.

1.8 Eligible Project Costs

The Eligible project costs must consist of expenditures eligible under Washington Administrative Code (WAC) 399-30-030 and be related only to project activities described in declared **SCOPE OF WORK**. Eligible costs for reimbursement shall be construed to mean expenditures incurred and paid, or incurred and payable within thirty (30) days of the reimbursement request. Only costs that have been incurred on or after **LOAN REIMBURSEMENT START DATE** shown in the Declarations are eligible for reimbursement under this Contract.

The Contractor assures compliance with WAC 399-30-030, which identifies eligible costs for projects assisted with Public Works Board loans.

These terms supersede the terms in Section 2.2. Allowable Costs.

1.9 Historical and Cultural Resources

Prior to commencing construction, Contractor shall complete the requirements of Governor's Executive Order 05-05, or, as an alternative to completion of Governor's Executive Order 05-05, Contractor shall complete Section 106 of the National Historic Preservation Act, as applicable. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless the Board and the State of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 05-05, coordinate with the Washington State Department of Archaeology and Historic Preservation (DAHP), including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed project funded by this Contract. Contractor agrees to avoid, minimize, or mitigate impacts to cultural resources as a continuing pre-requisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural resources are discovered during construction, the Contractor shall immediately stop work and notify the local historical preservation officer and the state's historic preservation officer at 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 DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all sub-contracts for work or services related to the declared **SCOPE OF WORK**.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44.040 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, WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05.

In the event that the Contractor finds it necessary to amend **SCOPE OF WORK**, the Contractor may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

1.10 Project Completion Amendment and Certified Project Completion Report

The Contractor shall complete a Certified Project Completion Report when all activities identified in the **SCOPE OF WORK** are complete. The Board will supply the Contractor with the Certified Project Completion Report form, which shall include:

- A. A certified statement that the project, as described in the declared **SCOPE OF WORK**, is complete and, if applicable, meets required standards.
- B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in the **SCOPE OF WORK**.
- C. Certification that all costs associated with the project have been incurred and have been accounted for. Costs are incurred when goods and services are received and/or contract work is performed.
- D. A final voucher for the remaining eligible funds.

The Contractor will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the loan amount. The final Invoice Voucher payment shall not occur prior to the completion of all project activities identified in the **SCOPE OF WORK** and the Board's receipt and acceptance of the Certified Project Completion Report.

The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount, local share, term, and interest rate.

1.11 Rate and Term of Loan

The Board shall loan the Contractor a sum not to exceed the **LOAN AMOUNT** shown on the Contract Face Sheet and declared on the Contract Declarations Page. The interest rate shall be the declared **INTEREST RATE** per annum on the outstanding principal balance. The length of the loan shall not exceed the declared **LOAN TERM** in years, with the final payment due by the **CONTRACT END DATE** as shown on the Contract Face Sheet.

1.12 Recapture

The right of recapture Section 2.32. Recapture, shall exist for a period not to exceed six (6) years following contract termination. In the event that the Board is required to institute legal proceedings to enforce the recapture provision, the Board shall be entitled to its costs thereof, including attorney's fees.

1.13 Reimbursement Procedures and Payment

If funding or appropriation is not available at the time, the invoice is submitted, or when this contract is executed, the issuance of warrants will be delayed or suspended until such time as funds or appropriations become available. Therefore, subject to the availability of funds, warrants shall be issued to the Contractor for reimbursement of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with the declared **SCOPE OF WORK**.

The Board shall reimburse the Contractor for eligible project expenditures up to the maximum loan amount under this contract, as identified in Section 1.10. When requesting reimbursement for costs incurred, the Contractor shall submit a signed and completed Invoice Voucher (Form A19), referencing the **SCOPE OF WORK** project activity performed, and any appropriate documentation such as bills, invoices, and receipts. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Requests for reimbursements for costs related to **construction** activities will not be accepted until the Contractor provides:

- Proof of compliance with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act, as described in Section 1.9, and
- Signed Public Works Board Notice of Contract Award and Notice to Proceed, which follows the formal award of a construction contract.

The Contractor shall submit all Invoice Vouchers and all required documentation to:

Public Works Board
Attn: (Project Manager)
PO Box 42525
Olympia, WA 98504-2525

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

Payment shall be considered timely if made by the Board 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, terminate the contract or 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.

Duplication of Billed Costs. If the Contractor is entitled to payment or has been or will be paid by another source for an eligible project cost, then the Contractor shall not be reimbursed by the Board for that cost.

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

In no event shall the total Public Works loan exceed 100% of the eligible actual project costs. At the time of project completion, the Contractor shall submit to the Board a Project Completion Amendment certifying the total actual project costs and local share. The final Public Works loan disbursement shall bring the total loan to the lesser of 100% of the eligible project costs or the total declared **LOAN AMOUNT**. The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount, local share, and interest rate.

