

Special Meeting Agenda
PUD Board of Commissioners
Meter Replacement and Broadband
Polices and Rates

Friday, August 26, 2022 10:00 AM
310 Four Corners Rd and Zoom
Port Townsend, WA 98368



To join online go to: <https://zoom.us/my/jeffcopud>. Follow the instructions to login. Meetings will open 10 minutes before they begin. TOLL FREE CALL IN #: 833-548-0282, Meeting ID# 4359992575#. Use *6 to mute or unmute. *9 to raise a hand to request to begin speaking.

Page

1. Call to Order

With the adoption by the Washington State Legislature of ESHB 1329, providing for both virtual and in-person meetings to be held, JPUD will be offering both virtual on-line meetings as well as in-person meetings, unless advance notice is provided. In person attendance will be limited to provide sufficient space and masking is encouraged. Online participant audio will be muted upon entry. Please unmute at the appropriate time to speak. If you are calling in, use *6 to mute and unmute and *9 to raise a hand to request to speak.

2. Agenda Review

3. Meter Replacement Program

- 3.1. Meter Replacement Program Update and Comms Plan 4 - 15

[Meter Replace and Repair Process_20220805.pdf](#) 

- 3.2. **Customer Side Repair Policy** 16 - 19

[Meter-Replacement Customer-Side-Repair-Policy \(WO JRP\) v.002.pdf](#)



Recommended Action: Discuss policy and move to Consent Agenda (with any necessary changes) at next regular meeting

4. Broadband Grant and Loan Contracts

- 4.1. Public Works Board Loan Contract 20 - 117

[PWB Report Slides - Pdf.pdf](#) 

[PWB LOAN](#)





[CONTRACT DocuSign_PBC23_96104_001_Jefferson_Co.pdf](#) 

[PWB Broadband Construction Handbook 2022-2023 FINAL.pdf](#) 

Recommended Action: Approve a motion to authorize the General Manager to sign the PWB Broadband Loan Contract

- 4.2. State Broadband Office Grant Contract (Jefferson North) 118 - 153
[22-96810-010 Jefferson Co Executed.pdf](#) 
for review only

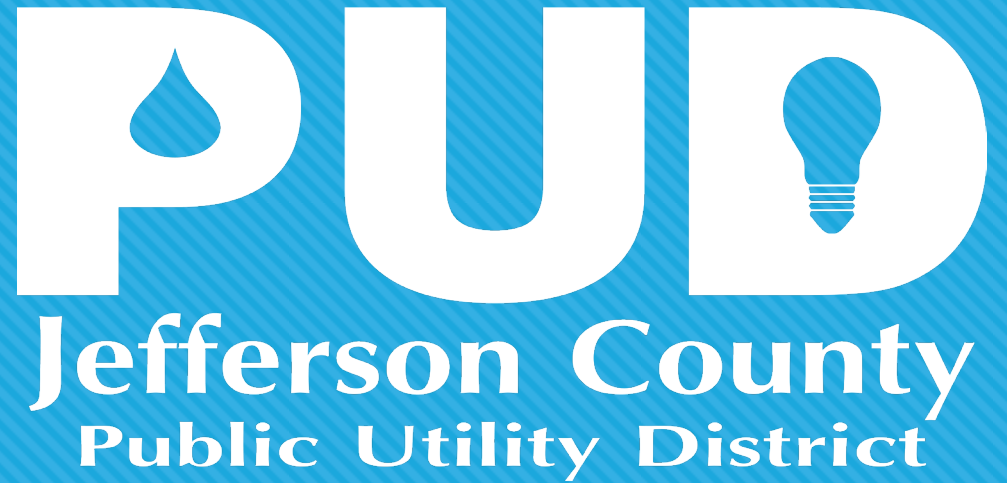
5. Broadband Rates

- 5.1. Wholesale Broadband Rate Revisions 154 - 162
[Wholesale Rate Schedule 071321 \(003\) markup.pdf](#) 
[Wholesale Rate Schedule 20220825 clean draft.pdf](#) 
Recommended Action: Discuss rates and move to Consent Agenda (with any necessary changes) at next regular meeting
- 5.2. Retail Broadband Rate Revisions 163 - 170
[Retail Rate Schedule draft 20220816 markup.pdf](#) 
[Retail Rate Schedule draft 20220816 clean.pdf](#) 
Recommended Action: Discuss rates and move to Consent Agenda (with any necessary changes) at next regular meeting

6. Broadband Policies

- 6.1. Acceptable Use Policy 171 - 182
[JPUD Acceptable Use Policy 20220804 \(004\) wo-jrp edits.pdf](#) 
[JPUD Acceptable Use Policy 20220809 clean.pdf](#) 
Recommended Action: Approve a motion to adopt the Acceptable Use Policy as presented
- 6.2. Internet Service Agreement 183 - 187
[JPUD Internet Services Agreement 20220715.pdf](#) 
Recommended Action: Approve a motion to adopt the Internet Service Agreement as presented

7. Adjourn



Meter Replacement Communications & Meter Base Policies, Procedures

Will O'Donnell

Broadband and Communications Director

August 26 2022

Deployment Customer Comm Plan - *DRAFT*

General Messaging

- *Ongoing website update
- *Utility wide customer newsletter
- *4x6 Postcard Mailer to Area Customers
- *Day-of Door Knock by PUD Staff
- *Informational rack cards for Metering staff
- *‘Install Completed’ Door Hanger

Advanced Meter Upgrade Scheduled for Next Week

Installation Reminder

- PUD staff will install your new meter **between Monday and Friday** in the next week at this service address.
- Installation only takes a few minutes. **Expect a brief interruption in your power service during install.**
- If your electrical meter is accessible, you do not need to be home. Visit jeffpud.org/XXXXXXX to ensure your property is ready.

www.jeffpud.org/meter-replacement

Public Utility District No. 1 of Jefferson County is an Equal Opportunity Provider and Employer



PUD Jefferson County PUD
Jefferson County 310 Four Corners Rd
Public Utility District Port Townsend, WA 98368

If you cannot accommodate a brief shut off to your power, or must be home to provide access, call **(360) 385-5800** to schedule an installation.

Please, secure all animals before installation.

PUD staff will knock on your door prior to installation and will carry an ID badge. *They will not need to enter your home.* A door hanger indicating work completed will be left at the residence if no one is reached.

RESIDENT MAILING ADDRESS

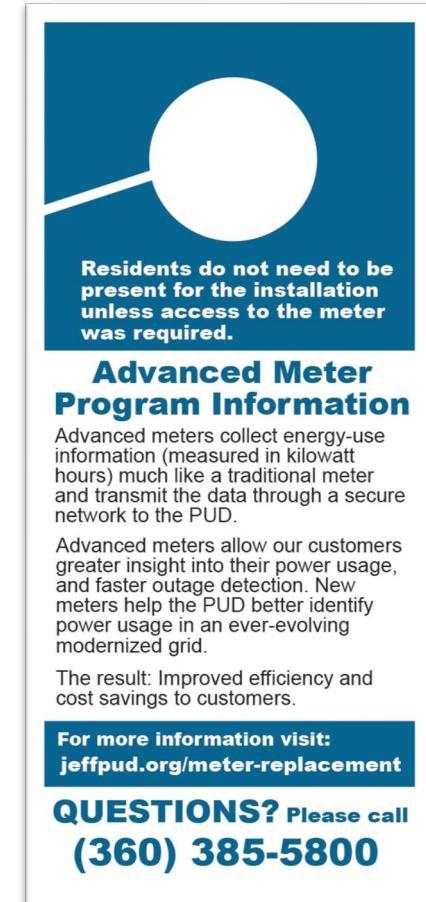
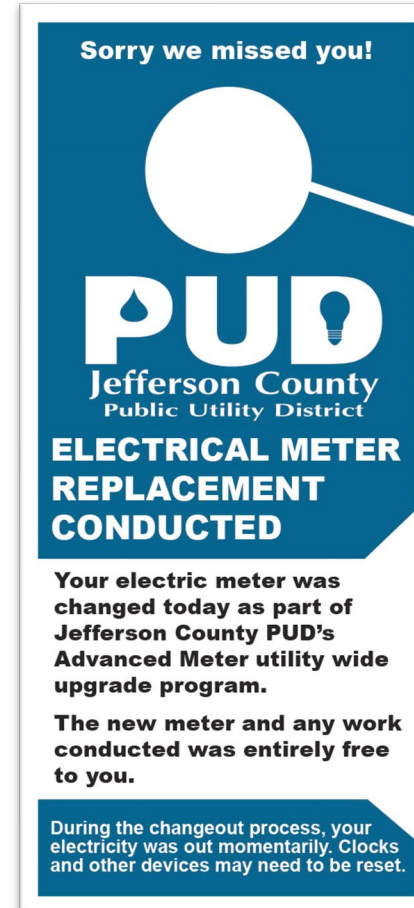
Ongoing Community Outreach

- As orders of advanced meters arrive, staff will determine deployment by region.
- Updates on the meter project will be presented in the 'News Briefs' section of the monthly newsletter, if applicable.
- Updates to installation schedules between newsletter mailings will occur via the PUD's website, social media platforms and weekly e-newsletter.
- Installation schedule and zone map will be continually updated on the PUD's Meter Replacement section of the website.
- Updated install zone map will accompany social media channel outreach via a link or presented map.

Installation Day Outreach

- Note: *Installation area residents will have received a 7-Day Prior Postcard mailer.*
- A PUD meter reader will conduct a door knock to inform the resident of work to be done and the brief interruption in power.
- PUD meter readers may also provide rack card with additional information about advanced meters and regarding meter accessibility.
- If the resident is not home, the meter reader will provide a door hanger explaining the work that was conducted, or work that might need to be done.

DRAFT DOOR HANGER DESIGN



STANDARD INSTALL

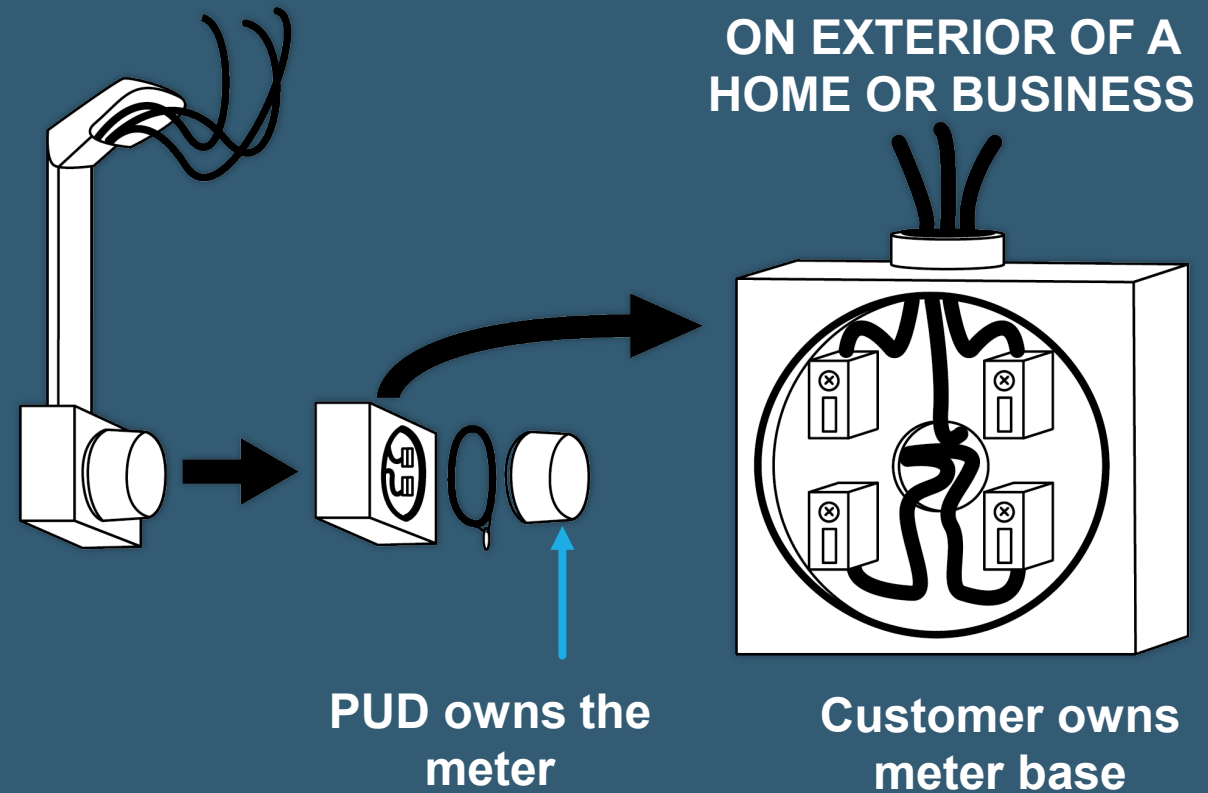


- Meter staff will pull the old meter, test the meter base jaws, and perform a visual inspection of the meter base and customer equipment.
- There will be a brief loss of power to the customer between the removal of the old meter and the installation of the new meter.
- After the new meter is installed, it is sealed and tagged to prevent tampering.
- The meter reader will bring the old meter back to the PUD for recycling, and a door hanger notifying the customer of the changeout will be left for the customer.

Meter Base Inspection

METER BASE: The meter base houses the meter as well as the electrical components that connect the service wire to the customer electrical panel.

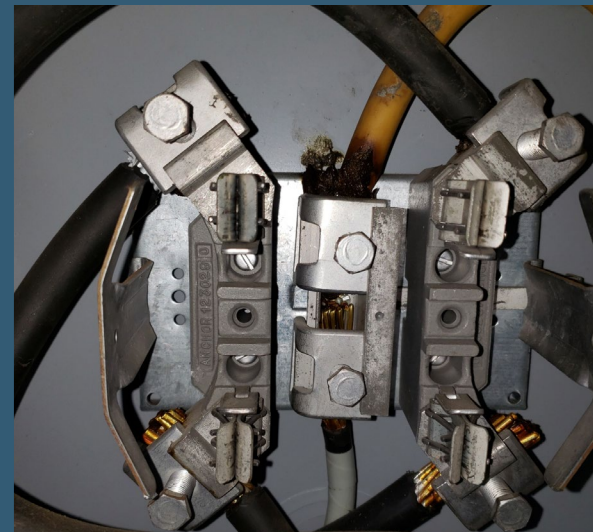
- Every meter base will be visually inspected by the meter reader prior to installation.
- Homeowners own the meter base and are typically responsible for the maintenance & upkeep of the meter base.
- The meter is owned by the PUD.



METER BASE DAMAGE

- Damaged or defective meter bases require a qualified electrician to repair or replace.
- If, after pulling the meter, PUD staff determine the meter base needs emergency replacement or repair, the PUD will contact on call electrical contractors to provide replacement or repair. The customer will be without power during that time.
- If need of a non-emergency repair is discovered during installation, the PUD will schedule the repair for a later date by the on call electrician.
- If meter base jaws are weak or damaged, PUD meter staff will install specialized jaw clips prior to contacting the scheduling of the electrical contractor
- Meter jaw clips allow meter staff to install the meter prior to repair and therefore avoiding an extended outage. All repairs must be completed within 180 days (typical usage life of meter jaw clips).
- If, after pulling the meter, PUD staff determine the meter base or related equipment need replacement or repair, the PUD will pay associated costs.

Examples of damaged meter base components found afield.



CAN'T REPLACE

BARRIER TO ACCESS OR DANGEROUS DISREPAIR

- Customer meter base/equipment determined inaccessible or unsafe after visual inspection
- BARRIER TO ACCESS: Customer will be given 30 days to remove barriers. If barriers are not removed within 30 days, customer risks shutoff or removal of encumbering material by PUD staff.
- DANGEROUS DISREPAIR: Customer will be given 30-90 days (depending on equipment) to repair or replace meter base or related equipment.
- Door hangers will be left outlining work needed to be completed and contact information for PUD.
- If a customer cannot cover the cost of repairs, customer can appeal to the General Manager to help with mitigation of cost. Verification of income level may be required.



Can't access, unsafe to replace




Unable to access due to homeowner-built structure.

Meter Base Repair Door Hangers

- BLUE Notifies customer meter has been replaced with no incident
- GREEN: Notifies customer that meter was replaced but repairs have been made
- ORANGE: Notifies customer that repairs are needed and will be scheduled
- YELLOW Notifies Customers that barriers to access need to be removed within 30 days
- RED Notifies Customer that meter base or related equipment is unsafe and needs replacement or repair prior to meter installation (30-90 days)

DRAFT DOOR HANGER DESIGNS

Sorry we missed you!



PUD
Jefferson County
Public Utility District

**ELECTRICAL METER
REPLACEMENT
CONDUCTED**

Your electric meter was changed today as part of Jefferson County PUD's Advanced Meter utility wide upgrade program.

The new meter and any work conducted was entirely free to you.

During the changeout process, your electricity was out momentarily. Clocks and other devices may need to be reset.

Residents do not need to be present for the installation unless access to the meter was required.

Advanced Meter Program Information

Advanced meters collect energy-use information (measured in kilowatt hours) much like a traditional meter and transmit the data through a secure network to the PUD.


Advanced meters allow our customers greater insight into their power usage, and faster outage detection. New meters help the PUD better identify power usage in an ever-evolving modernized grid.

The result: Improved efficiency and cost savings to customers.

For more information visit:
jeffpud.org/meter-replacement

**QUESTIONS? Please call
(360) 385-5800**

ATTENTION NEEDED!



PUD
Jefferson County
Public Utility District

ATTENTION NEEDED!

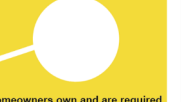
DATE OF VISIT: _____
TIME OF VISIT: _____
EMPLOYEE NUMBER: _____

A scheduled electrical meter upgrade was completed on your home or business.

This notice is to inform you that meter base maintenance or access to meter requires attention. Please see reverse for details.

(360) 385-5800

ATTENTION NEEDED!



PUD
Jefferson County
Public Utility District

ATTENTION NEEDED!

Homeowners own and are required to maintain the electrical meter base (portion that houses meter) on their home or business. Proper maintenance of the meter base and surrounding area provides safe access for personnel in the event of an emergency.


METER CLEARANCE REQUIRED

The homeowner must provide 18" of clearance on either side of the meter, and 36" in front of meter down to ground level.

Homeowner may not build structural components in front of or surrounding meter impedes access within the PUD-approved clearance area.

QUESTIONS?
Email
meters@jeffpud.org
**Meter Customer Service
(360) 385-5800**

ATTENTION NEEDED!



PUD
Jefferson County
Public Utility District

ATTENTION NEEDED!

DATE OF VISIT: _____
TIME OF VISIT: _____
EMPLOYEE NUMBER: _____


A scheduled electrical meter upgrade was completed on your home or business.

This notice is to inform you that meter base repair was needed. PUD staff coordinated repairs with a certified contractor at no cost to the homeowner.

No further action is required at this time.

(360) 385-5800

ATTENTION NEEDED!




PUD
Jefferson County
Public Utility District

The electrical meter on your home or business has been upgrade free of charge as part of Jefferson PUD's grid modernization program.

PUD Advanced Meter Infrastructure (AMI) program allows for accurate and timely meter reads, improved outage detection, and the ability to start/stop service quickly.

QUESTIONS?
Email
meters@jeffpud.org
**Meter Customer Service
(360) 385-5800**

ACTION NEEDED!



