

Jefferson County PUD Citizen Advisory Board

A G E N D A

**Date: October
8th, 2018**

**Time: 2:00PM to
4:30PM**

**Place of
Meeting:
Jefferson County
Transit – 63
Four Corners Rd.
Port Townsend,
WA.**

- Call to Order
- Review of Agenda – See Attached Agenda Instructions
- Approval of Minutes from Last Mtg.
- Public Comment – See Attached Agenda Instructions
- Governance Resolution Sub-Committee Update and Recommendation
- CAB Recommendations for Meeting Changes Resulting from Parliamentary Procedure Workshop
- GM Report
 - Acceptance of CERB Grant (Action Item)
 - CAB Member Liability Insurance (Verbal Update)
 - Water Shortage Resource Plan (Verbal Update)
 - Street Lighting Rate (Verbal Update)
 - Intro – Broadband Line Extension Policy (Verbal Update)
- Next Steps or Additional Board Actions
- Public Comment
- Adjourn

Agenda Instructions for October 2018

Chair

Call to order, Quorum met, introductions (read below)

Chair reads: Per RCW 42.30.040. A member of the public shall not be required, as a condition to attendance at a meeting of a governing body, to register his or her name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.)

Chair reads: This public comment period is for any items not specifically listed on the current Agenda. The Chair may permit public comments on the other agenda items as they come up during the meeting. The Chair may place a time limit of three minutes on public comments to allow the meeting to be conducted in an efficient and orderly manner. All speakers will address their remarks to the Chair; but, the Chair will not engage in back-and-forth discussions with the Public. Staff is ready to note input or questions from the public and provide responses at a later date.



AGENDA REPORT

DATE: October 8, 2018
TO: **Citizens Advisory Board**
THRU: Larry Dunbar, General Manager
FROM: Don McDaniel, Management Consultant
RE: Resolution to clarify the role of the Citizens Advisory Board

SUMMARY: During the last 4 months staff and the Citizens Advisory Board (CAB) have discussed clarification to the governance resolution that are intended to enhance collaboration between the CAB and the Board of Commissioners (BOC) and the General Manager on policy issues.

BACKGROUND: The reason and spirit behind the formation of the CAB was to create a group of community members that could act as a sounding board for the BOC and General Manager on policy issues. There's only one other Public Utility District within Washington state that has established a CAB.

Over time there have been fewer policy issue requests from the BOC and the General Manager for the CAB to consider. Given there have been fewer requests, the CAB continued to provide support to the District by undertaking projects and tasks not assigned by the Commission.

Staff thinks that the CAB is beneficial and citizen involvement in policy issues provides significant value to the District. The General Manager attends CAB meetings and plans to continue to do so.

ANALYSIS/FINDINGS: During the last 4 months staff and the CAB have discussed clarifications to the governance resolution.

Staff and the CAB Chair Douglas Huber and CAB Governance Subcommittee, have prepared the attached governance resolution which is now ready for consideration. Staff sincerely appreciates the hard work of the Subcommittee.

Approval of the attached resolution will raise the importance of the CAB on policy issues and form a renewed integral relationship between the BOC, General Manager, and CAB members.

FISCAL IMPACT: There is no anticipated fiscal impact.

RECOMMENDATION: Staff is seeking a favorable recommendation from the Citizens Advisory Board to the Board of Commissioners to approve the attached governance resolution.

Attachment: Resolution clarifying the role of the Citizens Advisory Board

**PUBLIC UTILITY DISTRICT NO.1
OF
JEFFERSON COUNTY**

RESOLUTION NO. 2018-015

A RESOLUTION of the Board of Commissioners of Public Utility District No. 1 of Jefferson County, Washington ("the PUD"), Updating and Clarifying the Role of the Citizen's Advisory Board (CAB).

WHEREAS, RCW 54.12.010 states "The powers of the public utility district shall be exercised through a commission...." and

WHEREAS, the Board of Commissioners (Board) approved Resolution 2012-017 on or about the 1st day of October 2012; and

WHEREAS, Resolution 2012-017 set forth a policy for establishment of citizen boards, blue ribbon work groups and citizen task forces; and

WHEREAS, Resolution 2012-017 requires all committees established by the Board to be subject to periodic review so as to determine whether the committee and its function continue to be appropriate and necessary; and

WHEREAS, Resolution 2012-028 establishing a Citizen's Advisory Board (CAB) was approved by the Board on or about the 20th day of November, 2012; and

WHEREAS, Resolution 2012-028 sets forth that the purpose of the CAB is to provide recommendations on subjects selected by the Board, a process of appointing CAB members, terms and rotation of CAB members, and Board administrative support; and

WHEREAS, on or about the 2nd day of September 2014, the Board approved a motion that determined the CAB is a valuable instrument of the Board and should continue indefinitely, the terms and succession of CAB members, and the general process for appointment to the CAB; and

WHEREAS, on or about the 28th day of September 2016, the CAB Chair provided a letter to the Board and General Manager requesting clarity of the CAB role and expressing the CAB's desire to undertake projects and tasks both assigned by the Board and not assigned by the Board; and

WHEREAS, after discussion of the September 28, 2016 CAB letter, the Board at its October 3, 2016 meeting directed General Counsel to prepare a resolution superseding the resolutions referred to herein as they relate to the CAB, which would clarify and update the role of the CAB;

WHEREAS, Resolution 2016-019 modifying the policies of the CAB was approved by the Board on November 1, 2016; and

WHEREAS, Resolution 2017-017 further modified the policies of the CAB and was approved by the Board on August 15, 2017.