In the event that the final costs identified in the Project Completion Amendment indicate that the Contractor has received Public Works Board monies in excess of 100.00% of eligible costs, all funds in excess of 100.00% shall be repaid to the Public Works Board by payment to the Department of Commerce, or its successor, together with the submission of the Project Completion Amendment.

1.14 Repayment

Loan repayment installments are due on the day and month identified under the term: **PAYMENT MONTH** on the Declarations Page. Payments are due each year during the term of the loan beginning one year from the date of contract execution. Interest only will be charged for this payment if a warrant is issued prior to this date. All subsequent payments shall consist of principal and accrued interest due on the specified **PAYMENT MONTH** date 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 based on a three hundred and sixty (360) day year of twelve (12) thirty (30) day months. Interest will begin to accrue from the date each warrant is issued to the Contractor. The final payment shall be on or before the **CONTRACT END DATE** shown on the Declarations page, of an amount sufficient to bring the loan balance to zero.

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.

1.15 Reports

The Contractor shall furnish the Board with:

- A. Project Status Reports with each Invoice Voucher;
- B. Project Quarterly Reports (if no funds have been reimbursed in the quarter) and/or Quarterly Expenditures Report;
- C. Certified Project Completion Report at project completion (as described in Section 1.13); and
- D. Other reports as the Board may require.

1.16 Termination for Cause

If the Contractor fails to comply with the terms of this Contract, or fails to use the loan proceeds only for those activities identified in the **SCOPE OF WORK**, the Board may terminate the Contract in whole or in part

at any time. The Board shall notify the Contractor in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Nothing in this section shall affect the Contractor's obligation to repay the unpaid balance of the loan.

These terms supersede the terms in Section 2.41 Termination for Cause/Suspension.

1.17 Termination for Convenience

The Board may terminate this contract in the event that 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. Termination will be effective when the Board sends written notice of termination to the Contractor. Nothing in this section shall affect the Contractor's obligation to repay the unpaid balance of the loan.

These terms supersede the terms in Section 2.42 Termination for Convenience.

1.18 Time of Performance

No later than twelve (12) months after the date of contract execution, the Contractor must reach project completion.

Failure to meet Time of Performance shall constitute default of this contract. In the event of extenuating circumstances, the Contractor may request, in writing, that the Board extend the deadline for project completion. The Board may extend the deadline.

The term of this contract shall be for the entire term of the loan, regardless of actual project completion, unless terminated sooner as provided herein.

1.19 Contract Suspension

In the event that the Washington State Legislature fails to pass and the Governor does not authorize a Capital Budget by June 30 of each biennium, the Washington State Constitution Article 8 and RCW 43.88.130 and RCW 43.88.290 prohibit expenditures or commitments of state funds in the absence of appropriation.

In such event, all work will be suspended effective July 1. The Contractor shall immediately suspend work and take all reasonable steps necessary to minimize the cost of performance directly attributable to such suspension until the suspension is cancelled.

THE BOARD shall notify the Contractor immediately upon lifting of the contract suspension.

1.20 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.

1.21 Loan Security

Loan Security payments shall be made as stated on the attached Declarations Page, and identified therein as LOAN SECURITY.

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 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.

2.3 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.

2.4 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.

2.5 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.

2.6 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.

2.7 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.

2.8 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 attorney's fees and costs.

2.9 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.

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's requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

In the event an audit is required, if the Contractor is a 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.

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 no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

Department of Commerce
ATTN: Audit Review and Resolution Office
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.

If the Contractor is required to obtain a Single Audit in accordance with 2 CFR Part 200, a copy must be provided to Commerce; no other report is required.

2.10 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.

2.11 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

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

1. All material provided to the Contractor by the Board that is designated as "confidential" by the Board;
2. All material produced by the Contractor that is designated as "confidential" by the Board; and
3. 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.

2.12 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.

2.13 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.

2.14 DISALLOWED COSTS

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

2.15 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 Chair of 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 Chair and the other party's (respondent's) 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 Chair or the Chair's designee and the requestor within five (5) working days.

The Chair or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Chair 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.

2.16 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.

2.17 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.

2.18 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.

2.19 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.

2.20 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.

2.21 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.

2.22 LAWS

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

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.

2.23 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.

2.24 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.

2.25 LOCAL PUBLIC TRANSPORTATION COORDINATION

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

2.26 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.

2.27 PAY EQUITY

The Contractor agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar

working conditions. Job titles alone are not determinative of whether employees are similarly employed;

- B.** Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
1. A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
 2. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
 3. A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential, and account for the entire differential.

This Contract may be terminated by the BOARD, if the Department of Commerce or the Department of Enterprise Services determines that the Contractor is not in compliance with this provision.

2.28 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.

2.29 PREVAILING WAGE LAW

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with 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.

2.30 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.

2.31 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.

2.32 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.

2.33 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.

2.34 REGISTRATION WITH DEPARTMENT OF REVENUE

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

2.35 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.

2.36 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.

2.37 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.

2.38 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.

2.39 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.

2.40 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.

2.41 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).

2.42 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.