PUD
Jefferson County
Public Utility District

ACTION NEEDED!

DATE OF VISIT: _____
TIME OF VISIT: _____
EMPLOYEE NUMBER: _____


A scheduled electrical meter upgrade was completed on your home or business.

This notice is to inform you that meter base repair is needed. PUD staff are coordinating repairs with certified contractors (see reverse for details).

REPAIRS MADE WILL BE AT NO COST TO YOU.

(360) 385-5800

ACTION NEEDED!



PUD
Jefferson County
Public Utility District

ACTION NEEDED!

A PUD-certified on-call contractor will contact the homeowner at the phone number provided for the electrical service.


The contractor and homeowner will schedule time for the required meter base repairs.

Please note: Meter base repairs will require temporary deenergizing of the home.

Additional notes:

QUESTIONS?
Email
meters@jeffpud.org
**Meter Customer Service
(360) 385-5800**

IMMEDIATE ACTION NEEDED!



PUD
Jefferson County
Public Utility District

IMMEDIATE ACTION NEEDED!


DATE OF VISIT: _____
EMPLOYEE NUMBER: _____

During a scheduled electrical meter upgrade, PUD staff determined the meter base on your home or business required repair/immediate attention before meter can be replaced.

Action required:

(360) 385-5800

IMMEDIATE ACTION NEEDED!



PUD
Jefferson County
Public Utility District

The PUD cannot conduct meter replacement due to the risk of fire or potential damage to the residents electrical system.

Provided is a list of PUD-certified on-call contractors. Please verify actions required are completed within 30 days of notice. If you need assistance, please contact Customer Service.

Certified Contractors	
Business Name	Phone #
Business Name	Phone #
Business Name	Phone #
Business Name	Phone #


If customer is unable to cover cost of repair to meter base, an appeal can be made to the PUD General Manager for action to mitigate cost of metering equipment.

**PUD Customer Service
(360) 385-5800**



Work Authorization form (digital & print)

CUSTOMERS WILL BE ENCOURAGED TO PRE-AUTHORIZE THE PUD TO REPLACE OR REPAIR METER RELATED EQUIPMENT

E-form Authorization



1 800 385-5805

 Email
  Outages

My PUD

Electric

Water/Sewer

Sustainability

Broadband

About Us

Records/Data

Authorization to Work on Customer Owned Electrical Components

As part of Jefferson PUD's Advanced Metering Infrastructure (AMI) program, qualified Jefferson PUD Meter Reader personnel will be replacing the electrical meter serving your property. In some cases, Jefferson PUD personnel may discover faulty electrical components or connections in the meter base. The meter base is where Jefferson PUD's electrical facilities are attached to your service (i.e. home or business). You are the owner of the meter base and are responsible for its maintenance and upkeep. The discovery of a defective meter base would normally require:

- Immediate disconnection of electrical service.
- Notification of the customer for need to repair the meter base.
- Customer hiring a qualified electrician for repair, at their expense.
- Washington State L&I Electrical permits and inspection.
- Jefferson PUD personnel returning to the property for meter installation.

In order to reduce the time and expense associated with this process, Jefferson PUD has identified qualified licensed and bonded electricians who are willing to immediately respond if Jefferson PUD personnel find a defective meter base and make minor repairs necessary for installation of the new meter. Jefferson PUD is willing to pay the electrician to make repairs as necessary to your meter base or other components of your service, at Jefferson PUD's sole discretion under these conditions, to accommodate Jefferson PUD's AMI program. However, Jefferson PUD needs your permission to perform repairs to your electrical equipment. The purpose of this form is for you to grant this permission.

Permission to Perform Repairs

The undersigned hereby grants Jefferson PUD the right to authorize repairs to my meter base upon discovering any defects therein. I understand that the repairs will be performed by a qualified licensed and bonded electrician at Jefferson PUD's sole and exclusive expense. I agree that if any issues arise with repair work performed by the licensed and bonded electrician, I will seek redress solely from that electrician. I further release, indemnify and hold harmless Jefferson County Public Utility District 1, Port Townsend, Washington, its board, employees, representatives and insurance carriers from any and all rights, claims, demands and damages of any kind, resulting from or related to damage, arising out of, or in any way connected to repairs made to my property and agree only to seek such damages from the licensed and bonded electrician hired by Jefferson PUD to perform the work.

I grant Jefferson PUD the permission to authorize repairs. [\(Required\)](#)

I am the property owner of the address listed below. [\(Required\)](#)

Name [\(Required\)](#)

First

Last

Phone [\(Required\)](#)

Email [\(Required\)](#)

Electrical Service Address

Street Address

City

State

ZIP Code

Physical Form (Double-sided)

AUTHORIZATION TO WORK

CUSTOMER OWNED ELECTRICAL COMPONENTS

As part of Jefferson PUD's Advanced Metering Infrastructure (AMI) program, qualified Jefferson PUD Meter Reader personnel will be replacing the electrical meter serving your property. In some cases, Jefferson PUD personnel may discover faulty electrical components or connections in the meter base. The meter base is where Jefferson PUD's electrical facilities are attached to your service (i.e. home or business). You are the owner of the meter base and are responsible for its maintenance and upkeep. The discovery of a defective meter base would normally require:

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Name

First

Last

Phone

Email

Electrical Service Address

Street Address

City

State

ZIP Code

I grant Jefferson County PUD #1 the permission to authorize repairs.

(Signature required)

I am the property owner of the address listed above.

(Signature required)



Jefferson County
Public Utility District

QUESTIONS?



**Jefferson County PUD
Advanced Metering Infrastructure (AMI)
Meter Replacement Project
Customer Side Repair Policy**

August 2022

Adopted by JPUD BOC on XXXXX via Resolution XXXXXXXX

1. POLICY DURATION:

- 1.1. This policy shall be in effect during the period that the Advanced Metering Infrastructure (AMI) Meter Replacement Project is designated as a Special Project of Limited Duration, which is currently through December 31, 2024.
- 1.2. This policy will benefit JPUD and provide a smooth transition to its Advanced Metering Infrastructure program. For clarity, if the Advanced Metering Infrastructure Special Project of Limited Duration is extended by the Commission, the duration of this policy will be extended automatically to match the new Project resolution end date.
- 1.3. During the policy duration, this Policy shall supersede and be controlling over any other conflicting Jefferson County Public Utility (JPUD) customer service policies, procedures, and practices. Following the Project, customer owned infrastructure repairs will revert to existing JPUD customer service policies, procedures, and practices.

2. BACKGROUND:

- 2.1. Advanced meters are a foundational element of JPUD's Grid Modernization Strategy and will deliver customers new key benefits over time related to their power and water usage. JPUD will deploy advanced metering across its entire water and electric service territories, replacing or upgrading all non-communicating power and water meters with advanced two-way communicating technology. Advanced metering technology will capture interval data, enable two-way communications, include remote capabilities, and provide advanced outage/issue detection, and verification. Advanced metering will modernize utility operations and be a cornerstone to deliver improved services and benefits to customers.
- 2.2. The meter deployment phase of the Advanced Metering Infrastructure Project will exchange nearly 20,000 electric meters over the course of 24-36 months. During this period, there is the potential for a small percentage of "Customer Impacts." Customer Impacts result from (1) disruption or damage to infrastructure or customer equipment during the meter exchange or (2) customer equipment being identified as unsafe or to have preexisting damage by the meter installer. The anticipated number of Customer Impacts is relatively low, estimated to only affect approximately 0.5-1.0% of all customers based on advanced meter deployments at similar utilities. Nevertheless, it is essential that these Customer Impacts be handled promptly so that a customer's service is restored as quickly as possible.
- 2.3. To ensure both JPUD customers' wellbeing and the success of this critical project, JPUD has researched and identified solutions to potential Customer Impacts that may arise throughout the project. To address these impacts, this policy outlines criteria for electric customer owned infrastructure repairs to be completed by JPUD during the Meter Replacement Project.

- 2.4. Lastly, the existing JPUD claims process is available to all customers if damage or claimed Customer Impact is disputed or exceeds the criteria listed.

3. POWER REPAIR CRITERIA:

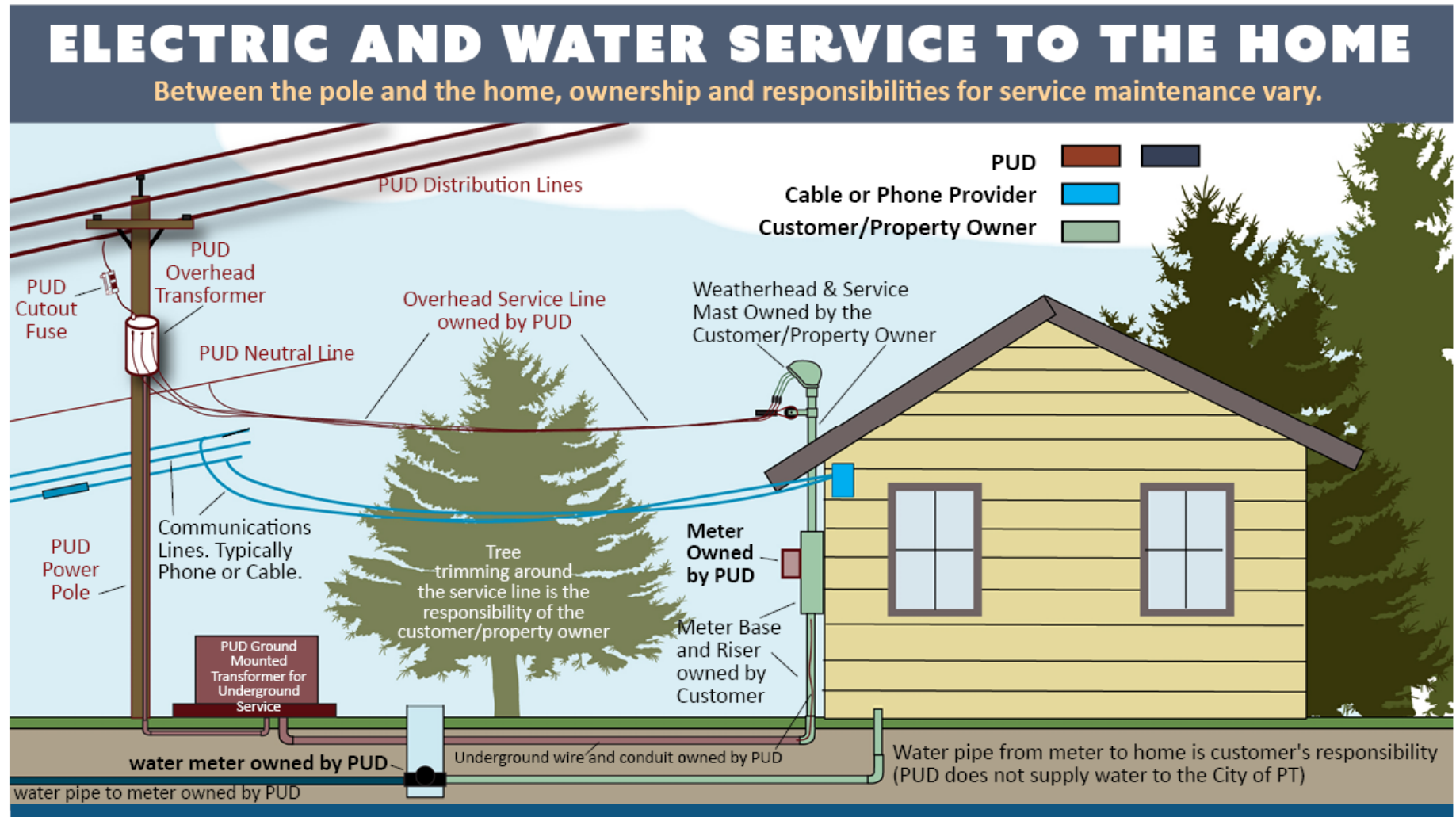
- 3.1. As specified in the JPUD Customer Service Policy, the customer is responsible for maintaining customer owned equipment, compliance with up-to-date electrical codes, and JPUD policies. This ensures both customer and utility staff safety when working in and around the meter. If customer owned equipment is impacted by a meter exchange, JPUD staff will make a reasonable attempt to re-establish the service connection.
- 3.2. JPUD expects minimal customer owned equipment impacts during advanced meter deployment.
- 3.3. During the Meter Replacement Project, JPUD may, at its discretion, replace customer owned equipment required to facilitate the meter exchange and safely provide the customer with electrical service. Customer owned equipment related to electrical service is identified in Figure 1. JPUD at its discretion may replace or repair items such as:
 - I. The meter socket, jaws, and/or enclosure (including minor related incidental repairs, as determined in the field)
 - II. Miscellaneous nuts/bolts related to the meter socket, jaws, and/or enclosure
 - III. The meter post
- 3.4. Items that JPUD will not replace or repair include, but are not limited to the following:
 - I. Service panels
 - II. Tampering
 - III. Code violation repairs

4. JPUD DISCRETION AND DISCLAIMER.

- 4.1. Repairs or replacements are strictly at the discretion of JPUD. This policy does not require or obligate JPUD to make or complete any repairs or replacements. In making said repairs, JPUD or its contractors will exercise the degree of skill and care required by good practice and procedure followed in the utility industry. However, JPUD cannot warrant or guaranty that replaced equipment will be without defect, and as such disclaims any such warranty..
- 4.2. By enacting this policy or making any repairs or replacements, JPUD does not assume or offer any ongoing replacement, repair, or maintenance obligation. JPUD may make repairs or replacements to the equipment as specified herein solely at its discretion. However, JPUD will have no other obligation or duty to make other repairs or to maintain the equipment.

5. ATTACHMENTS: Customer Owned Infrastructure Figures, Figures 1

Figure 1. JPUD Owned vs. Customer Owned Equipment:





PWB Loan Opportunity

Will O'Donnell, Broadband and Communications Director

July 19, 2022

Loan Details

Unserved Businesses <1G/50mbps

\$1.8M award, 204K match (10%)

0.42% rate, 15 yr Term

Jefferson is a Distressed County

Project Completed by 2024

Open Access

Project Details

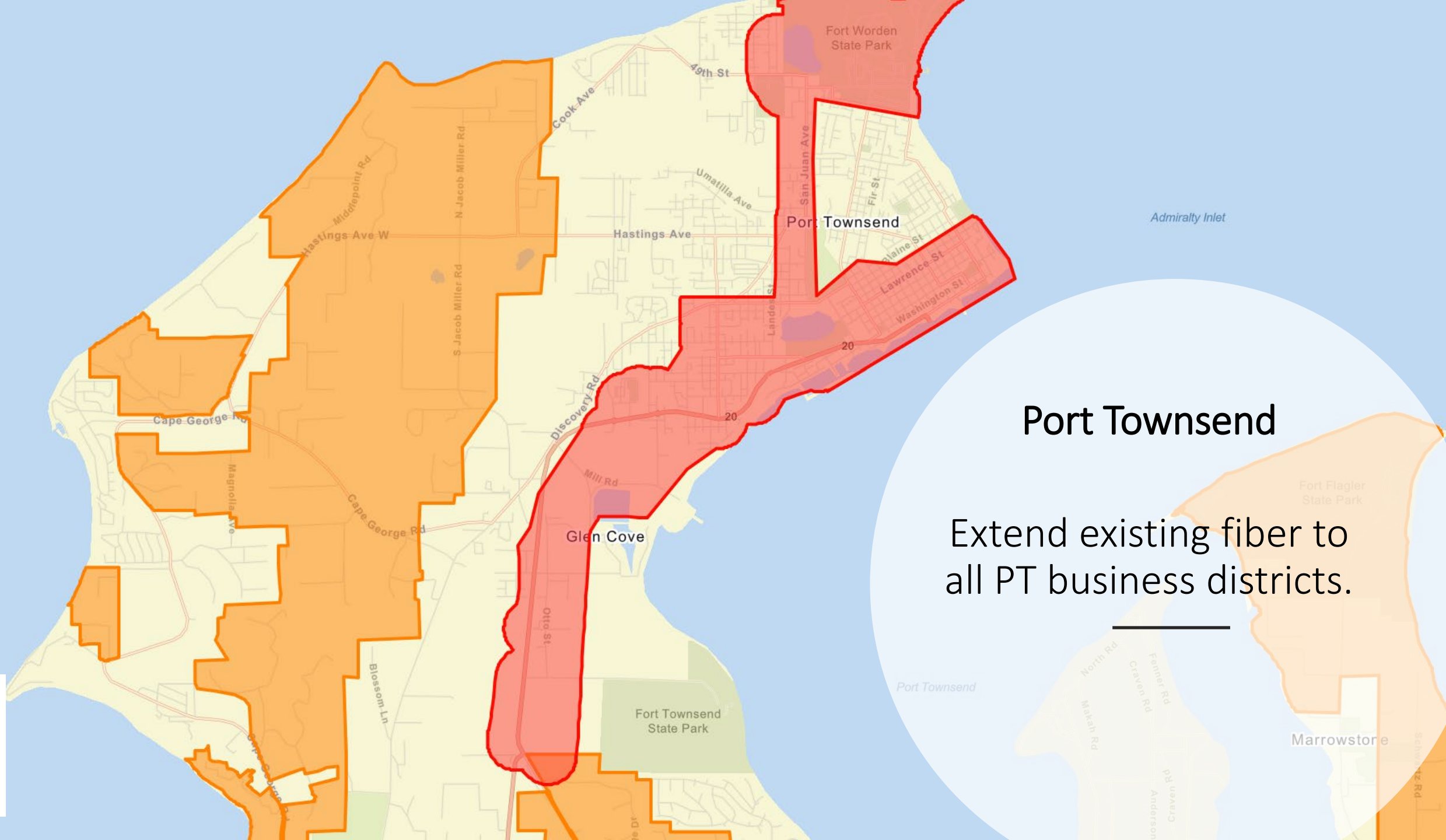
Expand on Existing Infrastructure

All Downtown, Uptown Businesses

Sims Way Fort Worden

Business Park, Glen Cove

Gig Symmetrical Service, \$100/mo.



Port Townsend

Extend existing fiber to
all PT business districts.