WHEREAS, The CAB was created for the purpose of providing a mechanism for the Board to obtain the benefits of recommendations, advice and opinions on policy matters from a volunteer committee which may devote the resources necessary for careful consideration of such matters and which will increase citizen participation and input to the Board.

THEREFORE, BE IT RESOLVED, by the Commissioners of the Public Utility District No. 1 of Jefferson County, Washington as follows regarding the Citizen's Advisory Board (CAB):

1. **Purpose:** The CAB provides advisory reports and recommendations to the Board of Commissioners (Board).
2. **Procedures:**
 - A. The General Manager (GM) is the liaison between the Board and the CAB.
 - B. The Board will make its CAB requests through the GM. The Board prioritizes issues to be studied by the CAB. **The CAB administers the list of prioritized issues.**
 - C. Policy issues may be studied by a CAB subcommittee. CAB members volunteer to be on a subcommittee based on their area of expertise or interest. A subcommittee shall not constitute a quorum of the CAB. **Based on unanimous approval by subcommittee members, a subcommittee may invite non-voting members of the public to participate.**
 - D. With the advance concurrence of the Board, a Board member may serve in an advisory capacity on a CAB subcommittee.
 - E. The Board recognizes that CAB members come from diverse professional backgrounds. Therefore, at a regularly scheduled CAB meeting, members may introduce topics to be discussed and studied **and may recommend prioritization. If agreed upon by the CAB, the GM will submit the topic to the Board for approval and prioritization.**
 - F. **Interim and final subcommittee reports are presented to the CAB. If the CAB approves, the approved interim or final subcommittee report will be submitted to the CAB President and GM for inclusion in the Board agenda.**

3. Membership:

- A. The full CAB consists of up to nine community volunteer members – three from each Commissioner District. CAB members are nominated by their respective Commissioner. Nominations must be confirmed by the Board before a nominee may join the CAB.
- B. The Board wishes to maintain stability and institutional knowledge on the CAB while providing opportunity for increased citizen participation. To that end, the CAB members shall have staggered 3-year terms.
- C. As terms of current CAB members expire, each Commissioner will nominate one person for a new 3-year term. The nominee must reside within the Board member’s respective district. A sitting CAB member must be nominated by their Commissioner to serve a subsequent term.
- D. Vacancies on the CAB shall be filled by nomination. The Board approved CAB member will serve the remainder of any unexpired term and then may re-apply for a full 3-year term.
- E. CAB member residency within the respective Commissioner District is required. Should Commissioner District boundaries change or should a CAB member move out of their respective Commissioner District, then that CAB member shall be replaced unless otherwise approved by the Board.

4. Removal of CAB Member:

- A. At its sole discretion, the Board may remove a CAB member if the CAB member has not performed satisfactorily in carrying out his or her duties, provided the CAB member has first been notified of the Board’s concerns and has had a reasonable opportunity to correct the issue. The Board shall have absolute discretion whether its concerns have been adequately addressed.
- B. A CAB member may resign their position by providing written notice to the Commissioner representing the CAB member’s district. Their replacement must be nominated following the process in Section 3.D.

5. Meeting Agenda: The GM and the CAB Chair shall set the agenda for each CAB meeting based on input from the CAB and with consultation from the Board, as necessary and appropriate.

6. Manner of Communication:

- A. Each regular Board meeting agenda that follows a CAB meeting should include a written “CAB Update” that includes current and future CAB activities.

- B. The CAB and its members are an advisory group only, and do not represent the Board.
- C. When expressing their views regarding District business in any venue, CAB members shall make it clear that such views are personal and not those of the CAB or the District.

7. Administrative Procedures and Support:

The CAB shall:

- A. Be subject to the Washington State Open Public Meetings Act (RCW 42.30) and Public Records Act. (RCW 42.56). Each CAB member shall complete the trainings that are required by RCW 42.30.205 and RCW 42.56.150. The CAB will be notified when training is available, and each CAB member shall provide a Certificate of Training.
- B. Conduct an annual election of a Chair and Vice-Chair to one-year terms. Current officers will remain in office until new officers are elected.
- C. Conduct a monthly meeting, open to the public at an agreed-upon date and time. The CAB agenda packet will be published on the District website no fewer than two business-days before the meeting.
- D. Be provided an adequate meeting venue and a voice recording system.
- E. Be provided a contract or District staff person to take minutes, and other such support as the Board may approve.

Board members will rotate to attend all CAB meetings.

- 8. **Periodic review:** The Board shall review the CAB purpose and effectiveness periodically but, no less than every 3 years.
- 9. **Supersede:** This resolution supersedes any previous policy, resolution or Board action as they relate to the CAB.

ADOPTED at a regular meeting of the Board of Commissioners of Public Utility District No. 1 of Jefferson County, this ___ day of _____, 2018.

Jeff Randall, President

Wayne King, Vice President

ATTEST:

Ken Collins, Secretary



AGENDA REPORT

DATE: October 8, 2018
TO: **Citizens Advisory Board**
FROM: Larry Dunbar, General Manager
RE: Meeting changes resulting from parliamentary procedure workshop

SUMMARY: Several meeting changes were discussed at the Parliamentary Procedure Workshop. Staff is seeking a recommendation from the Citizens Advisory Board on which changes, if any, should be implemented at future Board of Commissioner and Citizens Advisory Board (policymaker) meetings.