2.43 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 State 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

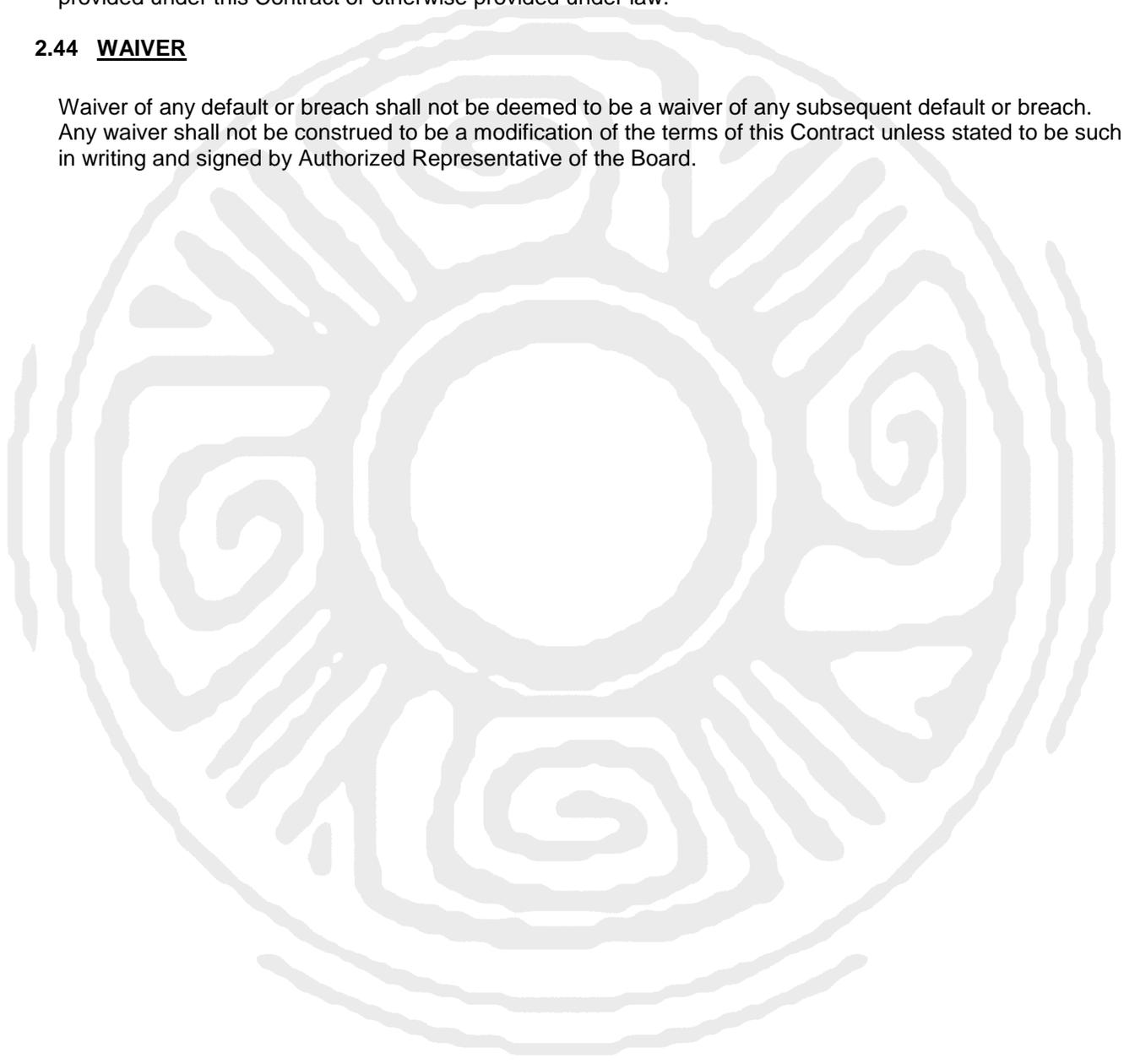
D. Preserve and transfer any materials, contract deliverables and/or the Board property in the Contractor's possession as directed by the Board.

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.

2.44 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.



ATTACHMENT I: ATTORNEY'S CERTIFICATION

PUBLIC WORKS BOARD EMERGENCY LOAN PROGRAM

City of Aberdeen
PE20-96103-104

I, _____, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the City of Aberdeen (the Contractor); 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 Public Works Board financial assistance and to provide for repayment of the loan as set forth in the Contract.
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 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 Contract.
4. Assumption of this obligation would not exceed statutory and administrative rule debt limitations applicable to the Contractor.

Signature of Attorney

Date

Name

Address

This page intentionally left blank.

**LEGISLATIVE DEPARTMENT
CITY OF ABERDEEN**

MR. MAYOR: Pete Schave

THE MEMBERS OF YOUR COMMITTEE ON: Public Works

TO WHOM IT WAS REFERRED: BUILD Grant for Aberdeen US 12 Highway-Rail Separation Project

REPORTS AS FOLLOWS: The City is partnering with the Port of Grays Harbor to prepare a Better Utilizing Investments to Leverage Development (BUILD) grant application for the Aberdeen US 12 Highway-Rail Separation Project. The grant request will be for up to \$2 million for pre-construction phases of the project. The City will utilize \$700,000 secured in the State's 2020 supplemental transportation budget and \$700,000 of local commitment, including \$200,000 previously committed by the City of Aberdeen, as match for the application. Applications are due May 18, 2020.