Need for Speed

375 Businesses Passed

Goal of 225 Connections (60%)

\$1200 connection fee

Up to 10G/10G service

Award Details

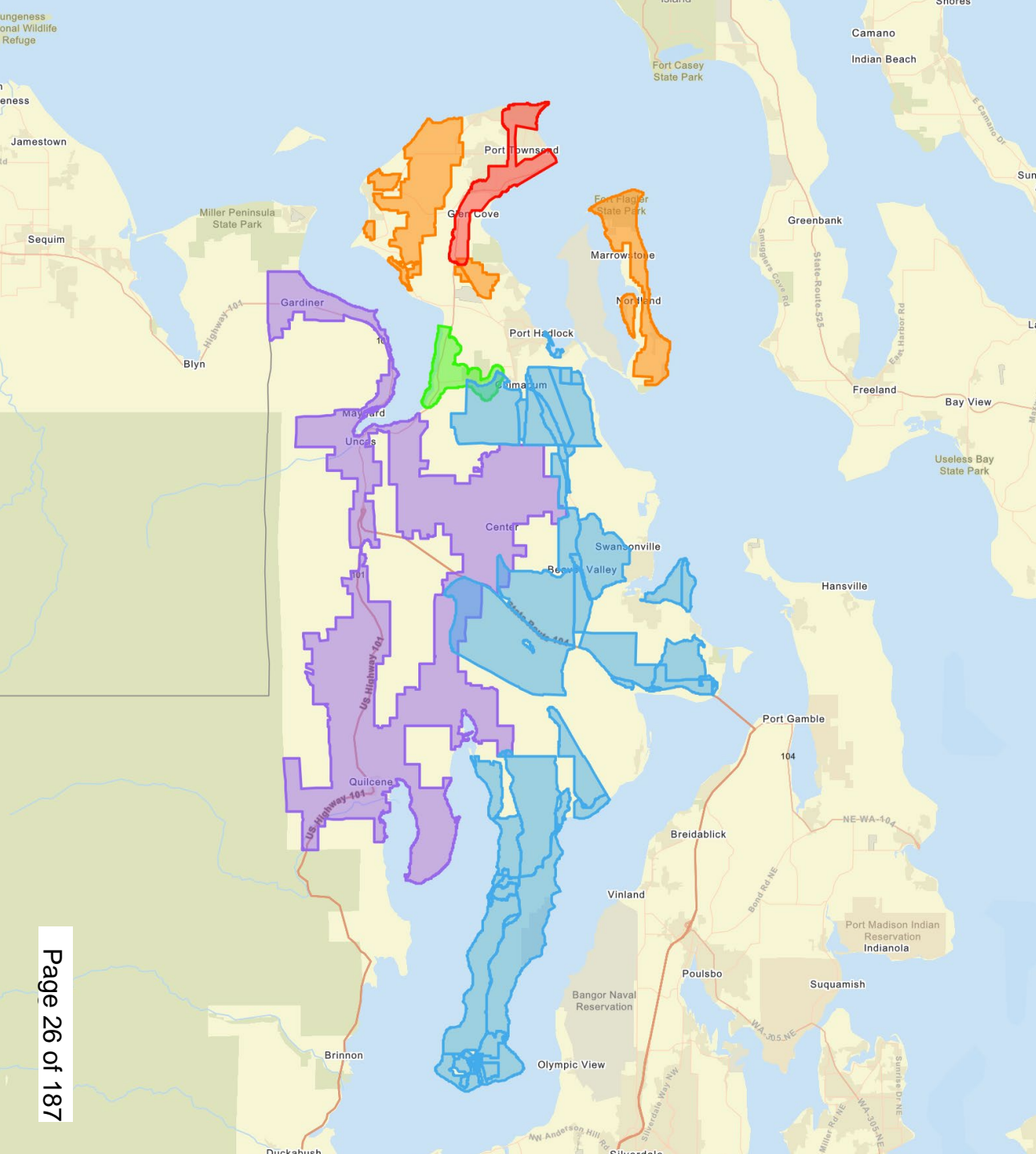
Paid Annually not monthly

Interest Only first payment

\$135,554 yr (\$11,296 mo.)

106 customers needed to cover cost of loan

Cost of match covered by construction fees



Current Projects

Olympic Fiber Corridor
Quilcene to Gardiner

East Discovery Bay
Anderson Lake Rd and Hwy 20

Jefferson North
Cape George, Woodland Hills, Marrowstone

SE Jefferson County
Chimacum to Ludlow to Coyle

PT Business Fiber
Fort Worden to Hwy 20/19 Intersection

Project Areas	E DISCO BAY <i>awarded</i>	Olympic Fiber Corridor <i>awarded</i>	Jefferson North <i>awarded</i>	PT Business Fiber (Loan) <i>awarded</i>	SE Jefferson County (<i>not submitted yet</i>)	Projected Total
FUNDER	PWB	NTIA/WSBO	WSBO	PWB	USDA RUS	
Residential Passings	74	1646	1071	0	1034	3825
Business Passings	0	37	6	375	0	413
Est. Take Rate	70%	60%	60%	60%	70%	
Customers	52	1010	646	225	724	2675
Miles of Fiber	8.3	136	100	47	114	405.3
State or Federal Funding	\$1,096,046	\$10,406,153	\$9,718,934	\$1,839,295	\$9,927,431	\$31,148,564
State or Local Match	0	\$1,156,239	\$750,000	0	\$3,309,144	\$5,215,383
JPUD Cash	0	\$147,840	\$965,106	\$204,366	0	\$1,317,312
Total Funding	\$1,096,046	\$11,710,232	\$10,468,934	\$2,043,661	\$13,236,575	\$39,520,554

CONTRACT FACE SHEET

Contract Number: PBC23-96104-001

PUBLIC WORKS BOARD BROADBAND PROGRAM

1. Contractor Jefferson County Public Utility District #1 410 Four Corners Rd Port Townsend, WA 98368		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative Will O' Donnell 360-385-8369 wodonnell@jeffpud.org		4. Public Works Board Project Manager Sheila Richardson 564-999-1927 sheila.richardson@commerce.wa.gov	
5. Contract Amount \$1,812,041	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 October 31, 2037	
9. Federal Funds (as applicable) N/A		Federal Agency N/A	CFDA Number N/A
10. Tax ID # N/A	11. SWV # 0074555-01	12. UBI # 601-141-351	13. DUNS # N/A
14. Contract Purpose Provide funding under RCW 43.155.160 for the construction of Broadband Infrastructure to deliver affordable, high-speed broadband services to homes and businesses at speeds in excess of 25 megabits per second download and three megabits per second upload and that are scalable to the statutory broadband speed goals of 150 megabits per second symmetrical service.			
The Board, defined as the Washington State Public Works Board (BOARD), and Contractor (CONTRACTOR) acknowledge and accept the terms of this Contract (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: Scope of Work, Attachment II: Attorney's Certification, and Attachment III: Indefeasible Rights of Use Agreement, if applicable.			
FOR THE CONTRACTOR _____ Signature Kevin Streett Print Name _____ General Manager Title _____ Date		FOR PUBLIC WORKS BOARD _____ Kathryn A. Gardow, Public Works Board Chair _____ Date APPROVED AS TO FORM ONLY 4/21/2021 Sandra Adix Assistant Attorney General	



DECLARATIONS**CLIENT INFORMATION**

Legal Name: Public Utility District No 1 of Jefferson County
 Contract Number: PBC23-96104-001

PROJECT INFORMATION

Project Title: PT Business Fiber Project
 Project City: Port Townsend
 Project State: **Washington**
 Project Zip Code: 98368
 Project Area: Business Corridor of Port Townsend

FUNDING INFORMATION**LOAN FUNDING:**

Loan Amount: **\$1,812,041**
 Loan Term, if applicable: **15**
 Interest Rate: **0.42%**
 Payment Month: October 31st

GRANT FUNDING

Grant Amount: **\$0**
 Appropriation Number: **SHB 1080 S-3081.3, Section 1067**

PROJECT TOTALS

Match Amount: **\$201,338**
 Total Estimated Funding: **\$1,812,041**
 Total Estimate Cost: **\$2,013,379**
 Contract Earliest Date for Construction Reimbursement: **July 8, 2022**
 Contract Time of Performance: 48 months from Execution Date of this Contract to Project Completion.

ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS LOAN AGREEMENT

N/A

LOAN SECURITY CONDITION GOVERNING THIS LOAN AGREEMENT

N/A

SCOPE OF WORK

Construct approximately 5 miles of underground fiber and approximately 10 miles of aerial fiber and provide Gigabit fiber broadband to approximately 225 businesses in the downtown corridor from Fort Worden State Park PDA to the intersection of State HWY 19 and 20.

The project costs may include but are not limited to: engineering, cultural and historical resources, environmental documentation, review, permits, easements, bid documents and construction.

The project needs to meet all applicable Local, State, and/or Federal standards.



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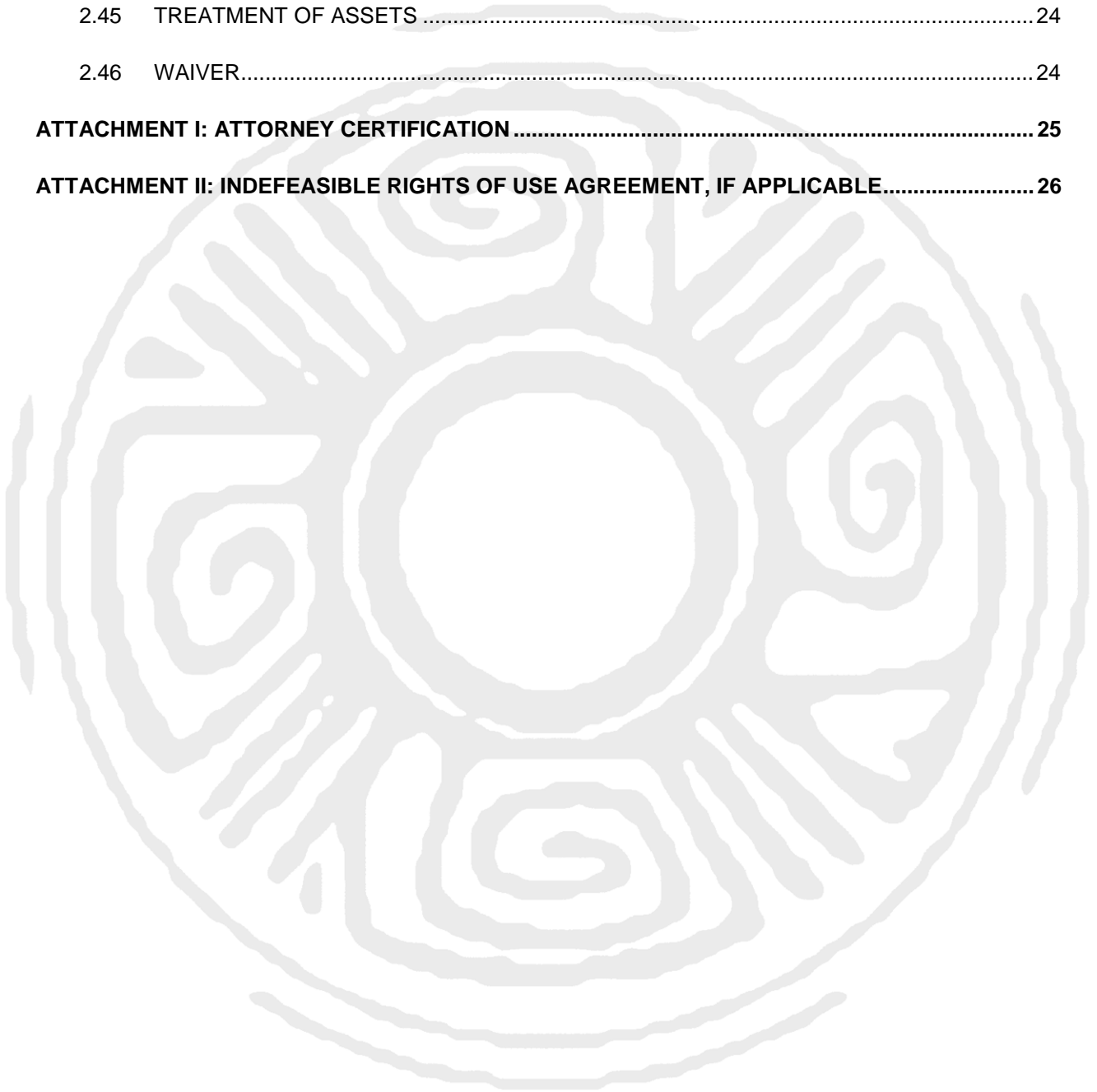
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CONTRACT TERMS AND CONDITIONS

Part 1: SPECIAL TERMS AND CONDITIONS

1.1 **TERMS AND CONDITIONS FOR TRIBAL ENTITIES:**

- 1.28 Culturally Relevant Services
- 1.29 Tribal Hiring Preference and Employment Practices
- 1.30 Sovereign Immunity

1.2 **DEFINITIONS**

As used throughout this Construction Funding CONTRACT the following terms shall have the meaning set forth below:

- A. "CONTRACT" shall mean this BOARD Broadband Construction Funding CONTRACT.
- B. "CONTRACTOR" shall mean the local governments; Tribes; nonprofit organizations; cooperative associations; multiparty entities comprised of public entity members; limited liability companies organized for the purpose of expanding broadband access; and incorporated businesses or partnerships identified on the CONTRACT Face Sheet as a recipient of a BOARD loan or grant and 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 State of Washington Public Works Board established 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, terms and conditions as stated on the Declarations Page of this CONTRACT, displayed within the CONTRACT in THIS STYLE for easier identification.
- E. "PUBLIC USE" any grant or loan to a private entity is conditioned upon a guarantee that the asset or infrastructure to be developed will be maintained for public use for a period of at least fifteen (15) years. PUBLIC USE is defined as that the portion of the broadband network funded in whole or in part by the BOARD shall remain available to connect unserved areas for a period of not less than fifteen (15) years from the date of completed construction.
- F. "Unserved Areas" shall have the meaning defined in RCW 43.330.530(10).
- G. "Maintained for Public Use" for purposes of this CONTRACT shall mean private entity recipients of BOARD Broadband funding shall be required to enter into a minimum fifteen (15) year Indefeasible Rights of Use Agreement (IRU) that includes rights of the BOARD to sub-lease the infrastructure that is subject to the IRU, for purposes of connecting unserved areas.

1.3 **AUTHORITY**

Acting under the authority of RCW 43.155.160, the CONTRACTOR is awarded BOARD broadband construction funding for an approved broadband construction project.

1.4 **CHANGE OF OWNERSHIP OR USE FOR CONTRACTOR-OWNED PROPERTY**

The CONTRACTOR understands and agrees that any or all assets acquired, constructed, or otherwise improved by the CONTRACTOR using the funds under this CONTRACT shall be held and used by the CONTRACTOR for the purposes stated in the Scope of Work shown on the Declarations page for a period of at least fifteen (15) years from the date the final payment is made.

In the event that the CONTRACTOR decides to change or transfer ownership of any or all assets acquired or constructed in whole or in part, or otherwise improved by the CONTRACTOR using state funds under this CONTRACT, the CONTRACTOR agrees that any such decision or action must be submitted in writing and approved by BOARD in writing at least thirty (30) days prior to the execution of such decision or action.

In the event the CONTRACTOR is found to be out of compliance with this section, the CONTRACTOR shall repay the principal amount of the CONTRACT as stated in the Declarations plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject asset was authorized. Repayment shall be made pursuant to Section 2.33 Recapture Provision.

1.5 **COMPETITIVE BIDDING REQUIREMENTS**

The CONTRACTOR shall comply with the provisions of RCW 43.155.060 regarding competitive bidding.

1.6 **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 under this CONTRACT will be suspended effective July 1. The CONTRACTOR shall immediately suspend work under this CONTRACT 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.

1.7 **DEFAULT IN REPAYMENT**

Loan repayments shall be made on the loan in accordance with Section 1.19 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 of 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.

1.8 DOCUMENTATION AND SECURITY

The provisions of this section shall apply to private entity broadband projects. To ensure a grant or loan to a private entity under this section primarily serves the public interest and benefits the public, any such grant or loan must be conditioned on a guarantee that the asset or infrastructure to be developed will be maintained for public use (definition: Section 1.2(E)) for a period of at least fifteen (15) years (RCW 43.155.160 (8)).

- A.** This CONTRACT shall be evidenced and secured by a security instrument in favor of BOARD guaranteeing public use for at least fifteen (15) years. Form of security will be as negotiated by the Parties to this CONTRACT, and include an Indefeasible Right of Use (IRU).
- B.** Term of the IRU. The IRU shall remain in full force and effect for a period of at least fifteen (15) years following the completion of the project funded in whole or in part under this CONTRACT. Upon satisfaction of the fifteen-year public benefit requirement and all other grant or loan terms and conditions, BOARD shall, upon written request of the CONTRACTOR, take appropriate action to reconvey or release the security instrument.
- C.** The IRU will be provided no later than the date of final payment under this CONTRACT, and shall remain in effect for a period at least 15 years after the date the project is complete and in service.

1.9 ELIGIBLE PROJECT COSTS

CONTRACT funds must be directly related to the scope of work of the project being financed by the BOARD. Eligible project activities and costs include the following:

- design, architectural, and engineering work;
- building permits/fees;
- archeological/historical review;
- construction labor (from external sources only)* and materials;
- demolition/site preparation;
- capitalized equipment;
- construction management (from external sources only);**
- landscaping; and
- real property when purchased specifically for the project, and associated costs.***

At least ninety percent (90%) of the funds awarded for the project must be used for the construction/equipment/and acquisition portion of the project.

***Construction labor** does **not** include work typically performed by employees of the applicant, unless the employee is hired solely and specifically to perform construction labor for the awarded project.

**** Construction management and observation** is on-site management and/or supervision of the work site and workers thereon. This is an eligible project cost. Construction management does not include work typically performed by off-site consultants or consultant organizations, grant writers, project managers, or employees of the applicant, unless the employee is hired solely and specifically to perform on-site construction management as defined above.

***** Costs directly associated with property acquisition** include appraisal fees, title opinions, surveying fees, real estate fees, title transfer taxes, easements of record, and legal expenses.

Ineligible costs: internal administrative activities, project management (from any source), fundraising activities, feasibility studies, computers or office equipment, rolling stock (such as vehicles), lease payments for rental of equipment or facilities, maintenance and operating, mortgages or property leases (including long-term), the moving of equipment, furniture, etc., between facilities, and salary & benefits for the employees of the applicant, and the cost of the technology used to extend broadband service to the end user.

These terms supersede the terms in Section 2.2 Allowable Costs.

1.10 HISTORICAL AND CULTURAL RESOURCES

Prior to commencing construction, CONTRACTOR shall cooperate with the BOARD to complete the requirements of Governor's Executive Order 21-02 or, as an alternative to completion of Governor's Executive Order 21-02, 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 21-02, 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 resource 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 immediately stop work and report the presence and location of the remains to the coroner and local law 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 process set forth in Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02.

In the event that the CONTRACTOR finds it necessary to amend the SCOPE OF WORK, the CONTRACTOR may be required to re-comply with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act.

1.11 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 1 – Project Scope of Work and Milestones
- Attachment 2 – Attorney Certification

1.12 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

If the CONTRACTOR is a state or local entity, the BOARD makes no claim to any real property improved or constructed with funds awarded under this CONTRACT and does not assert, and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this CONTRACT. This provision does not extend to claims that BOARD may bring against the CONTRACTOR in recapturing funds expended in violation of this CONTRACT.

If CONTRACTOR is a private entity it shall provide an IRU to the BOARD as set forth in Section 1.8.

1.13 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.
- E. Pictures of Completed Project, as appropriate.

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 or grant 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 and/ or grant amount, local share, term, and interest rate.

1.14 PROJECT SIGNS

If the CONTRACTOR displays, during the period covered by this CONTRACT, signs or markers identifying those agencies participating financially in the approved project, the sign or marker must identify the BOARD as a participant in the project.

1.15 PUBLIC USE – PRIVATE APPLICANTS ONLY

"PUBLIC USE" any grant or loan to a private entity is conditioned upon a guarantee that the asset or infrastructure to be developed will be maintained for public use for a period of at least fifteen (15) years. PUBLIC USE is defined as that the portion of the broadband network funded in whole or in part by the Public Works Board shall remain available to connect unserved areas for a period of not less than fifteen (15) years from the date of completed construction. The Public Use condition will be satisfied by CONTRACTOR's provision of an IRU to the BOARD as set forth in Section 1.8.

1.16 PURPOSE

The Board and the CONTRACTOR have entered into this CONTRACT to undertake a broadband construction project that furthers the goals and objectives of the BOARD Broadband 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 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.