BACKGROUND: On August 14, 2018 a Parliamentary Procedure Workshop was held for the PUD's policymakers and staff. Staff presented the below meeting changes at the September 10, 2018 Citizens Advisory Board meeting, however, no action was taken at that time.

ANALYSIS/FINDINGS: The following meeting changes to policymaker meetings were discussed at the Parliamentary Procedure Workshop.

1. Change policymaker/staff/public seating arrangement to become quasi-formal, including a presentation lectern
2. Change meeting minutes to action minutes, continue audio tape recordings and indicate the time each agenda topic is discussed in the minutes
3. Continue to allow public comment period on items not on the agenda, and begin to allow public comment on items on the agenda
4. Allow public comment after a staff presentation and before an agenda item is discussed by the policy makers
5. Discontinue public participation in a motion on an agenda item
6. Allow public participation after a motion is made and seconded-before an agenda item is discussed by policymakers.
7. Establishing a meeting ending time on the agenda.
8. Establishing a timeline on each agenda item to maintain the schedule.

FISCAL IMPACT: There is no anticipated fiscal impact.

RECOMMENDATION: Staff is seeking a recommendation from the Citizens Advisory Board to the Board of Commissioners on whether or not to proceed with each of the above meeting changes.



AGENDA REPORT

DATE: October 8, 2018
TO: **Board of Commissioners**
THRU: Larry Dunbar, General Manager
FROM: Will O'Donnell, Communications Manager
RE: Accept CERB Broadband Planning Grant Award

SUMMARY: Staff is seeking authorization from the Board of Commissioners (BOC) to accept grant funding from the Washington State Department of Commerce's Community Economic Revitalization Board (CERB).

BACKGROUND: This spring, CERB was allocated \$10 million by the legislature to fund loans and grants for broadband infrastructure investments in rural Washington State. Grants for up to \$50,000 are available for eligible applicants looking to fund planning for rural broadband infrastructure projects. Commissioner Collins reported the grant opportunity to the BOC and staff at the June 5th regular meeting, and the BOC subsequently and unanimously moved to direct staff to apply for a planning grant from CERB to help fund this objective. Staff submitted the application on July 30th and was awarded funding on September 20th.

ANALYSIS/FINDINGS: Though broadband internet is increasingly viewed as an essential service; many rural communities are either underserved or unserved by internet service providers. This is true in much of Jefferson County. The PUD should consider expanding its existing fiber network to reach all District facilities, which will pass by more homes and businesses. The PUD is limited by little to no existing telecom revenue and no legal authority to sell retail internet service. Thanks in part to a strengthened relationship with NoaNet however, the PUD also sees multiple opportunities it can pursue, and has planned to carry out a Strategic Plan for Telecommunications in 2019.

The CERB grant would cover 50,000 of the budgeted \$67,000 expense. Staff is seeking acceptance of the award on Oct 16th. A Request for Qualifications is being prepared in cooperation with the CAB broadband subcommittee and released following BOC acceptance. Staff hopes to bring the successful consultant back to the CAB and BOC for approval by the end of 2018. Planning would take place in the first half of 2019.

FISCAL IMPACT: Acceptance of the award supplants \$50,000 the PUD has included in the 2019 budget from cash reserves to pay for strategic planning, but it also commits the PUD to a 17,000 match (also budgeted for).

RECOMMENDATION: Staff is seeking a favorable recommendation from the CAB to the BOC to authorize the General Manager to execute the Initial Offer of Financial Aid and Capital Agreement from CERB.

Attachments: Initial Offer of Financial Aid
Sample Capital Agreement

Washington State
Community Economic Revitalization Board

Initial Offer of Financial Aid

Jefferson County PUD #1
Federal Tax Number: 91-6001044
Offer Date: September 20, 2018

The Community Economic Revitalization Board (CERB) is authorized by chapter 43.160 RCW to provide funds to political subdivisions to assist in financing the cost of certain public facilities. This Initial Offer of Financial Aid is contingent upon the availability of CERB funds. CERB hereby offers to make funds available to the **Jefferson County Public Utility District #1**, hereafter referred to as the "Contractor," in order to aid in financing the cost of the **Jefferson County Broadband Infrastructure Expansion Plan**, as described in the application (hereafter collectively referred to as the "Project").

Funds provided shall be in the form of a **grant** in the maximum principal amount of **\$50,000**, which must have a local **cash** match in the amount of at least **\$17,000**. Local cash match amounts and sources are identified as:

\$17,000	Jefferson County PUD #1	Cash
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This offer is subject to completion of pre-contract conditions, as described in Attachment A.

A final contract shall be developed by CERB prior to disbursement of funds. No project costs incurred prior to date of this offer will be reimbursed by CERB. In the event a final contract is not executed, no CERB funds will be disbursed.

If accepted, this Initial Offer of Financial Aid must be signed and returned to CERB by **November 6, 2018**.

ACCEPTANCE

FOR CERB

FOR THE CONTRACTOR

Randy Hayden, Chair
Community Economic Revitalization Board

Name: _____

Title: _____

Date: _____

Date: _____



Capital Agreement with

<Individual or Contractor organization here>

through

Community Economic Revitalization Board

For

<List project title, if applicable, and/or describe the primary purpose for the funding or the intended outcome/deliverables in approx. 25 words or less>

Start date: Date of the Last Signature



Department of Commerce
Innovation is in our nature.