IT IS RECOMMENDED: The City shall submit for a 2020 BUILD grant for up to \$2 million for the Aberdeen US 12 Highway-Rail Separation Project and the City Engineer shall be the City's authorized agent for the grant submission.

Rick Sangder
Public Works Director

Tim Alstrom, Committee Chair

Nathan Kennedy, Vice-Chair

Reported _____, 2020

Joshua Francy, Member

Adopted _____, 2020

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**CITY OF ABERDEEN
COMMITTEE REPORT**

MR. MAYOR:

Hon. Pete Schave

**THE MEMBERS OF
YOUR COMMITTEE ON:**

Public Safety and Chief of Police

IN REFERENCE TO:

**Port of Grays Harbor Rental Agreement (MRAP
Parking)**

Report and recommend as follows:

The Aberdeen Police Department has a Mine Resistant Ambush Protected (“MRAP”) vehicle, which must be kept under secure cover. Previously, the vehicle was stored at the Grays Harbor PUD, but that location is no longer available and an alternative location must be found immediately to protect the ability of APD to respond as needed with the MRAP in a timely manner; this action is both routine and necessary.

The proposed agreement is for an initial term of 12 months, with a 60-day notice by either party to terminate. The monthly rental is \$150.00, payable on the first of the month.

Therefore it is recommended that: City Council authorize execution of the Rental Agreement for storage of the MRAP at Port of Grays Harbor property, and to issue the first rental check in the amount of \$150.00.

Steven J. Shumate
Chief of Police

Reported: May 13, 2020

Adopted: _____

**PORT OF GRAYS HARBOR
RENTAL AGREEMENT NO. 1170**

THIS AGREEMENT OF RENTAL entered into this ____ day of May, 2020, by and between the **PORT OF GRAYS HARBOR**, a municipal corporation of the State of Washington, hereinafter referred to as “Owner,” and City of **Aberdeen Police Department** hereinafter referred to as “Tenant.”

IN CONSIDERATION of the rentals herein agreed to be paid by the Tenant to the Owner, and the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

1. **AGREEMENT TO RENT**. The Owner does hereby rent to the Tenant and the Tenant hereby takes and hires from the Owner one parking bay in the Port of Grays Harbor Equipment Building, located at 2305 Port Industrial Road, Aberdeen, WA 98520, a certain real estate situated in Grays Harbor County, State of Washington, and which real estate is hatch marked on that certain map designed as Exhibit “A,” and which drawing is attached hereto and incorporated herein by this reference.

2. **TERM**. The term of this Rental Agreement shall be from June 1, 2020 to midnight, May 31, 2021 and continue thereafter on a month-to-month basis according to the terms and conditions described in paragraph 21 entitled “HOLDING OVER.”

3. **RENT**.

A. The basic rent for the premises herein and the improvements thereon shall be the sum of \$150.00 (One Hundred Fifty and no/100 dollars) per month.

~~A. In addition to paying the rent as provided above, Tenant shall pay to Owner all leasehold excise taxes due and owing on all taxable rent consistent with RCW Chapter 82.29A relating to leasehold excise tax, and any subsequent revision or amendment thereto. In the event that the Washington State Department of Revenue determines, based on Chapter 82.29A RCW or any revision or amendment thereto, that a leasehold tax is due in an amount greater than the amount invoiced by the Port of Grays Harbor, then the Tenant shall pay the same and hold Owner harmless from the leasehold excise tax and any penalties or assessments due. Nothing herein shall prevent the Tenant from disputing the amount of the leasehold tax and taking proper steps to seek an administrative or judicial determination that determines the amount of leasehold tax due, provided there is no expense to the Owner.~~

B. Rent ~~and leasehold excise tax~~ shall be payable monthly in advance and shall be paid to the Owner at its offices in Aberdeen, Grays Harbor County, Washington. Rent ~~and leasehold excise tax~~ are due and payable on or before the first day of the month they are due; there is no grace period. The tenant may be considered in default of this Agreement if the rent ~~and leasehold excise tax~~ are not received when due. Delinquent rent shall draw interest at the rate of 1-1/2 % (one and one-half percent) per month, or the maximum rate permitted by law; whichever is lesser, from the date of delinquency, until fully paid.