1.17 RECAPTURE

The right of recapture under Section 2.33. 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.

1.18 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 appropriation become available. Thereafter, 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 funding amount under this CONTRACT, as identified in Section 1.9. When requesting reimbursement for costs incurred, the CONTRACTOR shall complete a digital 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 21-02 or Section 106 of the National Historic Preservation Act, as described in Section 1.10, and
- Signed 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 per guidance in the BOARD Broadband Construction Handbook.

When requesting reimbursement for expenditures made, CONTRACTOR shall submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Contracts Management System (CMS), which is available through the Secure Access Washington (SAW) portal. If the CONTRACTOR has constraints preventing access to COMMERCE's online A-19 portal, a hard copy A-19 form may be provided by the BOARD Project Manager upon request.

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.

If the CONTRACTOR receives funding in the form of both a grant and a loan, the CONTRACTOR shall bill to the loan and grant equally until and if one of the funds are exhausted at which time the remaining funds will be expensed.

Payment shall be considered timely if made by the BOARD within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be disbursed electronically to 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.

BOARD funds are disbursed on reimbursement only basis for eligible costs within the approved project's scope of work. BOARD funds will be reimbursed and CONTRACTOR's matching funds must be expended by CONTRACTOR in the amounts and as identified on the Declarations Page.

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

BOARD shall not release the final five (5) percent of the total funding amount until acceptance by BOARD of project completion report.

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 BOARD loan and/or grant exceed one hundred percent (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 BOARD disbursement shall bring the total loan/grant to the lesser of one hundred percent (100%) of the eligible project costs or the total declared funding under this CONTRACT. 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 BOARD monies in excess of one hundred percent (100%) of eligible costs, all funds in excess of one hundred percent (100%) shall be repaid to the BOARD by payment to the BOARD, or its successor, together with the submission of the Project Completion Amendment.

1.19 REPAYMENT

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 (0).

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. The first payment shall consist of accrued interest only and will be charged once a warrant has been issued prior to the PAYMENT MONTH. 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.

In the event that the BOARD approves the CONTRACTOR's request for a new system deferral as outlined in Section 1.27, then the first loan repayment is due twenty-four (24) months after CONTRACT execution. Interest still accrues on any warrants issued during the deferral period. The first payment shall consist of accrued interest only and will be charged once a warrant has been issued prior to the PAYMENT MONTH. Interest and principal payments are due on the declared **PAYMENT MONTH** date of each year during the remaining term of the loan. The CONTRACTOR has the right to repay the unpaid balance of the loan in full at any time or make accelerated payments without penalty.

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

1.20 REPORTS

The CONTRACTOR shall furnish the BOARD with:

- A. Monthly Project Progress Reports;
- B. Estimated Quarterly Expenditures Report;
- C. Certified Project Completion Report at project completion (as described in Section 1.13);
- D. Pictures and short videos of various stages of the project;
- E. Other reports as the BOARD may require.

1.21 SPECIAL CONDITIONS

If Additional Special Conditions are listed on the CONTRACT Declarations Page then those conditions are herein incorporated as part of the terms and requirements of this CONTRACT.

1.22 SUB-CONTRACTOR DATA COLLECTION

CONTRACTOR will submit monthly progress reports, in a form and format consistent with the template to be provided by the Board and 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.

1.23 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 2.42 Termination for Cause.

1.24 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.

In lieu of termination for convenience, this CONTRACT may be amended to reflect limitations and conditions of funding in appropriations of state funds available for this CONTRACT.

These terms supersede the terms in Section 2.43 Termination for Convenience.

1.25 TERM OF LOAN

If the CONTRACTOR is awarded a loan, the BOARD shall fund 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.

1.26 TIME OF PERFORMANCE

No later than Forty-eight (48) 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 from the BOARD, in writing, an extension to the deadline for project completion. Requests for extension must be submitted not less than 60 days prior to project completion deadline. The BOARD may extend the deadline, at its sole discretion. The BOARD considers extension requests on a case-by-case basis.

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

1.27 TWO-YEAR DEFERRAL FOR START-UP SYSTEMS

A deferral must be requested by the CONTRACTOR and approved by the BOARD. An approved deferral shall be for a period of up to twenty-four (24) months. .

A new or start-up broadband system is defined as a project that includes a minimum of fifty percent (50%) of the project plan for this CONTRACT that includes new service connections to residences that are currently served by 10 Mbps download and 1 Mbps upload or less.

Interest accrues for the aforementioned twenty-four (24) months. The accrued interest only payment is due October 31st of the third (3rd) year of the loan term. Regular interest and principal payments are due annually on October 31st beginning the fourth (4th) year of the loan term.

1.28 CULTURALLY RELEVANT SERVICES

In performing work pursuant to any CONTRACT, the CONTRACTOR may develop and operate programs and deliver goods, services, and/or benefits in a manner that is culturally relevant and particularly suited to and/or particularly located for access by members of the CONTRACTOR'S Nation or other tribes, in accordance with tribal laws and policies.

1.29 TRIBAL HIRING PREFERENCE AND EMPLOYMENT PRACTICES

The CONTRACTOR may give preference in its hiring and employment practices to members of the CONTRACTOR, or other tribes, who have met all requirements for that position, including, state requirements, and as may be provided by tribal laws and policies.

1.30 SOVEREIGN IMMUNITY

Nothing in this CONTRACT, including any Exhibits hereto, nor any action taken by the Tribe or any of its officers, agents, or employees in connection with this CONTRACT shall be deemed to be a waiver of the sovereign immunity of the Tribe unless such waiver is explicit and in writing, and fully complies with all tribal and federal requirements for the waiver of such immunity.



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 BOARD Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "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
- C. "Commerce" shall mean the Department of Commerce.
- D. "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.
- 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.
- H. "TRIBAL LAW" means the resolutions, law, codes, and/or ordinances enacted by the CONTRACTOR executing this CONTRACT, and any of the CONTRACTOR's tribal court decisions interpreting the same. All references in this CONTRACT to tribal law shall include any successor, amended, or replacement law, as of the effective date of such successor, amended, or replacement law.

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 and Declarations.

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 (not applicable to Tribes)

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 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 BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES

When the grant or loan is used to fund the acquisition of real property, the value of the real property eligible for reimbursement under this CONTRACT shall be established as follows:

- A. CONTRACTOR purchases of real property from an independent third-party seller shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser, or a current property tax statement.
- B. CONTRACTOR purchases of real property from a subsidiary organization, such as an affiliated LLC, shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser or the prior purchase price of the property plus holding costs, whichever is less.

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 CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, 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 or any private action that would constitute such violation if undertaken by a state officer or employee, in the procurement of, or performance under this CONTRACT.

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW. The CONTRACTOR and their SUBCONTRACTOR(s) must identify any person employed in any capacity by the state of Washington that worked on the BOARD Broadband Program including but not limited to formulating or drafting the legislation, participating in grant or loan procurement planning and execution, awarding grant or loans, and monitoring loans, during the twenty-four (24) month period preceding the start date of this Grant or Loan. 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 BOARD that a conflict of interest exists, the CONTRACTOR may be disqualified from further consideration for the award of a Grant or Loan.

In the event this CONTRACT is terminated as provided above, 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 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 BOARD makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this CONTRACT.

2.14 COPYRIGHT

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.

2.15 DISALLOWED COSTS

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

2.16 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 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
- mailed to the BOARD 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 BOARD Chair or the BOARD Chair's designee and the requestor within five (5) working days.

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

2.17 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.

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, 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, 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 shall not be eliminated by any actual or alleged concurrent negligence of the State or its agents, agencies, employees and officers.

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.

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 INSURANCE

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the CONTRACTOR or SUBCONTRACTOR, or agents of either, while performing under the terms of this CONTRACT. Failure to maintain the required insurance coverage may result in termination of this CONTRACT.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The CONTRACTOR shall instruct the insurers to give BOARD thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The CONTRACTOR shall submit to the BOARD within fifteen (15) calendar days of a written request by BOARD, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the CONTRACT, if required or requested, the CONTRACTOR shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The CONTRACTOR shall provide insurance coverage that shall be maintained in full force and effect during the term of this CONTRACT, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate

quantity to protect against legal liability arising out of CONTRACT activity but no less than \$1,000,000 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that any SUBCONTRACTORS provide adequate insurance coverage for the activities arising out of SUBCONTRACTS.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the CONTRACTOR for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this CONTRACT shall be \$2,000,000 or the highest of planned reimbursement for the CONTRACT period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name the BOARD as beneficiary.
- B. SUBCONTRACTORS that receive \$10,000 or more per year in funding through this CONTRACT shall secure fidelity insurance as noted above. Fidelity insurance secured by SUBCONTRACTORS pursuant to this paragraph shall name the CONTRACTOR and the CONTRACTOR's fiscal agent as beneficiary.
- C. The CONTRACTOR shall provide, at BOARD's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that BOARD will be provided thirty (30) days advance written notice of cancellation.

GRANTEES and Local Governments that Participate in a Self-Insurance Program.

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from BOARD, the CONTRACTOR may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from BOARD, the CONTRACTOR shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. CONTRACTOR's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third Parties as additional insured.

CONTRACTOR shall provide annually to BOARD a summary of coverages and a letter of self-insurance, evidencing continued coverage under CONTRACTOR's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self-insurance will be provided on the anniversary of the start date of this CONTRACT.

2.23 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. Office of minority and women’s business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. Open public meetings act, Chapter 42.30 RCW.
- H. Prevailing wages on public works, Chapter 39.12 RCW.
- I. Public records act, Chapter 42.56 RCW.
- J. State Executive Order 21-02 Archaeological and Cultural Resources.

2.24 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.

2.25 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.

2.26 LOCAL PUBLIC TRANSPORTATION COORDINATION

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

2.27 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.

2.28 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 BOARD or the Department of Enterprise Services determines that the CONTRACTOR is not in compliance with this provision.

2.29 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 provided under this CONTRACT may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

2.30 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.

2.31 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.

2.32 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.

2.33 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.

2.34 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 (6) 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 BOARD, personnel duly authorized by 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 finally resolved.

2.35 REGISTRATION WITH DEPARTMENT OF REVENUE

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

2.36 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.

2.37 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.

2.38 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.

2.39 SUBCONTRACTING

The Parties acknowledge and agree that CONTRACTOR may undertake all or part of the work under this CONTRACT through SUBCONTRACTORS. CONTRACTOR shall be solely responsible for the selection and management of SUBCONTRACTORS.

If CONTRACTOR engages in 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.

2.40 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.

2.41 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.

2.42 TERMINATION FOR CAUSE

In the event BOARD determines the CONTRACTOR has failed to comply with the conditions of this CONTRACT in a timely manner, BOARD has the right to suspend or terminate this CONTRACT. Before suspending or terminating the CONTRACT, BOARD shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within thirty (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.

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 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 BOARD provided in this CONTRACT are not exclusive and are, in addition to any other rights and remedies, provided by law.

2.43 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.

2.44 TERMINATION PROCEDURES

Upon termination of this CONTRACT, BOARD, in addition to any other rights provided in this CONTRACT.

The rights and remedies of 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:

- 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 except as may be necessary for completion of such portion of the work under the CONTRACT that is not terminated;
- C. 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;
- D. 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;
- E. 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;

- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. 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.

2.45 TREATMENT OF ASSETS

Title to all property furnished by BOARD shall remain in BOARD. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this CONTRACT, shall pass to and vest in BOARD upon delivery of such property by the CONTRACTOR

- A. Any property of the BOARD furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the BOARD, be used only for the performance of this CONTRACT.
- B. The CONTRACTOR shall be responsible for any loss or damage to property of the BOARD that results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- C. If any BOARD property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the BOARD and shall take all reasonable steps to protect the property from further damage.
- D. The CONTRACTOR shall surrender to the BOARD all property of the BOARD prior to settlement upon completion, termination or cancellation of this CONTRACT.

All reference to the CONTRACTOR under this clause shall also include CONTRACTOR's employees, agents or SUBCONTRACTORS.

2.46 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 CERTIFICATION

PUBLIC WORKS BOARD BROADBAND CONSTRUCTION PROGRAM

CONTRACTOR: Public Utility District No 1 of Jefferson County

CONTRACT Number: PBC23-96104-001

I, Joel R. Paisner, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the Public Utility District No 1 of Jefferson County; 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 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 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 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

Joel R. Paisner
Partner, Ascent Law Partners, LLP

ATTACHMENT II: INDEFEASIBLE RIGHTS OF USE AGREEMENT, IF APPLICABLE

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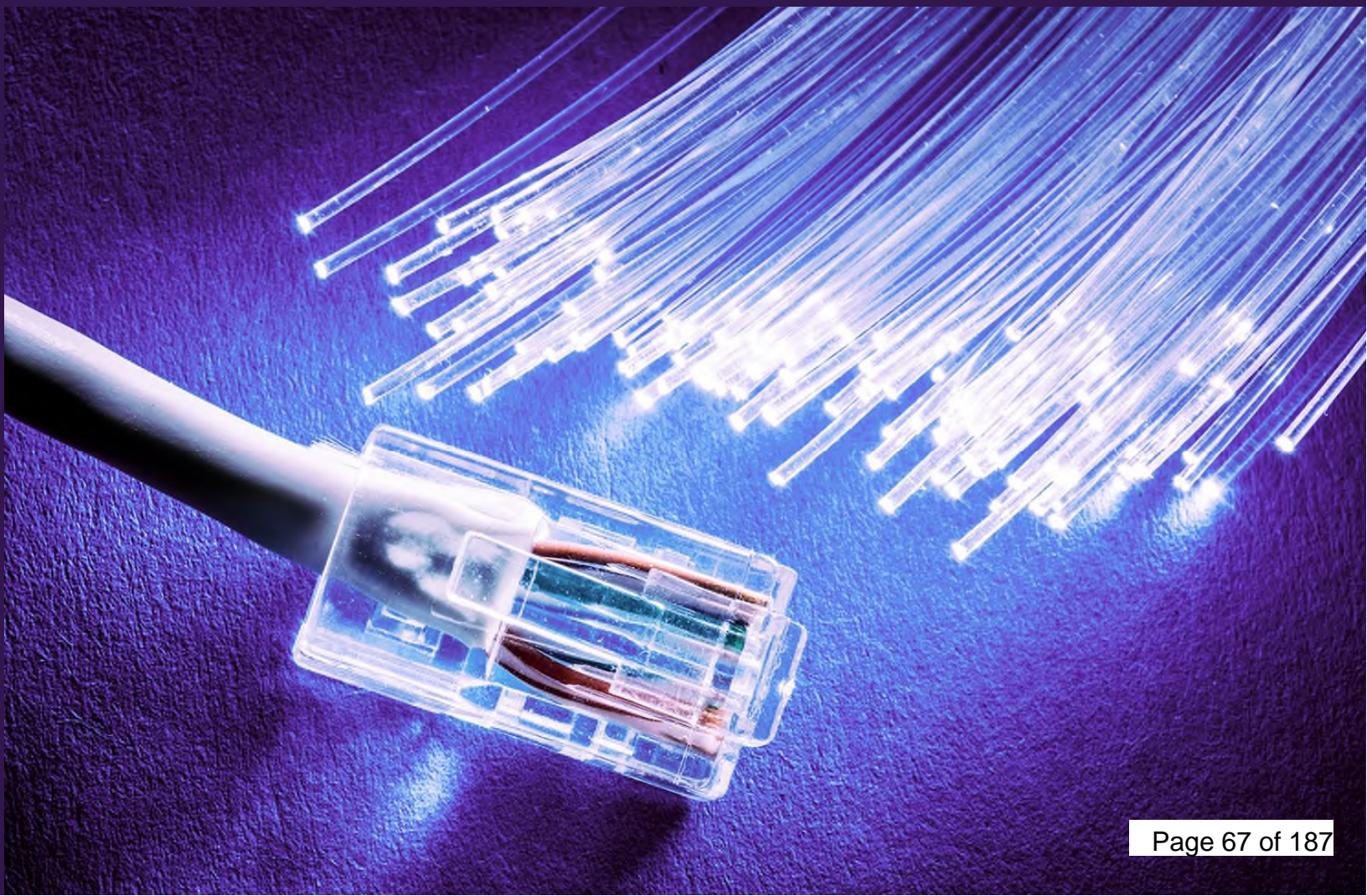
State Funding Loan Cycle 2022-2023

Broadband Construction Policies

Handbook

Effective July 8, 2022

Version 1.0



Disclaimer

This handbook is a guide for CONTRACTORS of a Public Works Board (BOARD) Broadband loan and/or grant funded with state dollars. While this handbook is a helpful resource, it does not guarantee compliance with all state requirements. CONTRACTORS are responsible for compliance with all the rules and guidelines as required by the BOARD program as enacted in law. The BOARD and the Department of Commerce (COMMERCE) expressly disclaim any warranty related to the compliance with federal and state requirements and will accept no responsibility for any consequences arising from the use or reliance on this handbook.

*The Public Works Board reserves the right to update these policies through BOARD action at any time. Updates will be published in this document, and posted at <https://www.commerce.wa.gov/building-infrastructure/pwb-home-page/>.

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Section 1 - Overview

1.1 Introduction

The Public Works Board (BOARD) Broadband program is authorized by state statute ([RCW 43.155.160](#)), to loan and grant money to local governments, tribes, nonprofit organizations, cooperative associations, multiparty entities comprised of public entity members, limited liability corporations organized for the purpose of expanding broadband access, and incorporated businesses or partnerships for the purpose of promoting the expansion of access to broadband service in unserved areas of the state. These organizations are known as applicants until such time as they are CONTRACTORS of PWB funding.

The purpose of the PWB Broadband program (PROGRAM) is to provide low-interest loans and grants to finance the acquisition, installation, and construction of broadband infrastructure.

- The BOARD may award grants and loans under the PROGRAM to assist in the construction of middle mile and last mile broadband infrastructure and strategic planning for deploying broadband service in unserved areas.
- The BOARD may choose to fund all or part of an application, provided the application meets all statutory requirements.
- The BOARD may fund no more than 50 percent of the total cost of the project, except:
 - In “distressed areas” (defined in [RCW 43.168.020](#)) as or in “Indian country” (defined in [WAC 458-20-192](#)) the BOARD may choose to fund up to 90 percent of the total cost of a project.
- Funds awarded to a single project must not exceed two million dollars unless
 - The BOARD chooses to fund projects in “distressed areas” or “Indian Country” up to, but not to exceed, \$5 million dollars.

1.2 Public Works Board Broadband Program Administration

The PROGRAM is administered by the BOARD as outlined below.

Public Works Board (PWB)

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Olympia, WA 98504-2525

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Executive Director
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Broadband Project Manager
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Cindy Chavez, Loan Payment
and Amortization Schedule
(360) 522-2409

PROGRAM staff is responsible for the application process including:

- Publishing program guidelines and application;
- Scoring and ranking applications;
- Conducting affordability index analysis, risk analysis, and financial review;
- Determining project readiness and negotiating final scopes of work;
- Conducting the Governors Executive Order 21-02 Cultural Review Process;
- Preparing and executing loan contract documents;
- Providing contract management training;
- Monitoring compliance with contract requirements and progress;
- Reviewing and approving reimbursement requests;
- Amending contracts, project completion process;
- Technical assistance;
- Issuing annual loan billing statements; and
- Managing contracts for completed projects.