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Attachment B: Budget

Attachment C: Planning Study Minimum Requirements

SAMPLE

DECLARATIONS

CLIENT INFORMATION

Legal Name

Loan Number

Federal Tax ID #

Statewide Vendor #

PROJECT INFORMATION

Title

Project City

Project State

Project Zip

Washington

CONTRACT TERMS and CONDITIONS

Initial Offer Date

Grant Amount

Local Match

Project Completion Date

Project must reach completion within (2) years from date of execution

Special Conditions

FACE SHEET

Contract Number: <Insert Number>

Washington State Community Economic Revitalization Board

1. Contractor <Insert legal name> <Insert mailing address> <Insert location>		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative <Insert name> <Insert title> <Insert phone> <Insert e-mail>		4. CERB Representative Janea Delk, CERB Program Director & Tribal Liaison PO Box 42525 Olympia, WA 98504-2525	
5. Grant Amount <Insert \$ amount>	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date Date of Last Signature	8. End Date Two years from the date of last signature
9. Federal Funds (as applicable) N/A		Federal Agency: N/A CFDA Number: N/A	
10. Tax ID # <Insert number>	11. SWV # <Insert number>	12. UBI #	13. DUNS #
14. Contract Purpose The Board, defined as the Washington State Community Economic Revitalization Board, and the Contractor have entered into this Contract to undertake a project that furthers the goals and objectives of the Washington State Community Economic Revitalization Board as created in Chapter 43.160 Revised Code of Washington. The 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 including documents attached hereto and/or incorporated by reference: Special and General Contract Terms and Conditions; Declarations Page; ATTACHMENT A: PROJECT SCOPE OF WORK; ATTACHMENT B: BUDGET; ATTACHMENT C: PLANNING STUDY MINIMUM REQUIREMENTS.			
FOR CONTRACTOR _____ <insert name>, <insert title> _____ Date		FOR CERB _____ Randy Hayden, Chair _____ Date APPROVED AS TO FORM ONLY SIGNATURE ON FILE _____ Sandra Adix Assistant Attorney General _____ September 26, 2017 Date	

SPECIAL TERMS AND CONDITIONS

1. DEFINITIONS

- A. "THE BOARD" shall mean the Washington State Community Economic Revitalization Board created in Revised Code of Washington (RCW) 43.160, and who is a party to the Contract.
- B. "Authorized Representative" shall mean the Chair and/or the designee authorized in writing to act on the Chair's behalf.
- C. "Contract" or "Agreement" means the entire written agreement between THE BOARD and the Contractor, including any Exhibits, attached documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the public entity 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.
- E. "Declarations" and "Declared" shall refer to the project information, terms and conditions as stated on the Declarations Page of this Contract, displayed within the contract in THIS STYLE for easier identification
- F. "Initial Offer of Financial Aid" shall mean the written offer of financial assistance offered by the Board and accepted by the Contractor.
- G. "Project" shall mean the project approved for funding by the Board, as described in ATTACHMENT A: SCOPE OF WORK.
- H. "Project Completion Report" shall mean the report provided by the Board to the Contractor to be submitted upon the completion of the Board-funded project.

2. AUTHORITY

Under the authority RCW 43.160, the Board has awarded the Contractor a CERB Planning grant for an approved project as described in the ATTACHMENT A: SCOPE OF WORK.

3. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

4. CONTRACT PERIOD

The effective date of this Contract is the date of last signature. The term of this Contract runs through project completion date specified on the Declarations Page.

5. COPYRIGHT PROVISIONS

Notwithstanding the provisions of General Terms and Conditions 2.13, COPYRIGHT PROVISIONS, of this contract, the Contractor has ownership rights in all data and blueprints that the Contractor produces under this contract, subject to the Board right to royalty free use of these materials.

6. HISTORICAL OR CULTURAL ARTIFACTS, HUMAN REMAINS

Prior to commencing construction, Contractor shall complete the requirements of Governor's Executive Order 05-05, where applicable, or Contractor shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05. 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 artifacts and agrees to hold harmless the Board and the State of Washington in relation to

SPECIAL TERMS AND CONDITIONS

any claim related to such historical or cultural artifacts 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 the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The Contractor agrees that if historical or cultural artifacts are discovered during construction or other ground disturbing activity, the Contractor shall immediately stop work and notify the local historic preservation officer and the state historic preservation officer at DAHP. If human remains are uncovered, the Contractor shall stop work and report the presence and location of the remains to the coroner and local law enforcement immediately, and contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all subcontracts for work or services related to ATTACHMENT A: SCOPE OF WORK.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permits.

In the event that the Contractor finds it necessary to amend ATTACHMENT A: 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.

7. INTEREST ON CERB FUNDS

In those cases where funds have been disbursed by CERB, and the funds are not expended within thirty (30) days due to other circumstances, the Contractor shall owe the interest on all unexpended funds past thirty (30) days. All interest accruing on such funds shall inure to the benefit of CERB. Interest shall accrue at the same rate that the funds would have earned in the CERB Account held by the State Treasury Department.

8. NOTICE

All notices, demands, requests, consents, approvals, and other communication which may be or are required to be given by either party to the other under this agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes when delivered or mailed by first class postage or certified mail, postage prepaid, addressed as follows:

A. Notice to the Board:

Community Economic Revitalization Board (CERB)
1011 Plum St SE
P.O. Box 42525
Olympia, WA 98504-2525

SPECIAL TERMS AND CONDITIONS

B. Notice to Contractor:

The address used shall be that as displayed under **Item 1. Contractor**, found on the Contract Face Sheet, or to such other official address the Contractor shall have furnished to the Board in writing.