4. **USE OF PREMISES.** The Tenant shall use the premises for storage of their MRAP vehicle and shall not use them for any other purpose without the written consent of the Owner. The Tenant shall continuously use the entire premises for the storage and reasonable access during the term of this agreement with the exception of temporary closures caused by reason of wars, labor disputes, riots, civil commotion, acts of public enemy, acts of God, or temporary shutdown because of economic necessity. Tenant shall not keep on the premises any material which, in the Owner's judgment, is dangerous or of explosive nature or which may cause an increase in Owner's insurance premiums or cause cancellation of Owner's insurance without advance written permission of the Owner. No activity which may create a hazard in the judgment of the Owner, or which may cause an increase in Owner's insurance premiums, may be performed without the advance written permission of the Owner. The Tenant shall keep the premises in a neat, clean and sanitary condition at all times in keeping with the above-described use of the property.

5. **POSSESSION.** The parties hereto understand that a prerequisite to the validity to this Rental Agreement is the provision for insurance as required in the paragraph entitled "ACCIDENT AND LIABILITY INSURANCE" and the provision for security of Tenant's performance of this Agreement as required in the paragraph entitled "PERFORMANCE BOND". Anything herein to the contrary notwithstanding, the Tenant shall not be entitled to the possession of all or any portion of the herein-rented premises until it shall have complied with said paragraphs.

6. **ACCEPTANCE OF PREMISES.** Tenant accepts the rented premises in their present condition, "as is" and agrees that it will not demand that the Owner make any improvements thereon or maintenance thereof other than as specifically agreed to herein. The Tenant shall make no alterations or improvements to the premises without the written approval of the Owner.

7. **EXTERIOR MAINTENANCE OF PREMISES.** Tenant shall keep the premises in a condition of proper cleanliness, orderliness and a state of attractive appearance at all times and shall permit no waste nor nuisances upon the premises. No refuse, garbage, debris, nor rubbish shall be permitted to accumulate on the premises. ~~Landscaping shall be properly maintained in an attractive state; lawns shall be watered, fertilized, weeded, mowed, and trimmed as required; shrubs and trees shall be fertilized and pruned as required; garden areas shall be kept free of weeds.~~ If tenant shall violate the covenants of this paragraph, Owner may enter the rented premises, without such entering causing or constituting a termination of this Rental Agreement or an interference with the

possession of the premises by Tenant, and Owner may restore the premises to a neat, clean, sightly, and sanitary condition in keeping with the above-described use of the property. In such event, Tenant shall pay to Owner, in addition to the rent as provided above, the expense of Owner in thus restoring the premises.

8. **RIGHT OF ACCESS.** The Owner reserves to itself, its agents or assigns, the right to enter the rented premises at any time for the purpose of inspecting and/or for the purpose of maintaining and repairing the same, and agrees to provide one business day notice to Tenant of such entry to the greatest extent practicable. The foregoing shall not be construed to require the Owner to inspect the premises and shall impose no liability on the Owner for failure to so inspect.

9. ~~**UTILITIES.** The Tenant shall pay before delinquency, all charges for electricity, telephone, sewerage, gas, garbage disposal, water and other utilities furnished to the leased premises during the term hereof.~~

10. **SIGNS.** No signs, banners, pennants, symbols, flags, eye-catching spinners or other advertising devices, nor any temporary signs shall be permitted to be flown, installed, placed or painted on, attached to or erected on the rented premises without the prior written consent of the Owner.

11. **TENANT'S RESPONSIBILITY FOR ESCAPED PRODUCTS.** Tenant hereby expressly assumes all responsibility for petroleum, hazardous substances or other products spilled or released from vehicles, rail cars, vessels, tanks, pipelines, structures, telephone poles, or other leasehold improvements used by Tenant or placed on the rented premises, or present on the rented premises at Tenant's request or convenience, including but not limited to any pipeline installed by Tenant or at Tenant's request to or from the rented premises, and Tenant shall hold Owner harmless from all liability, damages, suits, fines or penalties resulting from the release, spill or escape of any such products. This paragraph shall not include any spill or release from equipment rented by the tenant from the Owner, provided there was no negligence on the part of the Tenant, its employees or agents.

12. **PRESENCE AND USE OF HAZARDOUS SUBSTANCES.**

A. **Hazardous Substances Defined:** As used in the agreement, the term "Hazardous Substance" means any hazardous, toxic, dangerous or extremely hazardous substance, material or waste, including marine pollutants, marine toxics, and air toxics, which is or becomes regulated by the United States Government, the State of Washington, or any local governmental authority. The term includes, without limitation, any substance containing (contaminants) regulated as specified above.

B. **Release Defined:** As used in this Agreement, the term "release" shall be defined as provided in 42 U.S.C. 9601 and RCW 70.105D.020, or successor legislation. In the event a conflict exists between the two definitions, the broader

definition shall apply. For purposes of the Agreement, the term release shall also include threatened release.

C. Use, Storage and Disposal: Notwithstanding any other provision of this Agreement, Tenant shall not use, store, treat, generate, sell or dispose of any Hazardous Substances on or in any manner that affects the premises, improvements and common areas without the prior written consent of the Owner.

D. Compliance with Laws: Tenant shall, at its sole cost and expense, comply with all laws, statues, ordinances, regulations, rules and other governmental requirements regarding the proper and lawful generation, use, sale, transportation, storage, treatment and disposal of Hazardous Substances (hereinafter "Laws") or in any manner that affects the premises.