1.3 Public Works Board Interest Rate Criteria

Prior to the loan application cycle, interest rates are dictated by the BOARD. The PROGRAM implements three classes of interest rates: standard, distressed, and severely distressed (see Table 1 for details). Standard interest rates are set at 50% of the average daily market rate for tax-exempt municipal bonds for the 30-to-180 day period prior to each funding cycle opening. Distressed interest rates are 50% of the standard interest rate basis. Severely distressed interest rates are 25% of the standard interest rate basis.

Hardship Policy

The PROGRAM's hardship policy is consistent with statutory authority and legislative intent. The table below, provides a comparison of funding options, eligible project costs, and interest rates across each hardship type.

Table 1: Comparison of Standard, Distressed, and Severely Distressed Awards

Financial Status and Hardship Criteria	Funding Options	Eligible Project Costs	Interest Rate (loan only)	Interest Rate
Standard (Non-distressed)	Eligible for low-interest loans	<ul style="list-style-type: none"> PWB funds up to \$2M 50% of total project cost 	50% of Average Daily Market Rate (ADMR)	0.85%
Distressed <ul style="list-style-type: none"> Rural; and/or Tribal 	Eligible for distressed interest rate loans	<ul style="list-style-type: none"> PWB funds up to \$5M 90% of total project cost 	50% of standard interest rate	0.42%
Severely distressed <ul style="list-style-type: none"> Rural; and/or Tribal Unemployment rate 20% above the three-year state average A Median Household Income (MHI) that is 75% of the state MHI for the three previous years 	Eligible for severely distressed interest loans	<ul style="list-style-type: none"> PWB funds up to \$5M 90% of total project cost 	25% of standard interest rate	0.21%

Definition of Distressed Area and Indian Country

Definition of Distressed Area

[RCW 43.168.020 \(3\)](#) "Distressed area" means: (a) A rural county; (b) a county which has an unemployment rate which is twenty percent above the state average for the immediately previous three years; (c) a county that has a median household income that is less than seventy-five percent of the state median household income for the previous three years; (d) a metropolitan statistical area, as defined by the office of federal statistical policy and standards, United States department of commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent; or (e) an area within a county, which area: (i) Is composed of contiguous census tracts; (ii) has a minimum population of five thousand persons; (iii) has at least seventy percent of its families and unrelated individuals with incomes below eighty percent of the county's median income

for families and unrelated individuals; and (iv) has an unemployment rate which is at least forty percent higher than the county's unemployment rate. For purposes of this definition, "families and unrelated individuals" has the same meaning that is ascribed to that term by the federal department of housing and urban development in its regulations authorizing action grants for economic development and neighborhood revitalization projects

Definition of Indian Country

WAC 458-20-192 (2)(i) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation; (ii) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

1.5 State Requirements

Numerous state requirements must be followed when implementing a BOARD-funded project. These requirements are a part of the contract between the BOARD and the CONTRACTOR. Please see Attachment 1-A.

1.6 Pre-Contract Requirements

Statewide Vendor Number - In order to execute a PWB contract, the CONTRACTOR must establish a statewide vendor (SWV) number through the WA State Office of Financial Management (OFM). The statewide registration forms can be found on OFM's website at:

<https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>

OFM may be contacted at 360-407-8180 or payeehelpdesk@ofm.wa.gov.

1.7 Growth Management Act (GMA) Compliance - Board Policy

To be eligible for funding, applicants planning under GMA must be in GMA compliance with no unresolved findings before a Growth Management Hearings Board at the time of application submission. *Adopted 06/07/2019*

1.8 GMA not in conformance - Board Policy

Applicants that are not in conformance with GMA because their periodic updates are overdue, have five months from the date of award to become conformant. Otherwise, their award letters will be withdrawn. *Adopted 06/07/2019.*

1.9 Deferral for Startup Systems - Board Policy

CONTRACTORS may request from the BOARD up to two-years deferred loan repayment to assist CONTRACTOR with completely new infrastructure systems that otherwise would not be fiscally feasible if loan repayments were to start before the system could begin generating revenue. The CONTRACTOR must request the Deferral for Startup Systems prior to contract execution and through their PWB project manager.

Any "new system" is eligible for a two-year loan payment deferral as defined below:

Eligibility Requirements

1. New system - any project that includes a minimum of 50 percent of the plan for new service connections to residences that are currently served by 10 Mbps download and 1 Mbps upload or less.
2. PROGRAM Broadband Construction loans only.
3. The CONTRACTOR must meet all the standard BOARD threshold requirements such as, GMA compliance, etc.

Loan Terms

1. No loan (principal or interest) payments for first two years.
2. Interest on the amount drawn would accrue for the first two years of the loan.
3. In the third year, the first payment would consist of the accrued interest.
4. Beginning the fourth year, the client would begin both interest and principal payments.
5. The CONTRACTOR will have up to a maximum of 15 years to repay the interest, and up to a maximum of 13 years to repay the principal after the two-year loan deferment.

Adopted 05/01/2020

1.10 Annual Loan Payments

Loan repayments are due October 31st, following the execution date and shall consist of interest only for the first payment. If a loan is executed a few months prior to October, the first interest payment will be due the following year. Subsequent repayments shall consist of principal and interest remaining for the term of the loan. The final payment shall be on or before the term of the loan of an amount sufficient to bring the loan balance to zero.

Billing statements are issued by COMMERCE to the CONTRACTOR approximately one month prior to the date payment is due. There is a 30-day grace period. If payments are not received by October 31st, then a late fee of 1% of the billed amount will be due.

The CONTRACTOR will repay the loan in accordance with the preceding conditions through electronic funds transfer (EFT) to COMMERCE, or its successor.

1.11 Loan Default – Board Policy

Policy Statement

The BOARD established this policy to address the issues of loan deferral, restructuring, termination, and delinquency.

Policy Scope

A CONTRACTOR, which has experienced financial difficulties caused by events beyond their control, may request deferral of the loan payment by contacting their PROGRAM project manager and requesting a deferral of the loan payment. The BOARD has the authority to amend the loan agreement with the CONTRACTOR.

The BOARD, when determining whether to make a change in loan terms, shall take into consideration the following criteria:

1. Sound fiscal management of the CONTRACTOR,
2. Significant loss of revenue that supports the system for which the loan was made, or severe fiscal distress caused by a natural disaster,
3. Established rates that are adequate to provide for operation and debt service,
4. Current financial statements (balance sheet and income statement to be provided for evaluation), and
5. Unable to obtain financing from other lenders.
6. Organized as a local government, or recognized as a non-profit.

The BOARD may amend the agreement to incorporate one or more of the following:

1. Temporarily defer loan payment and/or late fee for up to 90 days,
2. Defer principal payment and extend the length of the loan not to exceed the remaining life of the asset,
3. Reduce interest rate,
4. Amend loan agreement to place the BOARD in the senior position to future debt obligation of the CONTRACTOR.

Should the BOARD amend an agreement to include the above changes, the following conditions may be required:

1. Provide collateral equivalent to the value of the loan.
2. Provide annual financial statements (balance sheet and income statement).

3. If the loan balance is over \$500,000, an independent audit of the CONTRACTOR's financial statements.

In addition, the borrower may be restricted from future BOARD loans until they can demonstrate financial and managerial capacity. *Adopted 05/01/2020.*

Default in Repayment

When a borrower has not received a loan deferral or made a payment within 120 days of the due date, the BOARD may impose such remedy as provided for in the loan agreement. *Adopted 05/01/2020.*

1.12 Delinquent Loan Management – Board Policy

The BOARD loan agreements require payment within thirty days of the due date of the loan payment as described in the agreement. A loan is delinquent when a borrower fails to make full payment within thirty days of the due date.

A borrower failing to make a payment in accordance with the terms of the loan agreement will be sent a notice of delinquency requesting payment before the thirty first (31st) day following the due date. The borrower will be sent a new billing statement for the outstanding payment due plus a one (1) percent penalty of the payment amount. The PROGRAM project manager will contact the borrower, and document the reason for the delinquency.

A borrower failing to make payment by the sixty-first (61st) day following the due date will be sent a Second Notice of Delinquency requesting payment before the ninety-first (91st) day following the due date. The borrower will be sent a new billing statement for the outstanding payment due plus an additional one (1) percent penalty of the payment amount.

A borrower failing to make payment by the ninety-first (91st) day following the due date will be sent a Final Notice of Delinquency requesting payment before the one hundred and twenty-first (121st) day following the due date.

The borrower will be sent a new billing statement for the outstanding payment due plus an additional one (1) percent penalty of the payment amount. *Adopted 05/01/2020.*

Attachment 1-A: State Requirements

Washington State Laws and Regulations

- Affirmative Action, [RCW 41.06.020](#) (11)
- Boards of Directors or Officers of Non-profit Corporations – Liability - Limitations, [RCW 4.24.264](#).
- Chapter [36.70A RCW](#), Growth Management Act

- Chapter [39.80 RCW](#), Contracts for Architectural and Engineering Services
- Chapter [43.155 RCW](#), Public Works Project
- Disclosure-Campaign Finances-Lobbying, Chapter [42.17 RCW](#)
- Discrimination-Human Rights Commission, Chapter [49.60 RCW](#)
- Ethics in Public Service, Chapter [42.52 RCW](#)
- Housing Assistance Program, Chapter [43.185 RCW](#)
- Inter-local Cooperation Act, Chapter [39.34 RCW](#)
- Noise Control, Chapter [70.107 RCW](#)
- Office of Minority and Women's Business Enterprises, Chapter [39.19 RCW](#)
- Open Public Meetings Act, Chapter [42.30 RCW](#)
- Prevailing Wages on Public Works, Chapter [39.12 RCW](#) Chapter 39.12 RCW, Washington State Public Works Act
- Public Records Act, Chapter [42.56 RCW](#)
- Relocation Assistance - Real Property Acquisition Policy, [Chapter 8.26 RCW](#)
- Shoreline Management Act of 1971, Chapter [90.58 RCW](#)
- State Budgeting, Accounting, and Reporting System, Chapter [43.88 RCW](#)
- 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](#)
- State Environmental Policy, Chapter [43.21C RCW](#)
- State Executive Order 21-02 Archeological and Cultural Resources: See [Washington State Department of Archaeology & Historic Preservation \(DAHP\)](#)

Section 2 - Contract and Amendments

2.1 Overview

This section outlines the contract development and contract amendments process followed by PROGRAM project managers through project completion.

2.2 Assignment of Project

All awarded CONTRACTORS will receive a letter from BOARD specifying the amount of the award, any conditions on the award, and the name and contact information of the PROGRAM project manager assigned to the project.

CONTRACTORS are expected to work closely with the project manager during pre-contracting, project implementation, placed-in-service activities, and award close-out.

2.3 Scope of Work

The PROGRAM project manager will work with the CONTRACTOR to finalize the scope of work for the contract. The scope of work provided in the PROGRAM application will be reviewed and edited by the PROGRAM project manager. The revised scope of work will be emailed to the CONTRACTOR for review and approval.

2.4 Contract

The PROGRAM contract is comprised of two parts: *Special Terms and Conditions* and *General Terms and Conditions*. The Office of the Attorney General has pre-approved the boilerplate language for the PROGRAM contract and related legal documents. The General Terms and Conditions are not negotiable. Limited revisions to the Specific Terms and Conditions or other legal documents may be allowed, as noted below. Substitution or addition of non-PWB documents is subject to the approval of BOARD's Assistant Attorney General (AAG).

The approved contract boilerplate will include the scope of work as Attachment A and terms of the contract on the declaration page.

2.5 Contract Execution Deadline – Board Policy

Applicants awarded a PROGRAM contract must return an executed contract within six-months of receipt. Failure to do so could result in withdrawal of the award. Applicants who have their award withdrawn would be eligible to reapply to the next funding cycle. *Adopted 05/01/2020.*

2.6 Time of Performance Requirements

The CONTRACTOR must demonstrate projects are progressing in a timely manner. The BOARD may terminate contracts when projects are not progressing on schedule. Planning projects must be completed within 12 months of the date of the contract execution. Construction projects must be completed within 48 months of the date of contract execution.

2.7 Contract Amendments Overview

Changes to the contract scope of work, budget activities, or timing to carry out contract activities require a contract amendment. The CONTRACTOR must contact their PROGRAM project manager to initiate amendments to contracts.

2.8 Scope of Work Amendment

Scope of work revisions must be requested in writing by the CONTRACTOR to their designated PROGRAM project manager. Scope changes that include modifications to the project area will not be accepted.

Scope of work amendments may require additional environmental and/or cultural resources Governor's Execution Order (GEO) 21-02, or Section 106 (federal, if applicable) reviews, especially where the revisions:

- Add elements to the project scope of work.
- Excavate at a deeper depth or different location.

No work can proceed, nor reimbursement of any elements related to the proposed revised scope until the PWB Program Director determines the scope change is allowable, all elements of the GEO 21-02 are completed for the proposed change, and a contract amendment is fully executed. The PWB Broadband Program Director approves scope changes to PROGRAM contracts.

2.9 Requesting Extensions

For the BOARD to consider project extension requests, the CONTRACTOR must request extensions to the Project Completion Date at least 120-days before the Project Completion Date referenced on the Declarations page of their contracts. The CONTRACTOR must request a Project Completion extension via email through their PROGRAM project manager. Requests must state the reason(s) for the delay, list the revised timeline for completion of the activities, and be prepared to present to the BOARD by the CONTRACTOR if requested.

2.10 Change of Ownership or Use

In the event that the CONTRACTOR decides to change or transfer ownership of any or all assets acquired or constructed in whole or in part, or otherwise improved by the CONTRACTOR using state funds under this CONTRACT, the CONTRACTOR agrees that any such decision or action must be submitted in writing and approved by BOARD in writing at least thirty (30) days prior to the execution of such decision or action.

In order for the BOARD to consider a receiver CONTRACTOR to assume the debt, they must provide their financial documentation to be reviewed for underwriting purposes. If approved, a legal document signed by both parties must be submitted to the PWB.

2.11 Requesting CONTRACTOR Name Change

The purpose of this amendment is to change the legal name of the CONTRACTOR. The CONTRACTOR must send an official document that shows the approval of the Board of Commissioners, council, and/or other legal entity with authorization to approve the name change. CONTRACTOR must send such an amendment request to their PROGRAM project manager.

2.12 Requesting Contract Termination

The purpose of this request is to rescind all obligations and provisions contained in the contract. The CONTRACTOR must include the reason for the requested termination in order to complete the request. The request must go to the BOARD for approval. An invoice for the remaining loan balance owed is sent to the client and must be paid prior to execution of contract termination.

Section 3 - Record Keeping and Reporting

3.1 Overview

The CONTRACTOR must be able to document compliance with all state and federal (if applicable) regulations. Good record keeping and reporting systems are essential to document compliance. This section provides a summary to help set up a PWB record keeping system and a summary of reports that will be requested during the management of the contract.

3.2 Establishing a Filing System

The CONTRACTOR must maintain accurate and current files. It is best to keep all PWB files in one central location. Files need to be accessible to all project funders.

3.3 Security

Files should be kept in a secure place, but accessible to the public.

3.4. Maintaining Records

All records and files pertaining to the PROGRAM application, engineering, and construction of the project must be stored for the life of the grant or loan plus six years (ex. 21 years for a 15-year loan). Records of operating and maintenance costs do not have to be saved for purposes of the PROGRAM grant or loan.

3.5. Organizing a Filing System

A good filing system can be a very effective management tool. It will ensure the CONTRACTOR has all necessary documentation to meet compliance requirements. The following is suggested as a basic guide for PWB record keeping. It is recommended that the CONTRACTOR keep separate files for each PWB project.

The system includes major headings for administration, financial management, and compliance (as applicable):

- | | |
|--------------------------------------|-------------------------------------|
| 1 – Application | 6 – Environmental / Cultural Review |
| 2 – Grant/Loan Contract & Amendments | 7 – Prime Contractor Contracts |
| 3 – Financial Management | 8 – Labor Construction & Standards |
| 4 – Non-Construction Contracts | 9 – Required Reports |
| 5 – Procurement / Bonding | |

3.6. Project Progress Reports

The PROGRAM requires the following:

1. Monthly Project Progress Reports
2. Quarterly Estimated Expenditure Projection Report
3. Quarterly Project Review with PROGRAM project manager

3.7. Project Completion

Once the CONTRACTOR has successfully completed all contractual tasks, activities, and conditions, the CONTRACTOR shall submit a project completion report (see attachment 8-A for Construction) to the PROGRAM project manager. Upon the PROGRAM'S acceptance of the completion report, the CONTRACTOR may request final reimbursements.

Section 4 - Financial Management

4.1 Overview

This section is designed to help the CONTRACTOR understand and implement financial management systems that comply with PROGRAM requirements.

4.2 Internal Control

The CONTRACTOR should designate one person as fiscal coordinator of the PROGRAM grant or loan. Only one digital signature is required to request reimbursement of expenditures from COMMERCE. However, in the absence of a fiscal coordinator, or in other circumstances, a second person should be authorized to digitally sign the reimbursement request in the Contract Management System (CMS).

The CONTRACTOR must maintain effective internal controls and accountability for PROGRAM funds by complying with financial management standards and generally accepted accounting principles. Methods for maintaining internal control include establishing policies and practices for approval of expenditures, bonding of staff handling cash, clearly defining loan/grant and project management roles and responsibilities, and maintaining segregation of duties in handling and accounting for expenditures and receipting of funds.

4.3 Establishing a Dedicated Repayment Account (if applicable)

CONTRACTORS may be required to establish a dedicated repayment account. This would be included as special terms and conditions of your contract. If required, the CONTRACTOR must establish a dedicated account in a FDIC insured institution to handle the funds for repaying the loan, and should have a separate account for each BOARD loan. This account is used solely for the purpose of repaying the BOARD loan.

4.4 Requesting Reimbursement

After contracts are executed, the CONTRACTOR may request reimbursements for eligible project costs incurred since the loan/grant October 23, 2020 award date but not paid for by any other state or federal fund, reimbursed back to the established award date.

All A-19 reimbursement requests must include a Match Tracking Sheet that lists all the invoices which also must equal the match amount requested for reimbursement as listed on the A-19.

All A-19 reimbursement vouchers and supporting documentation will be processed using the CMS. Instructions and resources for accessing and setting up your CMS account, the Online A-19 user Manual, and Reportable Expenses Template can be found on Commerce's contract management system [portal page](#).

Each A-19 Invoice Reimbursement Voucher must be accompanied by supporting documentation of costs incurred, and submitted electronically through the CMS portal. Your PROGRAM project manager will not release payment for any reimbursement requests received unless supporting documentation is received and Project Progress Reports are current (less than 30 days). After approving the Voucher, the PROGRAM project manager shall promptly remit reimbursement to the CONTRACTOR.

COMMERCE initiated a Diverse Spend reporting process to assess how it supports diverse businesses through its pass-through funds. A CONTRACTOR requesting reimbursements must submit Unified Business Identifier (UBI) expenditure to CMS to collect payment data for each contractor and subcontractor by their name, contract relationship, and UBI number. There are two ways to enter these reportable expenses in the CMS portal; (1) manually enter the expenses (a good option if you have just a few to report), or (2) upload a prefilled Reportable Expenses Template found on the CMS portal page, under the Helpful links section.

4.5 Requirements Before Starting Construction

Prior to starting construction that includes any ground disturbing activities, there are certain contract conditions that must be met prior to issuing the Notice of Contract Award and Notice to Proceed. Meeting these conditions may take from 60 to 180 days (or longer) to complete.