9. ORDER OF PRECEDENCE

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

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- ATTACHMENT A – Scope of Work
- ATTACHMENT B – BUDGET
- ATTACHMENT C – PLANNING STUDY MINIMUM REQUIREMENTS
- Declarations Page

10. PERFORMANCE REPORTING

The Contractor shall furnish the Board with:

- A.** Quarterly Project Reports, due four times annually until completion of the CERB funded public project. Beginning within six (6) months of contract execution, Quarterly Project Reports shall be due on:
1. January 15,
 2. April 15,
 3. July 15, and
 4. October 15

The Contractor shall also include in the quarterly report any problems, delays, or adverse conditions which will materially affect the ability to meet project objectives, time schedules, or work units by the established time period. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Board assistance needed to resolve the situation.

- B.** Project Completion Report upon completion of the CERB funded public project, and
- C.** Other reports as the Board may require.

Upon final request for reimbursement, the Contractor shall submit a Certified Project Completion Report to the Board, signed by the Contractor's responsible party, which shall include, but not be limited to, an accounting of all expenditures, a description of work accomplished, further refinement of private sector permanent employment impacts, etc. in a format to be provided by the Board.

After submission of the Project Completion Report, the Contractor shall continue, for up to five years or as may be required by the Board, to provide updates on the economic impact of the project. The updates shall be in a format acceptable to the Board and describe, but not be limited to:

1. Number and types of businesses assisted by the project
2. Private sector employment and private investment activity resulting from the project

SPECIAL TERMS AND CONDITIONS

3. Wages and health benefits associated with the private sector employment
4. Amount of state funds and total capital invested in the project
5. Local fund match and local participation in the project
6. Project Distance from Transportation Infrastructure

11. PROJECT COMPLETION

The project shall be completed within two (2) years from the date of contract execution, unless otherwise specified. Extension may be considered upon appropriate written request. Any changes are to be in writing and incorporated into this document as amendments to Special Conditions.

12. PROJECT PERFORMANCE

The Contractor's performance shall commence within six months after execution of the Final Contract, unless otherwise specified. Extension may be considered upon appropriate written request. Any changes are to be incorporated into this document as additions or amendments to Special Conditions.

If at any time during the term of this agreement the Board determines that project performance is unsatisfactory, including, but not limited to: (a) defective work not remedied, or (b) a reasonable doubt that the Contract can be completed for the balance then unpaid, the Board reserves the right to withhold payments until the problem is remedied or to exercise its rights of termination under General Terms and Conditions 40, 41, and 42.

13. RE-APPROPRIATION

The parties hereto understand and agree that any state funds not expended by **the end of the declared BIENNIUM**, including the ten percent (10%) retainage as described in SPECIAL TERMS AND CONDITIONS, Section 17: REIMBURSEMENT, will lapse on that date unless specifically re-appropriated in an enacted Capital Budget. The Board will make all necessary efforts to seek re-appropriation of funds into the declared BIENNIUM. If funds are so re-appropriated, the Board's obligation under the terms of this Contract shall be contingent upon the terms of such re-appropriation.

14. 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 Section 4 and RCW 43.88.130 and RCW 43.88.290 prohibit expenditures or commitments of state funds in the absence of appropriation.

In such an 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 the lifting of the contract suspension.

15. RECAPTURE PAYMENT AND COSTS

In the event that the Contractor fails to expend state funds in accordance with state law and/or the provisions of this Contract, the Board reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance. Repayment by the Contractor of state funds under this recapture provision shall occur within thirty (30) days of demand. In the event that the Board is

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required to institute proceedings to enforce this recapture provision, the Board shall be entitled to its cost thereof, including reasonable attorney's fees.

16. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Contract are withdrawn, reduced, or limited in any way by the Washington State Governor or Legislature during the Contract period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of the Board, and shall meet and renegotiate the Contract accordingly. Any changes are to be incorporated into this document as additions or amendments to Special Conditions.

17. REIMBURSEMENT

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 ATTACHMENT A: SCOPE OF WORK. 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 appropriation become available.

The Board shall reimburse the Contractor for eligible project expenditures up to the maximum GRANT AMOUNT values as displayed on the Declarations Page of this Contract. When requesting reimbursement for costs incurred, the Contractor shall submit a signed and completed Invoice Voucher (Form A19), referencing ATTACHMENT A: SCOPE OF WORK project activity performed, and any appropriate documentation such as bills, invoices, and receipts. For eligible administrative costs of Contractor staff, the Contractor must include payroll records for reimbursing for salaries and benefits. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Contractor shall send these items to the Board at the following address:

Community Economic Revitalization Board
1011 Plum St SE
PO Box 42525
Olympia, WA 98504-2525

The Board will pay the Contractor after Contractor has completed the work described in this Contract and the Contractor has sent the Board 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 reimbursement if the Contractor fails to satisfactorily comply with any term or condition of this contract.

The Board will make no payments in advance or in anticipation of completion of work described in this Contract.

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Total amounts paid under this Contract shall be the lesser of actual amounts required for the work described in this Contract or the amount of the Board award.

CERB funds are disbursed on reimbursement basis-only for eligible costs within the approved project's scope of work. CERB funds will be reimbursed and the identified match funds will be paid out, in concert at the same percentages as the total project cost split, until CERB funds or matching funds are exhausted. Exceptions to this requirement may be granted by the Program Director & Tribal Liaison on a case-by-case basis. The Recipient must meet the identified match commitment over the project period.

Reimbursement includes both invoices that have been paid and invoices due within 30 days of reimbursement request.

The Board shall withhold ten percent (10%) of the total funding award until project completion and acceptance of the final Project Completion Report by the Board.