E. Monitoring: The Owner or its designated agents may, at the Owner's sole discretion and at reasonable times, enter upon the premises for the purpose of (1) monitoring Tenant's activities conducted thereon, and (2) conducting environmental testing and sampling to determine compliance with applicable laws and the terms of this Agreement. If such monitoring discloses the presence or release of Hazardous Substances in violation of either applicable laws or this Agreement, the cost of such monitoring shall be paid by Tenant pursuant to subparagraph ("H"). In addition, within five (5) days of the Owner's written request, Tenant shall provide the Owner with a detailed written description of Tenant's generation, use, sale, transportation, storage, treatment and disposal of Hazardous Substances on or which may otherwise affect premises. The Owner's discretionary actions pursuant to this subparagraph shall not constitute a release waiver or modification of Tenant's obligations otherwise specified in this Agreement.

F. Notifications: Tenant shall notify the Owner within twenty-four (24) hours of any release of Hazardous Substances that may affect the premises, and shall promptly provide the Owner with a copy of any notifications given to any governmental entity regarding any such release. Tenant shall promptly provide the Owner with copies of any inspection report, order, fine, request, notice or other correspondence from any governmental entity regarding the release of Hazardous Substance that may affect the premises. At the Owner's written request, Tenant shall provide the Owner with a copy of all reports, (manifests), material safety data sheets (MSDS), and identification numbers regarding Hazardous Substance at the same time they are submitted to the appropriate governmental authorities.

G. Environmental Assessment: Tenant shall, upon request from the Owner, based on a sufficient reason to believe there has been a release of hazardous substances, within sixty (60) days following expiration or other termination of the Agreement, provide the Owner with an environmental assessment prepared by a qualified professional mutually agreed upon by the Owner and Tenant. The environmental assessment shall, at a minimum, certify that a diligent investigation

of the premises has been conducted, including a specific description of the work performed, and either (1) certify that diligent investigation of the premises has revealed no evidence of a release of Hazardous Substances or violation of applicable laws, or (2) if a release or violation of applicable laws is detected, identify and describe; (I) the types and levels of Hazardous Substances detected; (ii) the physical boundaries of the release, including property other than the premises; (iii) the actual and potential risks to the environment from such release or violation; and (iv) the procedures and actions necessary to remedy the release or violation in compliance with applicable laws. Tenant shall pay the expense of obtaining the environmental assessment and of performing all remediation in accordance with subparagraph (“H”).

H. Hold Harmless and Indemnity: The parties will indemnify each other against actions, liabilities, loss, damages and expenses resulting from injury or death of any person or loss of or damage to any tangible real or tangible personal property to the extent that such injury, death, loss or damage is proximately caused by the indemnifying party’s negligent act or omission or intentional misconduct or that of its agents, employees or subcontractors in connection with the performance of its obligations under this Agreement, provided that the indemnifying party has been notified in writing as soon as practicable of any such claim.

I. Default and Cure: Notwithstanding any other provision of this Agreement, the Owner may, in the event of a release of Hazardous Substances or a violation of applicable laws affecting the premises, elect to declare this Agreement in default and terminate the same. Such election by the Owner, if made, shall be without prejudice to any other remedy provided in the Agreement. Should the Owner not elect to declare a default, it may cure any release of Hazardous Substances or any violation of applicable laws by Tenant, and impose a rent surcharge sufficient to recover such loss, and impose a rent surcharge sufficient to recover such expenses together with interest at 12% percent per annum, for such portion of the unexpired term of the Agreement as the Owner may deem proper.

J. Assignments and Subleases: The Owner may withhold its consent to any assignment, sublease, or other transfer if the proposed transferee’s use of the premises may involve the generation, storage, use, treatment, or disposal of Hazardous Substances, as defined in the Agreement.

K. Release of Hazardous Substances: Notwithstanding any other provision of this Agreement, and without prejudice to any other such remedy, the Owner, in the event of a release of Hazardous Substances, a violation of applicable laws or a breach of any section of paragraph 12 any of the terms, covenants or conditions of this Agreement, shall be entitled to any or all of the following rights and remedies, at the Owner’s option:

- (1) To terminate this Agreement immediately.

(2) To recover any and all damages associated with the release, including but not limited to cleanup costs and charges, civil and criminal penalties and fees, loss of business sales, by the Owner, and other Tenant's of the building, and any and all damages and claims asserted by other parties and the Owner's attorney's fees and costs.

(3) To renegotiate the terms of this Agreement to recover any return on expenditures made by the Owner in order to insure that the premises and the use of such premises comply with all governmental rules, regulations and requirements.

L. EPA Identification Number: Tenant shall also provide to the Owner the Tenant's Environmental Protection Agency Identification Number to dispose of hazardous waste if Tenant has one.