The CONTRACTOR is encouraged to begin work as soon as possible to complete and obtain approval from the PROGRAM on:

- Governor's Executive Order 21-02, cultural resources review process, and
- Draft Bid Ad must be reviewed by your PROGRAM project manager before advertising.

In addition, the Notice of Contract Award and Notice to Proceed form must be submitted to your PROGRAM project manager prior to any approval of reimbursement of construction expenses.

4.7 Retainage – Board Policy

Five percent (5%) of PWB Broadband contracts will be withheld until the BOARD-funded project scope of work is completed and a completion report is submitted to the PWB Broadband project manager. Adopted 05/01/2020.

4.9 Eligible Activities and Costs

Eligible project costs are those incurred on or after the award date approved by the BOARD. Costs must be directly related to the project being financed by the PROGRAM Broadband funding.

Eligible Project Costs

CONTRACT funds must be directly related to the scope of work of the project being financed by the BOARD. Eligible project activities and costs include the following:

- design, architectural, and engineering work;
- building permits/fees;
- archeological/historical review;
- construction labor (from external sources only)* and materials;
- demolition/site preparation;
- capitalized equipment;
- construction management (from external sources only);**
- landscaping; and
- real property when purchased specifically for the project, and associated costs.***

At least ninety percent (90%) of the funds awarded for the project must be used for the construction/equipment/and acquisition portion of the project.

***Construction labor** does **not** include work typically performed by employees of the applicant, unless the employee is hired solely and specifically to perform construction labor for the awarded project.

**** Construction management and observation** is on-site management and/or supervision of the work site and workers thereon. This is an eligible project cost. Construction management does not include work typically performed by off-site consultants or consultant organizations, grant writers, project managers, or employees of the applicant, unless the employee is hired solely and specifically to perform on-site construction management as defined above.

***** Costs directly associated with property acquisition** include appraisal fees, title opinions, surveying fees, real estate fees, title transfer taxes, easements of record, and legal expenses.

Ineligible costs: internal administrative activities, project management (from any source), fundraising activities, feasibility studies, computers or office equipment, rolling stock (such as vehicles), lease payments for rental of equipment or facilities, maintenance and operating, mortgages or property leases (including long-term), the moving of equipment, furniture, etc., between facilities, and salary & benefits for the employees of the applicant, and the cost of the technology used to extend broadband service to the end user.

These terms supersede the terms in Section 2.2 Allowable Costs.

4.10 Compliance by Prime, Sub-Contractors and Professional Service Providers

The CONTRACTOR must require their prime and sub-contractors (including contracted administrators and engineers) to comply with all financial management and state requirements.

4.11 Match Requirements

The CONTRACTOR must provide proper documentation to support their cost share requirement. Without documentation demonstrating that the cost share requirement has been met, the CONTRACTOR will not be fully reimbursed for expenditures. If the cost share is properly documented and meets the applicable eligibility criteria, expenditures may be reimbursed according to the agreement. Refer to your contract for your cost share requirement.

All eligible expenditures used for cost share are to be reported and incurred within the effective dates of the agreement, on the Cost Match sheet with each A-19 invoice.

Supporting Documentation

All cost share expenditures must be supported by documentation acceptable to the PWB and be verifiable from CONTRACTOR'S records. Examples include (but are not limited to):

- Itemized receipts
- Detailed invoice from CONTRACTORS, sub-contractors, etc.
- Description of work performed
- Vendor invoices

Contributions Not Eligible for Match

- Expenditures used as cost share for another project are not eligible.
- Costs paid by the same funding source. Funds that come from the same funding source as the grant or loan, even if it passes through another party to the CONTRACTOR, cannot be used as match.
- Costs financed by penalties and/or fines. The CONTRACTOR cannot use income associated with penalties and/or fines for a match.

Attachment 4-A: Cost Share Submittal Form

An individual Cost Share Submittal form is created for each CONTRACTOR.

PWB Grantee:							
PWB Project Title:							
Report Period: _____ to _____				Funding Sources			
				Local (___%)			PWB (___%)
Available Funds (contract amount)							
Previously Expended Funds							
Invoices/Activities	Amounts						
		Expended funds		\$0.00			\$0.00
	Billing # _____	Available Funds		\$0.00			\$0.00

PWB funds are disbursed on reimbursement basis-only for eligible costs within the approved project's scope of work. **PWB funds will be reimbursed and the identified match funds will paid out, in concert at the same percentages as the total project cost split, until PWB funds or matching funds are exhausted.**

Please reference the percentage in the funding columns above.
The Recipient must meet the identified match commitment over the project period.

Attachment 4-B: State Certified Compliance of Payroll Review

Washington State Department of Commerce

PUBLIC WORKS BOARD- BROADBAND

STATE LABOR STANDARDS CERTIFICATION

Legal Name

Contract Number

A19- Invoice Voucher Request #

CERTIFICATION

I hereby certify that all certified payrolls for the period supported by the attached invoice voucher have been reviewed to ensure that all laborers and mechanics are being paid at least applicable state wage decisions for the type of work performed.

Contractor's Signature: _____

Print Name: _____

Title: _____

Date: _____

Section 5 - Requirements and Procedures for Procuring Professional Services

5.1 Overview

The CONTRACTOR may use their own staff for engineering and design work. A CONTRACTOR who is already under contract with an engineering or architectural consultant may continue to use that consultant for their project. Alternatively, a CONTRACTOR that needs to hire engineering or architectural consultants is required to use a competitive selection process. The CONTRACTOR can demonstrate compliance with this requirement using the following guidelines to secure professional services.

5.2 Select Procurement Method

Select a method of soliciting interested firms. There are two methods to choose from: publish a Request for Statements of Qualifications (RSQ), or publish a Request for Proposals (RFP).

If the RSQ method is used, at least three statements of qualifications must be received. You must review and rank each statement received and either contact the firm or firms of your choice to request a proposal covering the scope of services, or select your top choice and begin negotiations.

If an RFP method is used, the RFP must specify the type of contract to be provided (i.e., cost reimbursement or fixed price); type of project; cost and pricing data; anticipated start and completion dates; and evaluation criteria with relative importance that will be used to rank proposals. At least two qualified RFPs must be received to have a competitive procurement.

Award should be made to the responsible firm whose proposal is determined to be most advantageous to the project based on the stated criteria. Fair and reasonable compensation is determined during the negotiation process.

5.3 Small Works Roster

The CONTRACTOR may utilize the small works statute [RCW 39.04.155](#) allowing participating public agencies to use a small works roster system for small works projects under \$350,000 in lieu of other procedures to award contracts. More information can be accessed through the Municipal Research and Services Center website at www.mrsc.org.

5.4 Advertise

To demonstrate a competitive selection process was used by advertising, publish the request for professional services in a newspaper of general circulation. The advertisement must be publicized at a minimum of once a week for two weeks. At least 14-calendar days from the last publication date must be allowed for respondents to prepare and submit their proposals. The announcement should state the general scope and nature of the project or work and how to contact the CONTRACTOR for additional information.

Evaluation of Proposals and Statement of Qualifications

The CONTRACTOR must have a documented system for reviewing proposals and statements of qualifications submitted in response to the published and distributed advertisement. The system must include the use of selection criteria established prior to solicitation, evaluation of cost and rates, and be thorough, uniform, and well documented.

Select Firm Most Advantageous to the Project

- The CONTRACTOR needs to document why they selected the chosen firm and indicate why the chosen firm is the most qualified for the job. Select the firm (under the Request for Proposals method) whose proposal is most advantageous to the project considering all factors, or the most qualified (under Request for Statement of Qualifications method). In the case of the latter method, contract negotiations must then be conducted to determine the fair and reasonable price of services.
- The CONTRACTOR should negotiate a contract with the most qualified firm for architectural and engineering services at a price they determine to be fair and reasonable. In making a determination, the CONTRACTOR should take into account the estimated value of the services to be performed, as well as the scope and complexity of the project. If the CONTRACTOR is unable to negotiate a satisfactory contract with the firm selected at a price the CONTRACTOR determines to be fair and reasonable, negotiations with that firm shall be formally terminated and the CONTRACTOR shall select other firms in accordance with RCW [39.80.040](#).

5.5 Prepare the Contract

Prepare the contract agreement. The contract should include the following provisions:

General Requirements

- Effective date
- Authority and source of funds
- Conditions and terms under which the agreement can be terminated

- Errors and Omission (engineering firms only)
 - Engineering firms must be licensed to do business in Washington State, be in compliance with the Board of Professional Registration requirements, and insured with proper errors and omissions insurance and/or bonding.
- Conflict of interest provisions
- Access to records & records retention clauses

Scope of Services

- Detailed description of the extent and character of work to be performed
- Time of performance and completion of contract services, including milestones, if any
- Specifications of materials or other services to be provided by both parties

Method of Compensation

- Provisions for compensation for services
- Maximum amount payable under the contract
- Fee and payment schedules, if appropriate

5.6 Monitor Performance

The CONTRACTOR should establish a system to monitor performance of its engineers, architects, or consultants. At a minimum, the system should provide for reconciling the bills against applicable documentation and receiving, at the minimum, a monthly update on the project status, problems, etc. The scope of work provides the basis for monitoring and evaluating the performance of the engineer, architect, or consultant by specifically identifying performance measures.

5.7 Record Keeping and Reporting

The CONTRACTOR is required to maintain records which identify the procurement method used and why it was selected; the rationale used for selecting the contract type; reasons for selecting and rejecting bidders/qualified firms; and the basis for the contract cost or price.

Section 6 – Archaeological and Cultural Resources Review

6.1 Cultural Resources Review Overview - Board Policy

In order to protect the rich cultural heritage of Washington state, Governor Christine Gregoire signed Executive Order 21-02 (GEO 21-02): CONTRACTORs of state capital funds must consult with the Department of Archaeology & Historic Preservation (DAHP) and any Federally recognized Indian tribes that may have cultural and/or historic interest or concerns in the project's vicinity. However, if the project is subject to Section 106 of the National Historic Preservation Act through federal involvement (such as the use of Federal funding or the need to acquire Federal permits), then the Governor's Executive Order (GEO) 21-02 process is unnecessary.

The CONTRACTOR will not move forward with construction activities that will disturb soils (such as, trenching, completing geo-tech work, grading, clearing, etc.), or construction activities until 21-02 is completed (and/or both the SERP and 106 processes, if applicable) and the PWB has issued a final compliance letter. If ground-disturbing activities occur prior to the CONTRACTOR receiving the final compliance letter, PROGRAM funding will be jeopardized. *Adopted 12-01-2017.*

A government-to-government relationship must be properly adhered to for the cultural review. As such, it is the PROGRAM'S responsibility to contact the Tribes and the DAHP. The PROGRAM will notify the CONTRACTOR when a cultural resources survey is necessary. The CONTRACTOR is responsible for hiring a qualified archaeologist to conduct the surveys and for submitting draft surveys to the PROGRAM for final approval.

6.2 Projects Receiving Additional State or Federal Funding

The CONTRACTOR must follow the more stringent of state and federal environmental and cultural review processes in order to comply with BOARD requirements. The CONTRACTOR must inform the PROGRAM of additional funding sources, and submit any necessary compliance documentation completed to date. Otherwise, any steps of the process not adequately documented must undergo another review.

Any documentation that is more than five years old is not valid, and subsequently another review is required. The PROGRAM coordinates reviews with other funding agencies.

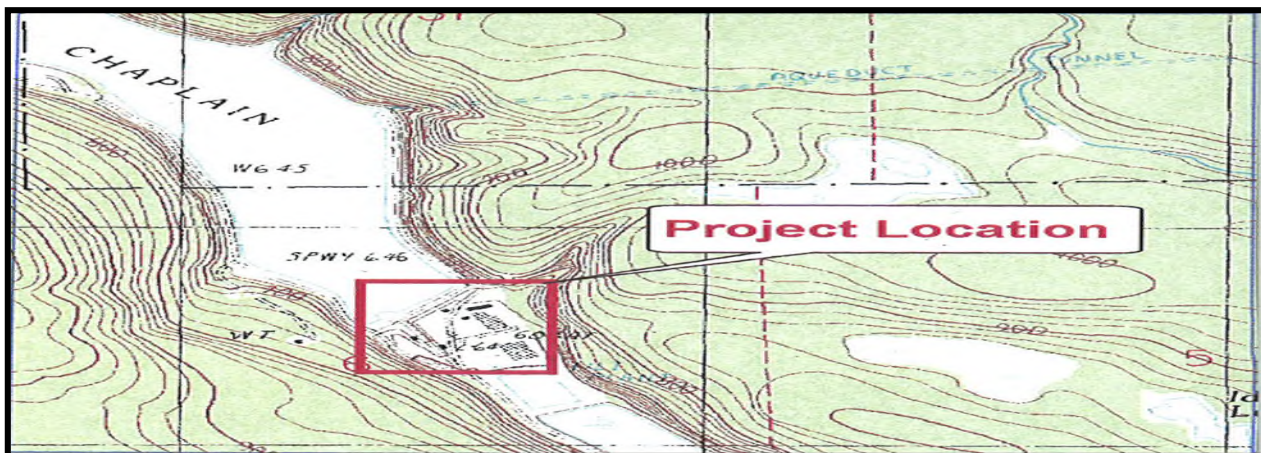
6.3 Process Administration - getting started

- The CONTRACTOR starts the process by submitting an EZ1 form (Attachment 6-A) to the PWB Program Director & Tribal Liaison. See [Attachment 6-B: GEO 21-02 Historical and Cultural Resource Review Checklist](#).
- The PWB Program Director & Tribal Liaison conducts the consultation with the DAHP and the potentially affected Tribes.

6.4 Things That May Hinder Progress

The following items may delay progress on a project's environmental or cultural review:

- A) Project Review Sheet (EZ-1 Form) is incomplete or contains incorrect information.
 - Project location is not clearly identified.
 - Project description is not detailed enough.
 - Township, Range, and Section is incorrect.
- B) The assumption that the cultural review is complete upon submittal of the EZ-1 Form is not correct. The EZ-1 Form is used to **initiate** the cultural review and identify potential further actions that may be required.
- C) Not completing the Historic Property Inventory (HPI) form when a structure or building is going to be modified or demolished. The PWB will notify you if additional actions are required by the DAHP.
- D) A 7.5 Series USGS Quad map is not submitted with the EZ-1 Form, and the project area is not identified (See below map as an example).
- E) Revising the project scope of work or acquiring additional relevant information may result in another cultural resource review process.



6.5 DAHP Consultation

The GEO 21-02 process requires the CONTRACTOR to define the construction project area for potential impact, and identify any building or structures 45-years or older that are located within the project site. For projects that plan to alter structure 45-years of age or older, an online inventory survey must be completed by the CONTRACTOR.

The DAHP can issue a broad range of responses to the submittal. A common response is a "*No Effect Upon Cultural/Historic Properties*" letter. If you receive such a letter, you have completed the DAHP portion of the review.

If the DAHP requires more information (completion of additional forms, cultural survey, inadvertent discovery plan (attachment 6-C), etc.) you must comply with the request. It is possible that you will need to hire a professional archaeologist to address this. Only when the DAHP concurs with the additional materials provided is the DAHP portion of GEO 21-02 complete.

6.6 Tribal Consultation

Tribal consultation is initiated by the PWB Program Director & Tribal Liaison who sends a letter to the potential affected federally recognized Indian tribe(s). The letter details any project information describing the location and extent of the project, along with a map of the impacted area.

The Tribe(s) will be allowed at least 30-days to respond. There may be no response, or there may be a wide range of responses to the information provided. As with the DAHP, if additional materials are required, they must be provided to the Tribe(s) and they must concur with the findings.

Attachment 6-A: PWB EZ-1 Form

See next page

Attachment 6-B: GEO 21-02 Historical & Cultural Resources Review Checklist

1a. Section 106 of the National Historic Preservation Act (Federal Funding)

The project is subject to Section 106 of the National Historic Preservation Act

- ☐ Provide the PWB Program Director & Tribal Liaison with a letter certifying Section 106 requirements have been completed.
- ☐ The PWB Program Director & Tribal Liaison reviews submitted documentation, and concurs that no other steps need to be taken.
- ☐ Process Complete.

1b. Executive Order 21-02 (State Funding)

Department of Archaeology and Historic Preservation ([DAHP](#)) Consultation

Step 1:

- ☐ **CONTRACTOR** submits, by email, [Form EZ1](#) to the PWB Program Director & Tribal Liaison
- ☐ If a historic property is involved, **CONTRACTOR** completes the [online inventory](#)
 - ☐ Notify the PWB Program Director & Tribal Liaison that the online inventory was completed
- ☐ **The PWB Program Director & Tribal Liaison will initiate consultation with the DAHP**

Step 2a:

The DAHP issues a "No Effect upon Cultural/Historic Properties" letter

- ☐ DAHP consultation complete

Step 2b:

The DAHP requires further information (may occur several times)

- ☐ Provide requested information to the DAHP and the PWB Program Director & Tribal Liaison

Step 3:

The DAHP issues final concurrence letter

- ☐ DAHP consultation complete

2. Federally-recognized Indian Tribes consultation (may involve multiple Tribes)

Step 1:

- ☐ **The PWB Program Director & Tribal Liaison will initiate consultation with the Tribe(s)** and will send notification to the:
 - Tribal Cultural Resource Contact
 - Tribal Chair
 - Tribal Historic Preservation Officer
 - CONTRACTOR

Step 2a:

No response received from Tribe after **at least 30-days**

- ☐ The PWB Program Director & Tribal Liaison will follow-up with a phone call and email

No response received from Tribe after **at least 60-days**

- ☐ The PWB Program Director & Tribal Liaison will follow-up with a phone call and email
- ☐ Tribal consultation complete

Step 2b:

Tribe issues "No Impact" letter

☐ Tribal consultation complete

Step 2c:

Tribe requests further information (may occur several times)

☐ Provide requested information to the PWB Program Director & Tribal Liaison

☐ Tribal consultation complete

Step 3:

Tribe issues final concurrence letter

☐ Tribal consultation complete

3. Cultural Resource Review Process Completion. CONTRACTOR has completed:

☐ Section 106, or

The PWB has completed:

☐ DAHP Consultation, and

☐ Tribal Consultation

4. Next Steps

The PWB Program Director & Tribal Liaison has confirmed that the Cultural Resource Review Process has been completed.

☐ CONTRACTOR may begin construction.

If you have any questions, please contact:

Public Works Board (PWB)

PO Box 42525

Olympia, WA 98504-2525

Mark Rentfrow, PWB Program Director & Tribal Liaison

360-529-6432 or Mark.Rentfrow@commerce.wa.gov

Attachment 6-C: Inadvertent Discovery Language

Inadvertent Discovery Language

Post copies of this plan throughout the construction area.

If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains.

The area of the find will be secured and protected from further disturbance.

The finding of human skeletal remains will be reported to the **county medical examiner/coroner** and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed.

The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic.

If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the **Department of Archaeology and Historic Preservation (DAHP)** who will then take jurisdiction over the remains.

The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

In the event any archaeological or historic materials are encountered during project activity, work in the immediate area (initially allowing for 10' buffer, this number may vary by circumstances) must stop and the following actions taken:

1. Implement reasonable measures to protect the discovery site, including any appropriate stabilization or covering.
2. Take reasonable steps to ensure the confidentiality of the discovery site.
3. Take reasonable steps to restrict access to the site of the discovery.