Eligible Costs

Eligible project costs are those which are incurred on or after the date of the *Initial Offer of Financial Aid*, shown on the Declarations Page as: INITIAL OFFER DATE, and are incurred under the performance of work specified in the approved Scope of Work (Attachment A).

Ineligible Costs

Internal administrative activities, fundraising activities, and salary & benefits for the employees of the applicant.

Duplication of Billed Costs

The Contractor shall not bill CERB for work under this Agreement, and CERB shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

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

Access to Work and Records

All property, facilities, and records developed pursuant to this Agreement shall be available for inspection upon request during regular business hours by the Board or its authorized representative. All records supporting every request for payment shall be maintained in a manner which will provide an audit trail to the expenditures. Copies of records shall be furnished to the Board immediately upon request. This paragraph shall be included in any and all subcontracts let by the Contractor under this agreement.

17. RESTRICTIONS ON CONVERSION OF FACILITY TO OTHER USES

The Contractor shall not convert any property or facility acquired or developed pursuant to this agreement to uses other than those for which CERB assistance was originally approved for a period of 10 years beginning from the date of contract execution without the prior written approval of CERB. If CERB no longer exists at the time of the proposed conversion, such written approval must be obtained from the Governor's Office, or from an agency designated by the Governor's Office.

SPECIAL TERMS AND CONDITIONS

In the event that the Contractor converts any such property or facility to an unapproved use, the Contractor shall pay to CERB all funds disbursed under this contract with interest in full upon demand.

18. SUBCONTRACTING

Notwithstanding the provisions of General Terms and Conditions, Section 37: SUBCONTRACTING, of this contract, the term "subcontracting" shall not refer to subcontracting of the actual planning project

SAMPLE

GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS**

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

- A. "THE BOARD" shall mean the Washington State Community Economic Revitalization Board created in Revised Code of Washington (RCW) 43.160, and who is a Party to the Contract.
- B. "Authorized Representative" shall mean the Chair and/or the designee authorized in writing to act on the Chair's behalf.
- C. "Contract" or "Agreement" means the entire written agreement between THE BOARD and the Contractor, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the public entity 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.
- E. "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.
- F. "State" shall mean the state of Washington.
- G. "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. **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.

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.

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.

5. **AMERICANS WITH DISABILITIES ACT (ADA)**

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.

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.

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.

GENERAL TERMS AND CONDITIONS

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 attorneys fees and costs.

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 audits 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 Grantee all disallowed costs resulting from the audit.

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

B. State Funds Requirements

In the event an audit is required, if the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.

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

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

C. Documentation Requirements

The Contractor must send a copy of any audit report no later than nine (9) months after the end of the Contractor's fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street SE
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 and Management Decision Letter, where applicable.

If the Contractor is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to The BOARD; no other report is required.

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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.

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.

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.

13. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the THE BOARD may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by THE BOARD that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

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Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The CONTRACTOR and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the (YOUR PROGRAM NAME) including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by THE BOARD that a conflict of interest exists, the CONTRACTOR may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, THE BOARD shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of THE BOARD provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which THE BOARD makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

14. 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.

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15. **DISALLOWED COSTS**

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

16. **DISPUTES**

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

The request for a dispute hearing must:

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

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

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

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

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

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

17. **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.

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.

19. **INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, THE BOARD, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury,

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sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the Contractor's or any subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

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.

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.

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.

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 (1).
- B.** Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C.** Disclosure-campaign finances-lobbying, Chapter 42.17A 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.

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- 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.

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.

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.

25. LOCAL PUBLIC TRANSPORTATION COORDINATION

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

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.

27. POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A 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.

28. 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.

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29. 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.

30. 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.

31. 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.

32. RECORDS MAINTENANCE

The CONTRACTOR shall maintain 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 that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The CONTRACTOR shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by THE BOARD, personnel duly authorized by THE BOARD, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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

33. REGISTRATION WITH DEPARTMENT OF REVENUE

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

34. 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.

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35. 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.

36. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

37. 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.

38. 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.

39. 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.

40. TERMINATION FOR CAUSE

In the event THE BOARD determines the Contractor has failed to comply with the conditions of this contract in a timely manner, THE BOARD has the right to suspend or terminate this contract. Before suspending or terminating the contract, THE BOARD shall notify the Contractor in writing of the need to

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take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, 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 or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

THE BOARD reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by THE BOARD to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of THE BOARD provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

41. 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.

42. TERMINATION PROCEDURES

Upon termination of this contract, THE BOARD, in addition to any other rights provided in this contract, may require the Contractor to deliver to THE BOARD any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

THE BOARD shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by THE BOARD, and the amount agreed upon by the Contractor and THE BOARD for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by THE BOARD, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of THE BOARD. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. THE BOARD may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect THE BOARD against potential loss or liability.

The rights and remedies of THE BOARD provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

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

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;

GENERAL TERMS AND CONDITIONS

3. Assign to THE BOARD, in the manner, at the times, and to the extent directed by the Authorized Representative, 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;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to THE BOARD and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to THE BOARD;
6. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
7. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which THE BOARD has or may acquire an interest.

43. 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.

Scope of Work

COMMUNITY ECONOMIC REVITALIZATION BOARD

Contractor: «LegalName»
Contract Number: «LoanNumber»
Project Title: «ProjectTitle»

The project's scope of work is comprised of the following activities (All activities will be completed no later than 2 years from contract execution):

Include Scope of Work submitted with the pre-contract conditions
 Attachment C: Planning Study Minimum Requirements

Deliverables:

- Copy of the completed study funded under this agreement.
- Final Project Report. Report format to be provided by CERB.
- Progress Reports.