13. **ACCIDENT AND LIABILITY INSURANCE**. The City of Aberdeen is a member of the Washington Cities Insurance Authority (WCIA), which is a self-insured pool of over 155 public entities in the State of Washington. WCIA has at least \$4,000,000.00 per occurrence limit of liability coverage in its self-insured layer that may be applicable in the event an incident occurs that is deemed to be attributed to the negligence of the member. Liability coverage includes general liability, automobile liability, stopgap coverage, errors or omissions liability, employee benefits liability and employment practices liability coverage.

WCIA was created by an interlocal agreement among public entities and liability is self-funded by the membership. As there is no insurance policy and WCIA is not an insurance company, the Owner cannot be named as an additionally insured.

14. **PERFORMANCE BOND**. The Tenant shall deliver to the Owner a sum equal to one month's rent conditioned to faithfully perform all terms and conditions of this Agreement. Owner acknowledges receipt of such sum of money, which shall be returned to the Tenant upon the termination of this Agreement and the tender of the premises to the Owner under circumstances which indicate that all the terms and conditions of this Agreement have been properly and faithfully performed.

15. **ASSIGNMENT AND SUBLETTING**. The Tenant shall not assign or sublet all or any portion of its interest herein, nor shall this Agreement or any interest hereunder be assignable or transferable by operation of law, or by any process or proceeding of any Court or otherwise, without the prior written consent of the Owner.

16. **INDEMNIFICATION BY TENANT**. The parties will indemnify each other against actions, liabilities, loss, damages and expenses resulting from injury or death of any person or loss of or damage to any tangible real or tangible personal property to the extent that such injury, death, loss or damage is proximately caused by the indemnifying party's negligent act or omission or intentional misconduct or that of its agents, employees or subcontractors in connection with the performance of its obligations under this

Agreement, provided that the indemnifying party has been notified in writing as soon as practicable of any such claim.

17. **NON- WAIVER OF BREACH.** The failure of the Owner to insist upon the strict performance of any covenants and agreements of this Rental Agreement in any one or more instances shall not be constructed to be a waiver thereof.

18. **COSTS AND ATTORNEYS FEES.** In the event either party shall be required to bring any action to enforce any of the provisions of this Rental Agreement, or shall be required to defend any action brought by the other with respect to this Rental Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, in addition to costs and necessary disbursements. The term "action" shall include an arbitration proceeding.

19. **ARBITRATION.** In the event of any disputes between the parties arising out of this Agreement, and if no provision is otherwise made herein for the resolution thereof, then such disputes shall be submitted to arbitration pursuant to the commercial arbitration rules of the American Arbitration Association. Said Association shall submit a list of proposed arbitrators and the parties hereto shall alternatively strike a name from such list until a final arbitrator remains, who shall be the arbitrator of the dispute. The decision of such arbitrator shall be final and binding on the parties. The cost of such arbitrator shall be final and binding on the parties. The cost of such arbitrator shall be borne equally by the parties hereto.

20. **RE-DELIVERY OF THE PREMISES.** At the termination or expiration of this Rental Agreement, the Tenant agrees to surrender to the Owner possession of the premises in as good condition as when received, less ordinary wear and tear.

21. **HOLDING OVER.** If the Tenant shall, with the consent of the Owner, hold over after the expiration or sooner termination of the term of this Agreement, the resulting tenancy shall be for an indefinite period of time on a month-to-month basis, and either party hereto may terminate such tenancy upon giving the other 30 days' notice in writing. During such month-to-month tenancy, tenant shall pay to the Owner the same rate of rental as set forth herein, unless a different rate shall be agreed upon, and shall be bound by all of the additional provisions of this Agreement insofar as they may be pertinent.

22. **TERMINATION FOR BREACH.** If the Tenant shall fail to keep and perform any of the covenants or agreements contained herein, including the payment of rent, and shall fail to remedy any such default within ten (10) days after written notice thereof, by the Owner to the Tenant, the Owner may at its option declare this Rental Agreement cancelled and forfeited, and the Tenant's right to possession ended, and the Owner may re-enter, said premises without process of law, using force as may be necessary to remove all persons or chattels therefrom, and the Owner shall not be liable for any damage by reason of such re-entry or forfeiture. All notices to Tenant shall be considered delivered to the Tenant upon such notice being deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Tenant at the address

stated below Tenant's signature upon this Rental Agreement or at such other address as Tenant may in writing furnish to the Owner.

22. **TERMINATION FOR CONVENIENCE AND MUTUAL CONSENT.**

A. **Termination for Convenience.** Either party may terminate this contract with sixty (60) days' notice.

B. **Termination by Mutual Consent/Changed Circumstances.** The parties may agree in writing to terminate this contract at any time.

23. **LIENS AND ENCUMBRANCES.** The Tenant shall keep the rented premises free and clear of all liens and encumbrances, including those arising out of or growing out of the use and occupancy of said premises by the Tenant. At the Owner's request, Tenant shall furnish the Owner with written proof of payment of any such items which will or might constitute the basis for such lien on the rented premises if not paid.

24. **CAPTIONS.** The captions in this Agreement are for convenience, only, and do not in any way limit or amplify the provisions of this Agreement.