The project proponent will notify the concerned Tribes and all appropriate county, state, and federal agencies, including the Department of Archeology and Historic Preservation (SHPO for Washington). The agencies and the Tribe(s) will discuss possible measures to remove or avoid cultural material, and will reach an agreement with the project proponent regarding actions to be taken and disposition of the material.

See Revised Code of Washington, Chapter 27.53 "Archaeological Sites and Resources," for applicable state laws and statutes. See Washington Executive Order 21-02, "Archaeological and Cultural Resources." Additional state and federal law(s) may also apply.

When to stop work:

Construction work may uncover previously unidentified Native American or Euro-American artifacts. This may occur for a variety of reasons, but may be associated with access restrictions during project development, or if the area contains impervious surfaces throughout most of the project area which would have prevented standard archaeological site discovery methods.

Work must stop when the following types of artifacts and/or features are encountered:

Native American artifacts may include (but are not limited to):

- Flaked stone tools (arrowheads, knives, scrapers, etc.)
- Waste flakes that resulted from the construction of flaked stone tools.
- Ground stone tools like mortars and pestles.
- Layers (strata) of discolored earth resulting from fire hearths. May be black, red or mottled brown and often contain discolored cracked rocks or dark soil with broken shell
- Human remains
- Structural remains- wooden beams, post holes, fish weirs

Euro-American artifacts may include (but are not limited to):

- Glass (from bottles, vessels, windows etc.)
- Ceramic (from dinnerware, vessels etc.)
- Metal (nails, drink/food cans, tobacco tins, industrial parts etc.)
- Building materials (bricks, shingles etc.)
- Building remains (foundations, architectural components etc.)
- Old Wooden Posts, pilings, or planks (these may be encountered above or below water)
- Even what looks to be old garbage could very well be an important archaeological resource
- Remains of ships or sea-going vessels, marine hardware etc.
- Old farm equipment may indicate historic resources in the area

When in doubt, call it in!

CONTACTS:

Project Proponent:

CONTRACTOR: __

Contact Name:__

Phone/Email: ____

Public Works Board (PWB)

Mark Rentfrow, Program Director & Tribal Liaison

360-529-6432 or Mark.Rentfrow@commerce.wa.gov

Department of Archeology and Historic Preservation (DAHP)

Allyson Brooks, Ph.D., State Historic Preservation Officer/Director

360.586.3066 or Allyson.Brooks@dahp.wa.gov

Section 7 - Requirements and Procedures for Procuring Construction Contracts

7.1 Overview

This section guides you through the process for procuring construction contractors. **It is the responsibility of the CONTRACTOR to understand their local procedures and policies and assure that the most stringent of the federal and state requirements are adhered to.**

Information in this section outlines a competitive bid process applicable to PWB construction projects where the construction project must be competitively bid through a sealed bid process, or small purchase procedure.

Construction contracts are normally procured by sending an Invitation for Bid (IFB) to interested contractors. The IFB contains all the information the contractor will need to bid on a project. Once completed and submitted by the bidder, the IFB, if the lowest responsible bid, becomes the basis for the contract between the contractor and the CONTRACTOR.

7.2 Small Works Roster

CONTRACTORS may utilize the small works statute [RCW 39.04.155](#) allowing participating public agencies to use a small works roster system for small works projects under \$300,000 in lieu of other procedures to award contracts. More information can be accessed through the Municipal Research and Services Center website at www.mrsc.org.

7.3 Advertise for Bids/Invitation for Bid (IFB)

Prior to advertising, send a copy of the draft bid advertisement to your PWB project manager for review and approval.

At a minimum, a bid advertisement should include the following items:

- Title of project;
- Nature and scope of work;
- Location where plans and specifications documents may be obtained;
- Cost, if any, to obtain a set of plans and specifications documents;
- The place, date, and time that the bids are due;
- Statement that the CONTRACTOR retains the right to reject any and all bids;
- List of the funding sources for the project, including the PWB funds; (See statement below)
- Requirement that state prevailing wages must be paid;

- Statement indicating that the RECIPIENT is an Equal Opportunity Employer (See statement below); and
- Statement that all contractors must be licensed in the State of Washington to conduct business.

The following statements must be included in the advertisement:

"All work performed on this project will be subject to state prevailing wage rates."

"(CONTRACTOR) is an Equal Opportunity and Affirmative Action Employer."

"This project is (funded/partially funded) through the Washington State Public Works Board program with state funds."

See Attachment 7-A: Example of Advertisement for Construction Contract Bids.

Bids should be advertised in a newspaper of general circulation for the project area. General contractors must be given enough time to research specifications and submit responsible proposals. CONTRACTORS must advertise the bid once a week for two weeks in a newspaper of general circulation. A minimum of 14 calendar days must be allowed for advertising. Bids can be opened no sooner than the 15th day.

7.4 Develop the Advertisement / Invitation for Bid with Scope of Work

CONTRACTORS are required to use a competitive bid process when choosing a general contractor for PWB funded projects, following the guidelines listed below.

7.5 Public Works Bidder Responsibility Criteria

The Washington Legislature adopted a new law ([Senate Bill 5301](#)) to amend RCW 39-04-350. It adds an additional criterion to the list of mandatory bidder responsibility criteria that public agencies must verify and document before awarding any public works project, regardless of cost. This means that public agencies must ensure that the required sworn statement is obtained prior to award of the public works project.

Minimum Wage Compliance by Bidder: The new law establishes a new criterion relating to the contractor's compliance with the state's minimum wage laws. It also dictates that, prior to award, the contractor must sign a statement that they have not violated the law within a three year period.

- Criterion: Here's the language from the law: "Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general

CONTRACTOR to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW."

- Documentation: Here's the language from the law on what is required for documentation: "Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (1)(g) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement." The reference to subsection (1) (g) refers to the "criterion" paragraph above.

7.6 Obtaining Prevailing Wage Rates

State law, RCW 39.12, requires that workers be paid state prevailing wage rates. Thus, CONTRACTORS must obtain state prevailing rates and place them in project bid specifications. The CONTRACTOR may request the Washington State Prevailing Wage Rates from:

Department of Labor and Industries
Prevailing Wage Program
406 Legion Way SE
PO Box 44540
Olympia, WA 98504-4540
Phone (360) 902-5335

Or www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp

In the bid document, you may include the State Prevailing Wage Rates, or include the URL to Department of Labor and the following information in the bid specs:

- Identify the exact wage publication date to use (bid opening date)
- State the county in which the public works project is located
- Specify a copy is available for viewing in your office
- Explain that your agency will mail a hard copy upon request
- Retain a printed version of the rates as part of your records

7.7 License, Bonding, and Insurance for Contractors

The contractor must be licensed, bonded, and insured in the State of Washington. Contractors are not required to have payment/performance bonds, which are above and beyond normal bonding requirement. However, this type of bonding ensures liability is covered and can reduce the CONTRACTOR'S exposure to risk. Payment/performance bonds are strongly encouraged for loan agreements over \$100,000. A performance bond guarantees that the

CONTRACTOR will complete the contract according to its terms, including price and time. In case of default, the owner will be paid the amount of the bond, which is usually the amount of the construction contract. A payment bond guarantees that subcontractors and suppliers will be paid the money they are due from the principal contractor, which reduces the possibility of liens against the project. The CONTRACTOR should ensure the bonding company and the insurance company recognizes the CONTRACTOR as an interested party and notifies the CONTRACTOR if the bond or insurance is terminated. The PWB program should also be listed among the interested parties to be notified if a bond or insurance is terminated.

7.8 Develop the Contract Document

All the clauses and provisions that were in the construction IFB packet must be incorporated into the construction contract. All provisions required in the prime contract must also be passed on by the prime contractor to all subcontractors, including the Labor Standards Provisions.

7.9 Receive Sealed Bids

All bids received should be logged with the time and date of receipt and kept in a secure place. If a CONTRACTOR is located in a rural area of the state and has difficulty in soliciting bids for construction projects, along with advertising for competitive bid in the local newspaper, they may also directly solicit bids from general contractors as part of the bidding process.

7.10 Conduct Bid Opening

Bids must be opened in public at the time and place stated in the advertisement. The bid opening can be delayed, but all the bidders must be notified in advance. If a bid opening is delayed, all bidders should have the opportunity to withdraw their bids, or, if they wish, resubmit the bid (e.g., cost of equipment, materials, etc. could increase) just before the new bid opening date and time. The public bid opening should be conducted in a business-like manner. Each bid must be read aloud during the meeting and the apparent low bidder determined. A description of the bid review/tabulation process must also be maintained in the CONTRACTOR'S project files.

If no bids are received, or the received bids are too costly, re-advertise the bid ad in a wider geographic area. CONTRACTORS are encouraged to maintain a list of reputable general contractors that have done good work for them in the past or have bid previous projects in order to alert them of the bid request.

7.11 Select the Lowest Responsible Bidder

The bids received should show in detail the estimated total cost of the work, a unit price for each component of the project, its overall individual cost, and the estimated completion schedule for each phase. The lowest responsible bidder must:

- Be licensed to work in the State of Washington;
- Have the ability, capacity, and skill to perform the work described in the contract scope of work, and comply with requirements within the indicated timeframes;
- Have good character, integrity, reputation, judgment, experience, and efficiency;
- Be able to perform within the time specified; and
- Demonstrate successful performance of previous construction contracts or services, and demonstrate compliance with laws relating to the loan contract or services.

7.12 Award the Contract

The CONTRACTOR must award the contract within 30-days, or reject all bids. The contract must be awarded to the lowest responsible bidder whose bid conforms to all material terms and conditions of the invitation for bids.

7.13 Negotiating the Bid Price

Negotiation of bid price, based upon agreed changes to the plans and specifications in the bid documents, is allowed with a low responsible bidder under the following conditions:

- All bids exceed the available funds, as certified by the appropriate fiscal officer;
- The apparent low responsible bid does not exceed the available funds by 5% on projects valued under one million dollars, or the greater of fifty thousand dollars or 2.5% for projects valued between one million and five million dollars; and
- The negotiated adjustment will bring the bid price within the amount of available funds.

7.14 Execute the Contract

Following award of the contract, contract documents and applicable bonding and insurance must be completed and executed. Contract documents must include all items contained in the bid package, as well as the executed contract, bid proposal, contractor certifications, and bond and insurance forms.

7.15 Conduct Pre-Construction Conference

Prior to starting construction, all parties should attend a pre-construction conference to go over the project details and state (federal, if applicable) requirements.

7.16 Send Notice of Contract Award to PWB

Within ten (10) days after contract award and signing, the CONTRACTOR must submit a PWB Notice of Contract Award and Notice to Proceed form (Attachment 7-B: Notice of Contract Award and Notice to Proceed) to their PWB project manager.

7.17 Maintain Procurement Records

Maintain documentation of the procurement process in project files for the life of the grant and or loan plus six years.

Attachment 7-A: Example of Advertisement for Construction Contract Bids

City of Devin
Business Development Building
Bid Date, July 21, 2019
Estimated Cost of Project: \$1,200,000.00
INVITATION FOR BIDS

Sealed bids will be received by the City of Devin Public Works Office, located at 130 SE Cascade Avenue, PO Box 413, Devin, WA 98684, until 2 P.M., July 21, 2019, for the general contract for construction of Broadband Infrastructure. The project consists of constructing fiber backhaul from the vault located at 123 Acme Lane to the cabinet serving 30 homes on Broadband Ave.

Bidding documents for the project are prepared by Delco Engineering, Inc., P.S.

Availability of Bidding Documents: Bona fide general contractors may obtain the contract documents at the office of Delco Engineering, Inc., P.S., located at 1313 West Clark, Nimbi, WA 99301, (509) 454-4402 upon payment of \$75.00 per set. Copies of the contract documents may be examined at the following locations: Portland Plan Center, 1125 SE Madison, Portland OR; Associated Women Contractors, 921 South Elm, Seattle WA.

Bid Security: A certified or bank cashier's check in the amount of five percent (5%) of the bid amount payable to the City of Devin, or a bid bond executed by a licensed bonding company is required with each bid.

Rejection of Bids: The city shall have the right to reject any or all bids not accompanied by bid security or data required by the bidding document, or a bid in any way incomplete or irregular.

The City of Devin is an equal opportunity and affirmative action employer. All work performed on the project will be subject to state prevailing wage rates.

The bids will be opened at 2 P.M., July 21, 2019, at the offices of Devin Public Works Department, located at 130 SE Cascade Avenue, Devin WA. For more information, call Shawn Gometz at (509) 427-5484.

This project is funded/partially funded, through the Washington State Public Works Board Loan program. PWB requirements and provisions must be met by general contractors and all subcontractors.

Attachment 7-B: Notice of Contract Award and Notice to Proceed

NOTIFICATION OF CONTRACT AWARD AND START OF CONSTRUCTION

CONTRACT

CONTRACTOR/CONTRACTOR: _____ NUMBER: _____

DATE OF NOTICE TO PROCEED: _____

CONTRACT AWARD DATE: _____

CONTRACT

PROJECT NAME: _____ AMOUNT: _____

PROJECT LOCATION: _____

GENERAL CONTRACTOR: _____

DATE BID SOLICITATION PUBLISHED*: _____

BID OPENING DATE: _____ NUMBER OF BIDS RECEIVED: _____

NAMES/ADDRESSES OF DISADVANTAGED BUSINESS ENTERPRISE SOLICITED (if applicable): _____

APPLICABLE FEDERAL WAGE DECISION NUMBER (if applicable): _____

MODIFICATIONS**: _____

PRECONSTRUCTION CONFERENCE DATE (if applicable): _____

CONSTRUCTION START DATE: _____

SUBMITTED BY: _____

SIGNATURE: _____ TITLE: _____

PRINTED NAME: _____

ADDRESS: _____

Please attach copy of published bid solicitation advertisement.

PLEASE NOTE: Federally funded projects are subject to paying the higher of Federal or State prevailing wages.

Section 8 - Managing Construction Projects

8.1 Overview

CONTRACTORS undertaking a BOARD funded construction project must have a contract management system in place to ensure contractors perform in accordance with contract terms, conditions, specifications, and applicable state requirements. This system includes conducting the pre-construction conference, review of contractor and subcontractor compliance with Labor Standards, on-site inspections, review of change order requests, project closeout, release of retainage, and record keeping.

8.2 Conduct the Pre-construction Conference

After awarding and signing the construction contract and before the contractor is issued a Notice to Proceed, the CONTRACTOR, or its representative, is responsible for holding a pre-construction conference for the general contractor and subcontractors, engineers and other professional service providers, and other interested parties. The pre-construction conference should cover the following:

- Responsibilities of the engineer, CONTRACTOR, contractor, and any other agencies or parties contributing to or involved in the project;
- Discuss general contract provisions, including specifications, Notice to Proceed, completion schedule, guarantees and warranties for materials, workmanship, change orders, etc.;
- Review project inspection and reporting responsibilities of the engineer and CONTRACTOR;
- Describe Labor Standards requirements, prevailing wage rates, apprentices and trainees, fringe benefits, weekly payroll, on-site employee interviews, and additional classification requests;
- Requirements for final acceptance of work, special testing, and/or site cleanup; and
- Distribute necessary forms such as certified payroll, posters, and prevailing wage rates to the contractor and subcontractors.

Maintain a record of the pre-construction conference in the project file, and send a copy to your PROGRAM project manager.

8.3 Issue Notice of Contract Award & Notice to Proceed

Once the pre-construction conference is conducted, the CONTRACTOR can issue the Notice to Proceed to the contractor. The notice conveys the authorization to the contractor to begin work on the project. Send a copy to your PROGRAM project manager.

8.4 Conduct Technical Inspections

During construction, the CONTRACTOR is responsible for monitoring contractor/subcontractor progress and compliance with technical requirements of the project. Typically, this monitoring process is the responsibility of the project engineer, consulting engineer, or architect; however, the CONTRACTOR should designate someone locally with oversight responsibility. The purpose of the technical monitoring process is to ensure that the project is constructed as planned, within budget and estimated timeframes, and within specified quality and quantity standards.

8.5 Maintain Project Records

The CONTRACTOR is required to maintain project records that document all financial, monitoring and inspection transactions, and progress reviews that occur during the life of the project. CONTRACTORS must maintain copies of weekly certified payrolls and any corrected certified payrolls, copies of correspondence and resolution of overtime violations, and copies of employee interviews in the project files for the life of the grants and/or loan as defined by the contract plus six years.

8.6 Project Completion Requirements - Board Policy

A BOARD Loan contract is complete when all of the Scope of Work specified in the contract is complete, and the Engineer issues the completion letter (if applicable). *Adopted 05/01/2020.*

To complete the closeout process, the CONTRACTOR must submit the Project Completion Report form (attachment 8-A for construction) to their PWB project manager. Your PROGRAM project manager will issue a Project Completion amendment to be signed by the CONTRACTOR and the BOARD chair.

Attachment 8-A: Construction Project Completion Report

PWB Recipient:	
Contract Number:	
Project Name:	
Original Contract Completion Date:	
Project Completion Date:	

Total Project Funds Expended (include all funds)	
Source	Amount
PWB Expenditures To Date	
Amount of Final Reimbursement	
Total PWB Broadband Funds Used	
Please identify other funding sources below:	Amount
PWB Broadband Grant or Loan	
TOTAL PROJECT FUNDING <i>(Include all sources and the PWB loan used amount)</i>	

<p>Did any obstacles hinder completion of the project? If so, describe and explain how they were resolved.</p>

<p>Are there any upcoming ribbon cutting or groundbreaking events scheduled? If so, what is the scheduled date?</p>

Please provide high-resolution digital photographs of the completed project.

Email digital photos to your Project Manager. By providing images, audio, or video Contractor hereby consents to and authorize the use and reproduction in print or electronic format by the PWB or anyone authorized by the PWB, of any and all audio or video recording or photographs which have been provided to COMMERCE without compensation.

Certification of Final Report Accuracy:

I hereby certify that the information entered above and any attachments hereto are true and correct to the best of my knowledge and belief. Further, I certify that the infrastructure project was completed as described in the PWB application and PWB contract scope of work.

Section 9 - Glossary

A-19 Reimbursement Voucher	The form used to request reimbursement for incurred PWB loan project expenses.
Commerce	Washington State Department of Commerce.
Competitive Bid Process	All construction activities must be contracted out to the lowest responsible bidder through a competitive bidding process.
Department of Archaeology and Historic Preservation (DAHP)	Washington State Department of Archaeology and Historic Preservation, which reviews cultural resource activities for federal and state funded projects.
Electronic Funds Transfer (EFT)	CONTRACTORS are encouraged to sign up for EFT to have funds transferred to their accounts electronically rather than through the mail by State Warrant.
Executed Contract	A contract is considered "executed" once the document is signed by the CONTRACTOR and the BOARD.
Lowest Responsible Bidder	A term used to determine the successful contractor for a construction project that has been competitively bid.
Prevailing Wages	Hourly wage and usual benefits paid in the largest city in each county, to the majority of workers, laborers, and mechanics as determined by the Washington State Department of Labor and Industries for each trade and occupation employed in the performance of public work.
PROGRAM	Washington State Public Works Board Broadband Program
PROGRAM project manager	Washington State Public Works Board Broadband Program project manager
BOARD	Washington State Public Works Board.
PWB Broadband	Washington State Public Works Board Broadband Program
CONTRACTOR	Borrower or Grantee.
Statewide Vendor Number (SWV)	A vendor number established through the Washington State Department of Enterprise Services.