The Contractor shall make all plans and documents funded in whole or in part by this Contract available for the Board's review upon reasonable request.

The Contractor, by its signature below, certifies that the project's scope of work and performance measures set forth above have been reviewed and approved by the Contractor's governing body as of the date and year written below.

Signature

«Type Name»

Name

«Type Title»

Title

Date

Budget

COMMUNITY ECONOMIC REVITALIZATION BOARD

A. CERB AWARD:

- **Grant Amount: \$**

B. Budget

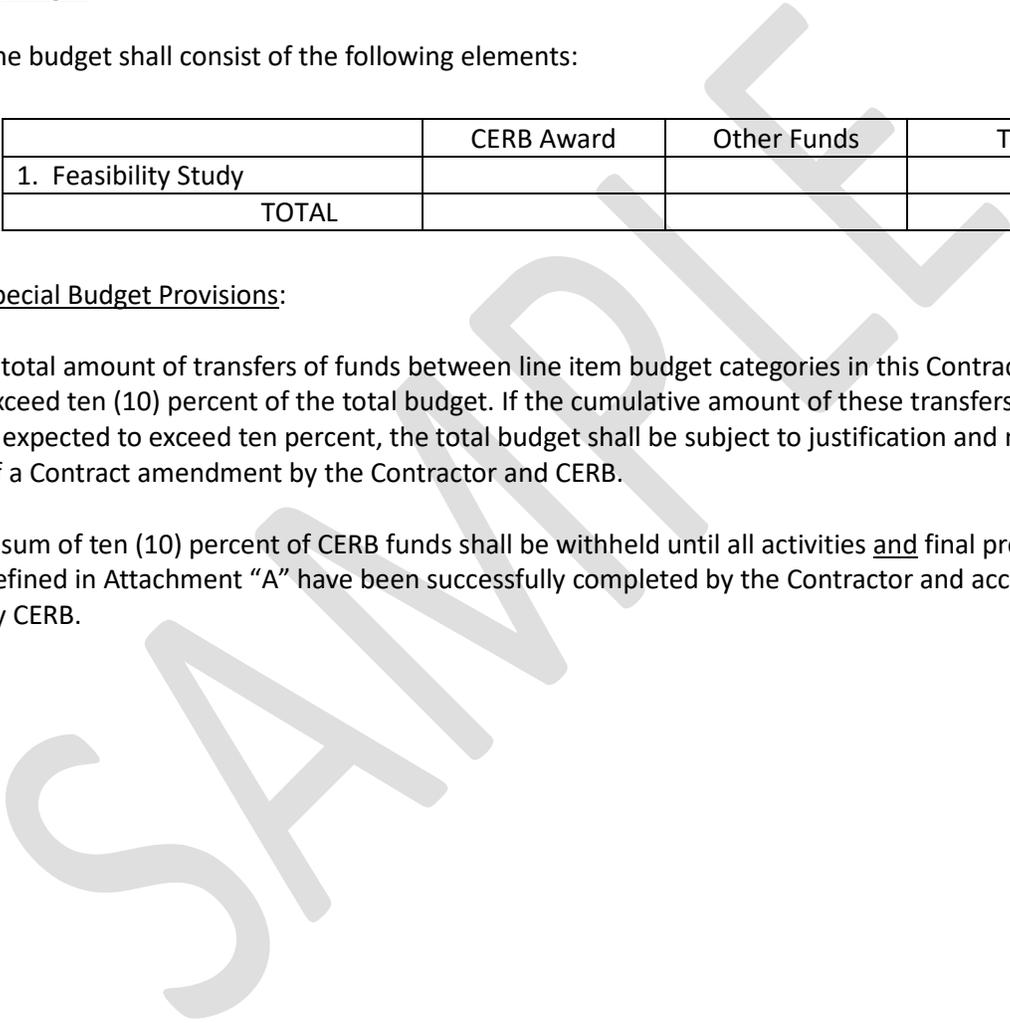
The budget shall consist of the following elements:

	CERB Award	Other Funds	Total
1. Feasibility Study			
TOTAL			

Special Budget Provisions:

A total amount of transfers of funds between line item budget categories in this Contract shall not exceed ten (10) percent of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed ten percent, the total budget shall be subject to justification and negotiation of a Contract amendment by the Contractor and CERB.

A sum of ten (10) percent of CERB funds shall be withheld until all activities and final products defined in Attachment "A" have been successfully completed by the Contractor and accepted fully by CERB.



Planning Study Minimum Requirements

COMMUNITY ECONOMIC REVITALIZATION BOARD

The feasibility study **must** meet the following minimum requirements. Please provide a response to each of the items below, in the format outlined.