25. **ENTIRE AGREEMENT.** This Agreement constitutes the whole agreement between the Owner and the Tenant. There are no items, obligations, covenants or conditions other than those contained herein. No modification or amendment of this Agreement shall be valid and effective unless evidenced by an agreement in writing and signed by both the Owner and the Tenant.

26. **INVALIDITY OF PARTICULAR PROVISIONS.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall continue in full force and effect.

27. **BINDING EFFECT.** This Agreement is binding upon each of the parties hereto, their successors and assigns.

28. **INTERPRETATION OF AGREEMENT.** This Agreement and all of its terms shall be construed according to the laws of the State of Washington. The venue and jurisdiction of any litigation between the parties hereto relating to this Agreement shall be the courts with the appropriate jurisdiction of any litigation between the parties hereto relating to this Agreement shall be the courts with the appropriate jurisdiction in Grays Harbor County, Washington.

29. **NOTICES.** All notices hereunder may be delivered or mailed. If mailed, they should be sent by certified registered mail to the Owner at Post Office Box 660, Aberdeen, Washington. Notices may be so mailed to the Tenant at its address set forth

below its signature to the Agreement. Such notices may be sent to other addresses of either party hereto as they may advise from time to time in writing. Notices sent by mail should be deemed to have been given when properly mailed and the postmark affixed by the United States Post Office shall be conclusive evidence of the mailing thereof.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year above written.

PORT OF GRAYS HARBOR

By _____
Gary G. Nelson,
Executive Director

“OWNER”

Port of Grays Harbor
P.O. Box 660
Aberdeen, WA 98520

ABERDEEN POLICE DEPARTMENT

By _____
Pete Schave, Mayor
City of Aberdeen
200 East Market Street
Aberdeen, WA 98520

(ATTEST): _____
City Clerk

“TENANT”

EXHIBIT "A"

Port of Grays Harbor Equipment Building
2305 Port Industrial Road, Aberdeen, WA 98520



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krowe

Thu, May 7, 10:31 AM

Please accept this letter as my resignation from Aberdeen city council. I have enjoyed my time as a representative for the 4th ward and am sad that it has come to this. I wish everyone the best of luck going forward in this difficult time.

Thank you.

Karen Rowe

Sent from my Verizon, Samsung Galaxy smartphone



Patrice Kent

Thu, May 7, 10:50 AM

Karen - Thank you for your service. Please confirm the effective date for your resignation.
Patrice



krowe

Thu, May 7, 11:01 AM

Effective immediately. My apologies. Karen



Patrice Kent

May 7, 2020, 11:02 AM

Thank you - Patrice

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**CITY OF ABERDEEN
LEGISLATIVE DEPARTMENT**

Mr. Mayor: Hon. Pete Schave

From: **Parks Director, Secretary to the Board of Museum and History**

In Reference To: **Museum property located in the Warehouse**

Reports and recommendations as follows:

At their regular board meeting on May 5, 2020, the Board of the Museum of History approved a motion to request the City to grant ongoing access to the Museum collection through the Collection Committee chairman. The City to provide a key so the collection can be assessed for the purpose of the Collection Committee to provide the Board with a plan to begin a controlled process, using volunteers, to restart the process of utilizing the Past Perfect inventory system by recording accessions, deaccessions and confirming that items on the inventory list are actually in physical possession.”

Recommend as follows:

It is recommended that the City Council approve access to the collection to the Board of Museum and History’s Collections Committee.

Stacie Barnum, Parks Director

Reported: May 13, 2020

Adopted: _____

May 7, 2020

Stacie,

The City of Aberdeen Board of Museum and History approved the below motion at their last monthly meeting held on May 5, 2020.

"A motion was made for the City to grant ongoing access to the Museum collection through the Collection Committee chairman. The City to provide a key so the collection can be assessed for the purpose of the Collection Committee to provide the Board with a plan to begin a controlled process, using volunteers, to restart the process of utilizing the Past Perfect inventory system by recording accessions, deaccessions and confirming that items on the inventory list are actually in physical possession." The motion was passed with a unanimous vote.

The initial step is for the chair to be allowed ongoing access to assess the current condition and position of the artifacts. This would be very limited to just a few people for a report back to the Collection committee who will then present the Board with a draft of the plan in order to get full participation and approval of the Board. Therefore, this is a two step process with the City Council whereby the initial step is to access and assess and the second is to come back again to the Council to present the plan and upon approval, begin implementation with volunteers. Volunteers will be trained with guidance created by the Board. The guidance will include input from outside museum professionals, the Washington State Historical Society (WSHS) and possible review from the University of Washington. We have offers for help from the WSHS and the Washington State Archives and are involved with both on a peer review program to facilitate this help. The goal is to secure volunteers and help from the State, the Friends of the Aberdeen Museum and to initiate a broad call for new volunteers from Grays Harbor and Aberdeen in general.

Thanks for your consideration.

George Donovan
Member-City of Aberdeen Board of Museum and History
Collections Committee Chairman