1. Community Support
 - a. Create a Community Broadband Team
 - i. Provide list of members, including name and title
 - b. Hold at least one Community Broadband Meeting
 - i. Send emails to broadband providers currently serving your community and invite them to the community meeting.
 - ii. Questions for attendees:
 1. Which providers are currently serving your community?
 2. Which providers attended your meeting?
 3. How does the mapping results compare with members' actual experiences? (if there is mapping available)
 4. Does existing broadband access meet your needs?
 5. If it is inadequate, in what ways does it fall short?
 6. If you have broadband, how do you use it now?
 - iii. Provide documentation showing meeting dates, notes, agenda and number of attendees, emails to providers and responses to the questions above.
2. Project Focus
 - a. Defines local broadband needs and goals.
 - b. Inventory existing broadband infrastructure assets within the community.
 - c. Includes a gap analysis defining the additional broadband infrastructure necessary to meet the identified goals.
 - d. Include one or more potential network designs, cost estimates, operating models and business models.
 - e. Include an assessment of municipal procedures, policies, rules and ordinances that impact or influence broadband infrastructure deployment.
 - f. Digital Inclusion
 - i. Affordable Internet –Describe how community will address providing affordable internet options.
 - ii. Affordable Equipment - Describe how community will expand the availability of affordable equipment to low-income residents.
 - iii. Digital Literacy Training – Describe how community will teach people to use technology.
 - iv. Public Computer Access –Describe how community will increase public computer access locations.
3. Create a Vision Statement
 - a. A Vision Statement is created by Community Broadband Team with input from the public at the Community Broadband Meeting, with the goal to take a first step toward being able to set a direction for the community's future broadband efforts.
 - b. The statement should describe the role broadband would play in the community's future.

- i. Identify specific priority areas (*e.g.*, connecting community anchor institutions, ensuring older citizens can age in place, closing the “homework gap”, providing affordable high-speed connections to a business park).
- c. Explain how this effort conforms to other planning documents/published visioning efforts on other issues in your community.

4. Financial Commitment and Budget

- a. Submit a budget for the plan aligned to significant project plan milestones, costs and tasks.
- b. Submit Pro Forma Income Statement and Expenses.

i. Income Statement

ii. Balance Sheet

iii. Cash Flow

- c. Identify potential sources of funding for the broadband infrastructure.
- d. Include letters of commitment for community funding.
- e. Include letters of commitment from any Internet Service Providers.

5. Identify Key Documents/Existing Efforts

- a. Does the municipality use broadband to deliver municipal services? Describe the services, and how broadband is used to deliver these services.
- b. Is there local or regional economic development plans in which broadband could play a role? If so, provide a list of these documents.
- c. Are there any on-going community projects focusing on the digital divide or information technology (public access through schools or libraries, training, improving access to broadband, etc.?)

6. Identify potential Community Anchor Institutions and Businesses

- a. Provide a list of potential community anchor institutions*.
- b. Provide a list of businesses** that could benefit from lower cost, higher bandwidth, and/or improved reliability of broadband.

i. Including the level of broadband improvements needed by the business to become and/or remain competitive and/or expand markets.

7. Development of a Management Plan

- a. Define (or refine) the broadband plan. The plan should have a clear definition of roles and responsibilities, partners required, levels of effort and associated costs, and a timeline. Plans and actions must include promotion and community awareness, and extend beyond the initial deployment.

8. Complete Readiness Self-Assessment

9. Evaluate how the project would benefit health and safety for the community.

10. Evaluate how this project would benefit education access (for all ages).

11. Identify if the community unserved or underserved (defined by the Board).

- a. Provide evidence of how this was determined.

* *Community Anchor Institutions definitions: includes facilities such as libraries, township halls, fire and police stations, city halls, county buildings, state facilities, public safety locations, hospitals and nursing homes, and educational institutions.*

***Business definitions: all business types; includes farms & home-based businesses, and work-at-home/telecommuter use of broadband.*



INVESTING IN WASHINGTON'S ECONOMIC FUTURE

Community Economic Revitalization Board

1011 Plum St SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-3151

September 21, 2018

Mr. Will O'Donnell
Communications Manager
Jefferson County PUD #1
310 Four Corners Road
Port Townsend, WA 98368

Dear Mr. O'Donnell,

Congratulations! The Community Economic Revitalization Board (CERB) has awarded funding to your planning project. Enclosed is a list of pre-contract conditions which must be satisfied no later than **January 17, 2019**, in order to execute a final contract with CERB.

Once the conditions have been met, a final contract will be developed by CERB prior to disbursement of funds. Please note that no project costs incurred prior to the Initial Offer of Financial Aid date will be reimbursed by CERB. After contract execution, a signed copy will be forwarded for Jefferson County PUD's records. The execution date of the final contract will be based on the date of the CERB Chair's final signature. A sample of the contract document is enclosed for your records.

I will be your primary contact during this contracting process. If you have any questions, please don't hesitate to contact me at (360) 725-3169 or Barbara.Smith@commerce.wa.gov.

Sincerely,

Barbara Smith
CERB Program Assistant

Enclosures:

- Initial Offer of Financial Aid (IOFA)
- Planning study minimum requirements
- Sample Contract

CERB Pre-Contract Requirements

Initial Offer of Financial Aid

If you wish to accept CERB's offer, please sign and return **two** original copies of the enclosed Initial Offer of Financial Aid by **November 6, 2018**. A copy of the executed Initial Offer will be forwarded for the City's records.

If the terms and conditions of this offer are not acceptable, you may request in writing that CERB reconsider, amend or modify its offer.

Pre-Contract Requirements

Please complete the conditions below and submit the appropriate documentation to CERB.

If all conditions are not completed by **January 17, 2019**, you have the option to request an extension from the Board. If the Board does not approve an extension of the initial offer, the offer will expire. Please see the enclosed policy on extension requests for details.

1. Finalized scope of work.
2. Evidence that consultant services have been selected to complete the study
3. Evidence that the \$17,000 cash match is in place, from the following or alternate sources:
 - a. Jefferson County PUD #1 \$17,000 cash

Please note that CERB requires feasibility studies/planning documents to be completed within 24 months of the executed contract date.