Capital Agreement with

Public Utility District No. 1 of Jefferson County

through

Washington State Broadband Office – Infrastructure Acceleration Grant
America Rescue Plan Act, State and Local Fiscal Recovery Funds

For

Jefferson North Fiber Projects

Start date: July 1, 2021

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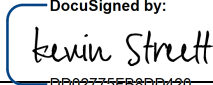
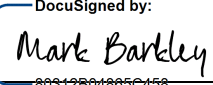
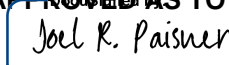
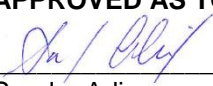
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**Washington State Department of Commerce
Local Government Division
State Broadband Office
ARPA State and Local Fiscal Recovery Funds Grant**

1. Grantee Jefferson County PUD No 1 310 Four Corners Road Port Townsend, WA 98368		2. Grantee Doing Business As (optional) N/A	
3. Grantee Representative Will O'Donnell Broadband and Communications Director (360) 385-8369 wodonnell@jeffpud.org		4. COMMERCE Representative Chelsea Bagwell Broadband Infrastructure Specialist (360) 485-3890 Chelsea.bagwell@commerce.wa.gov	
5. Grant Amount \$9,718,934.00		6. Funding Source Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	
7. Start Date July 1, 2021		8. End Date June 30, 2025, Contingent on reappropriation; June 30, 2023 if funds are not reappropriated.	
9. Federal Funds (as applicable) \$9,718,934.00		Federal Agency US Dept. Treasury	
ALN (CFDA #): 21.027		Indirect Rate: N/A	
10. SWV # 0074555-01	11. UBI # 601-141-351	13. UNIQUE ENTITY ID # HQNGRB7DLGE4	
14. Grant Purpose The outcome of this performance-based Grant Agreement is to undertake a legislatively approved project that furthers the goals and objectives of Infrastructure Projects Program as referenced in Attachment A – Scope of Work.			
COMMERCE, defined as the Department of Commerce and Grantee acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Attachment "A" – Scope of Work, Attachment "B" – Certification of Availability of Funds to Complete the Project, Attachment "C" – Certification of the Payment and Reporting of Prevailing Wages, the following documents incorporated herein by reference: Grantee's Application for Funding and the Washington State Broadband Office Infrastructure Acceleration Grants Handbook 21-23 prepared by Commerce.			
FOR GRANTEE DocuSigned by:  Kevin Streett, General Manager 8/15/2022 6:12 AM PDT Date		FOR COMMERCE DocuSigned by:  Mark K. Barkley, Assistant Director, Local Government Division 8/22/2022 6:51 AM PDT Date	
APPROVED AS TO FORM ONLY  Joel R. Paisner, Partner, Ascent Law Partners, LLP 8/11/2022 11:40 AM PDT Date		APPROVED AS TO FORM ONLY  Sandra Adix Assistant Attorney General August 08, 2022 Date	

DECLARATIONS

CLIENT INFORMATION

Grantee Name: Jefferson County PUD No 1
Grant Number: **22-96810-010**

PROJECT INFORMATION

Project Name: **Jefferson North Fiber Projects**
Project City: **Port Townsend**
Project State: **Washington**
Project Zip Code: **98368**

GRANT INFORMATION

Grant Amount: **\$9,718,934**
Local Match: **\$1,706,106**
Appropriation Number: **ESSB 1080, Section 1086**
Re-appropriation Number (if applicable):
Grant End Date: **June 30, 2023; may be extended up to June 30, 2025, contingent on State and Federal reappropriation**

Biennium: 2021-2023
Biennium Close Date: June 30, 2023
Earliest Date for Reimbursement: March 3, 2021
Time of Performance: **In accordance with Special Terms and Conditions Number 4**

FUNDING INFORMATION

Federal Funding: Sec. 602 Coronavirus State Fiscal Recovery Funds of Title VI of Social Security Act as added by American Rescue Plan Act of 2021 (ARPA or "Act"), Title IX, Subtitle M, Sec. 9901, Public Law 117-2, codified at 42 U.S.C. 802 et seq.

Federal Award Agency: US Department of Treasury

Amount of Federal Funds Obligated by this Action: \$9,718,934

ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

Extension of Grant Upon Reappropriation.

Notwithstanding General Term and Condition No. 4, the End Date of this Grant **may be extended upon written notice to Grantee from Commerce** for a period of time consistent with the effective date of any re-appropriation of funds, and/or with terms reflecting new Federal requirements for ARPA funds, if any. In Commerce's sole discretion, after review of any funding re-appropriation terms and applicable Federal law or guidance, a contract amendment in accordance with General Term and Condition No. 4 may be required to extend the End Date.

Last revision 8/4/2022

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

1. AUTHORITY

Funding for this Grant has been provided in the 2021-2023 biennial state Capital Budget, SSB 1080, pursuant to Federal grants to Washington State under the American Rescue Plan Act of 2021 (ARPA or "Act"), sec. 9901, Public Law 117-2, codified at 42 U.S.C. 802 et seq. The parties anticipate that funding under this Grant that is unexpended in the 2021-23 state biennium may be re-appropriated in future biennia, subject to Federal requirements.

2. ACKNOWLEDGEMENT OF FEDERAL FUNDING

Federal Award Identification Number (FAIN): SLRFP0002

Total amount of the federal award: \$9,718,934

Federal Awarding Agency: US Department of Treasury

Research & Development (R&D): award will not be used for R&D

The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Grant, shall contain the following statements:

"This project was supported by grant awarded by the US Department of the Treasury. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of the Treasury. Grant funds are administered by the America Rescue Plan Act, State and Local Fiscal Recovery Funds, Washington State Department of Commerce."

3. GRANT 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 Grant.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

The Representative for the Grantee and their contact information are identified on the Face Sheet of this Grant.

4. PERIOD OF PERFORMANCE, COSTS INCURRED, REIMBURSEMENT

- a) Period of Performance. The initial period of performance for this award begins on the date hereof and ends on June 30, 2023. If unexpended funds under this Grant are re-appropriated, the period of performance (Contract End Date) will be extended to not later than October 30, 2026.
- b) Costs Incurred Period. As set forth in Treasury's implementing regulations, Grantee may use funds awarded under ARPA to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024. Pursuant to Federal rules, a cost shall be considered to have been incurred if the Grantee has incurred an obligation with respect to such cost by December 31, 2024.
- c) Reimbursement Period. All requests for reimbursement of eligible costs incurred between March 3, 2021 and December 31, 2024 payable from ARPA funds must be submitted to COMMERCE by the **earlier of** October 30, 2026 or 30 days prior to the Contract End Date.
- d) In the event the grantee can't complete the full scope of work, due to material/supply chain delays, the parties may agree to amend the scope of work.

5. COMPENSATION

COMMERCE shall pay an amount not to exceed the total contract amount listed on the contract Face Sheet for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

6. BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES

When the grant is used to fund the acquisition of real property, the value of the real property eligible for reimbursement under this grant shall be established as follows:

- A. Grantee purchases of real property from an independent third-party seller shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser, or a current property tax statement.
- B. Grantee purchases of real property from a subsidiary organization, such as an affiliated LLC, shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser or the prior purchase price of the property plus holding costs, whichever is less.

7. EXPENSES

Grantee shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Grantee for authorized expenses shall not exceed the total contract amount listed on the contract Face Sheet.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Grantee shall receive compensation for travel expenses at current state travel reimbursement rates.

8. INDIRECT COSTS

Grantee shall provide their indirect cost rate that has been negotiated between their entity and the federal government as set forth on the Face Sheet, Sec. 9. If no such rate exists a de Minimis indirect cost rate of 10% of modified total direct costs (MTDC) can be used (requested in the application or the project data sheet).

9. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the Grantee for eligible Project expenditures, up to the maximum payable under this Grant Agreement. When requesting reimbursement for expenditures made, the Grantee shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed for the billing period. The Grantee can submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Grants Management System (CMS), which is available through the Secure Access Washington (SAW) portal.

Grant funds are disbursed on reimbursement basis-only for eligible costs within the approved project's scope of work. Grant funds will be reimbursed and Grantee's matching funds must be expended by Grantee in the amounts and as identified on the Declarations Page.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Grant Number listed on the contract Face Sheet. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

The voucher must be certified (signed) by an official of the Grantee with authority to bind the Grantee. The final voucher shall be submitted to COMMERCE within sixty (60) days following the completion of work or other termination of this Grant Agreement, or if work is not completed or Grant terminated, within fifteen (15) days following the end of the state biennium unless Grant Agreement funds are reappropriated by the Legislature in accordance with Additional Special Terms and Conditions set forth in the Declarations page above.

Each request for payment must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the Grantee.

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COMMERCE will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE **not more often than monthly**.

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

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Grant.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Invoices and End of Fiscal Year

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The grantee must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

Duplication of Billed Costs

The Grantee shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Grantee, to extent that the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

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

Withholding

At its sole discretion, COMMERCE may withhold ten percent (10%) from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).

10. SUBCONTRACTOR DATA COLLECTION

Grantee 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 Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

11. HISTORICAL OR CULTURAL RESOURCES, HUMAN REMAINS

Certain capital construction projects may be subject to the requirements of Washington State Executive Order 21-02 "Archaeological and Cultural Resources". Grantee will cooperate with Commerce as may be required, to fulfill the requirements of EO-21-02. In the event that historical or cultural artifacts are discovered at the Project site during construction or rehabilitation, the Grantee or subcontractor shall immediately stop work and notify the local historical preservation officer and the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. If human remains are discovered, the Grantee shall immediately stop work and report the presence and location of the remains to the coroner and local enforcement, then contact DAHP and any concerned tribe's cultural staff or committee.

12. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

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- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to auditreview@commerce.wa.gov.

13. DEBARMENT

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - ii. Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv. Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this Grant, the Grantee shall attach an explanation to this Grant.
- C. The Grantee agrees by signing this Grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Grantee further agrees by signing this Grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- i. The lower tier Grantee certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- ii. Where the lower tier Grantee is unable to certify to any of the statements in this Grant, such contractor shall attach an explanation to this Grant.

The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, currently available online at [eCFR :: 22 CFR Part 513 Subpart A -- General](#)

14. INSURANCE

The Grantee shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Grantee or Subcontractor, or

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agents of either, while performing under the terms of this contract. Failure to maintain the required insurance coverage may result in termination of this Grant.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Grantee shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Grantee shall submit to COMMERCE within fifteen (15) calendar days of a written request by COMMERCE, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Grant, if required or requested, the Grantee shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability. In the event that performance pursuant to this Grant involves the use of vehicles, owned or operated by the Grantee or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Grantee and licensed staff employed or under contract to the Grantee. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Grantee for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Grant shall be \$100,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
- B. Subcontractors that receive \$10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Grantee as beneficiary.

Grantees and Local Governments that Participate in a Self-Insurance Program.

Self-Insured/Liability Pool or Self-Insured Risk Management Program – Grantee may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the Grantee shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards

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promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. Grantee's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Annually Grantee shall provide upon written request by COMMERCE a summary of coverages and a letter of self-insurance, evidencing continued coverage under Grantee's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self-insurance will be provided on the anniversary of the start date of this Agreement.

15. COMPLIANCE WITH APPLICABLE LAW AND REGULATIONS

- A. Grantee agrees to comply with the requirements of 42 U.S. Code § 802 - Coronavirus State fiscal recovery fund, regulations adopted by Treasury pursuant to subsection (f) of that section, and guidance issued by Treasury regarding the foregoing. Grantee also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Grantee shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- B. Federal regulations applicable to this award include, but are not necessarily limited to the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.
 - x. Prohibition on certain telecommunications and video surveillance services or equipment 2 CFR [§ 200.216](#).
- C. Statutes and regulations prohibiting discrimination applicable to this award include, but are not necessarily limited to the following:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the

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basis of race, color, or national origin under programs or activities receiving federal financial assistance;

- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

16. FEDERAL EXCLUSION

These terms add to the terms in Section 12 Certification Regarding Debarment, Suspension or Ineligibility and Voluntary Exclusion — Primary and Lower Tier Covered Transactions in General Terms and Conditions. The Grantee also agrees to access the Federal Exclusion List at www.sam.gov and provide Federal Exclusion documentation to Commerce and to keep a copy on file with the Grantee's project records.

17. REGISTRATION WITH THE SYSTEM FOR AWARD MANAGEMENT (SAM)

By signing this Grant, the Grantee accepts the requirements stated in 48 CFR 52.204-7 to register with the System for Award Management at the SAM website (<https://www.sam.gov>). To register in SAM, a valid Unique Entity Identifier (UEI) is required. The Grantee is responsible for the accuracy and completeness of the data within the SAM database and for any liability resulting from the Government's reliance on inaccurate or incomplete data. The Grantee must remain registered in the SAM database after the initial registration. The Grantee is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in SAM to ensure it is current, accurate and complete. The Grantee shall provide evidence documenting registration and renewal of SAM registration to Commerce.

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

18. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Grant Agreement are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the Period of Performance, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of COMMERCE, and shall meet and renegotiate the Grant Agreement accordingly.

19. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this Grant Agreement and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Grant Agreement; provided, however, that COMMERCE may be granted a security interest in real property, to secure performance and funds awarded under this Grant Agreement. For the avoidance of doubt, the foregoing replaces in its entirety the introductory paragraph of Section 46 of the General Terms and Conditions. This provision does not extend to claims that COMMERCE may bring against the Grantee in recapturing funds expended in violation of this Grant Agreement.

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20. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY

- A. The Grantee understands and agrees that any and all real property or facilities owned by the Grantee that are acquired, constructed, or otherwise improved by the Grantee using state funds under this Grant Agreement, shall be held and used by the Grantee for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least twenty five (25) years from the date the final payment is made hereunder.
- B. This provision shall not be construed to prohibit the Grantee from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this Grant Agreement.
- C. In the event the Grantee is found to be out of compliance with this section, the Grantee shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 34 (Recapture provision of the General Terms and Conditions).

21. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE

- A. The Grantee understands and agrees that any facility leased by the Grantee that is constructed, renovated, or otherwise improved using state funds under this Grant Agreement shall be used by the Grantee for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least twenty five (25) years from the date the final payment is made hereunder.
- B. In the event the Grantee is found to be out of compliance with this section, the Grantee shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 34 (Recapture Provision).

22. TERMINATION FOR FRAUD OR MISREPRESENTATION

In the event the Grantee commits fraud or makes any misrepresentation in connection with the Grant application or during the performance of this Grant Agreement, COMMERCE reserves the right to terminate or amend this Grant Agreement accordingly, including the right to recapture all funds disbursed to the Grantee under the Grant.

23. FRAUD AND OTHER LOSS REPORTING

Grantee shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Grant Agreement immediately or as soon as practicable to the COMMERCE Representative identified on the Face Sheet.

24. SUBCONTRACTORS

No prior approval of subcontracting to a Subcontractor of any tier shall be required and the first three paragraphs of Section 40 of the General Terms and Conditions shall be deemed to refer to "subrecipient" rather than Subcontractor or subcontracting. The parties acknowledge and agree that Grantee may perform work under this agreement using subrecipients and that Grantee is wholly responsible for selection of subrecipients and to ensure their compliance with applicable law.

25. COPYRIGHT PROVISIONS

Per the Scope of Work, Section 16 is not intended to apply to any architectural and engineering work funded by this Grant.

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26. ORDER OF PRECEDENCE

In the event of an inconsistency in this Grant, 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 – Certification of the Availability of Funds to Complete the Project
- Attachment C – Certification of the Payment and Reporting of Prevailing Wages

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1. DEFINITIONS

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

- A. "Authorized Representative" shall mean the Director of Commerce and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Grant" or "Agreement" means the entire written agreement between COMMERCE and the Grantee, 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. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the Grantee.
- 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 Grantee, who is performing all or part of those services under this Grant under a separate contract with the Grantee. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ADMINISTRATIVE COST ALLOCATION

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

3. ALLOWABLE COSTS

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

4. ALL WRITINGS CONTAINED HEREIN

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

5. AMENDMENTS

This Grant 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.

6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Grantee 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.

7. APPROVAL

This contract shall be subject to the written approval of COMMERCE'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.

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8. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

9. ATTORNEYS' FEES

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

10. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to auditreview@commerce.wa.gov.

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

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - ii. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this contract, the Grantee shall attach an explanation to this contract.
- C. The Grantee agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Grantee further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

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LOWER TIER COVERED TRANSACTIONS

- i. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - ii. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
- E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

12. CODE REQUIREMENTS

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

13. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
- 1. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
 - 2. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
 - 3. All personal information in the possession of the Grantee 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 Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantor 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 Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE 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.

14. CONFORMANCE

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

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15. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the Grantee terminate this contract if it is found after due notice and examination by COMMERCE 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 Grantee in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Grantee and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the Commerce program administering this contract, 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 COMMERCE that a conflict of interest exists, the Grantee may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, COMMERCE 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 Grantee. The rights and remedies of COMMERCE 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 COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

16. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE 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 Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE 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 Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee hereby grants to COMMERCE 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 Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, 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 Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

17. DISALLOWED COSTS

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

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18. DISPUTES

Except as otherwise provided in this Grant, 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 COMMERCE, 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 Grant 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 Grant 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.

19. DUPLICATE PAYMENT

The Grantee 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.

20. GOVERNING LAW AND VENUE

This Grant 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.

21. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, 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, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

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

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subcontractor's performance or failure to perform the contract. Grantee'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 Grantee 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.

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22. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The Grantee and its employees or agents performing under this Grant are not employees or agents of the state of Washington or COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Grantee 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 Grantee.

23. INDUSTRIAL INSURANCE COVERAGE

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Grant, 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 Grantee.

24. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

25. LICENSING, ACCREDITATION AND REGISTRATION

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

26. LIMITATION OF AUTHORITY

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

27. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee'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 Grantee may be declared ineligible for further contracts with COMMERCE. The Grantee 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.

The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

28. PAY EQUITY

The Grantee 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. Grantee may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) 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.

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(ii) 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.

(iii) 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 Grant may be terminated by the Department, if the Department or the Department of Enterprise services determines that the Grantee is not in compliance with this provision.

29. POLITICAL ACTIVITIES

Political activity of Grantee 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 lobbying or for working for or against ballot measures or for or against the candidacy of any person for public office.

30. PREVAILING WAGE LAW

The Grantee 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 Grantee shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

31. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR 200 for all purchases funded by this contract.

All recipients of funds under this Contract, including Contractor and subrecipients or subcontractors of any tier, must follow the procurement standards in 2 CFR §§ 200.318 through 200.327, including ensuring that the procurement method used for the contracts are appropriate based on the dollar amount and conditions specified in 2 CFR § 200.320.

The Grantee's procurement system should include but not necessarily be limited to, the following:

- A. General procurement standards 2 CFR [§ 200.318](#). A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Competition 2 CFR [§ 200.319](#). Procedures that ensure all procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](#).
- C. Methods of procurement to be followed 2 CFR [§ 200.320](#).
- D. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms 2 CFR [§ 200.321](#).
- E. Domestic preferences for procurements 2 CFR [§ 200.322](#).

32. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Grant 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 Grant provided, however, that reasonable fees or bona fide technical consultant, managerial,

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or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

33. PUBLICITY

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

34. RECAPTURE

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

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

35. RECORDS MAINTENANCE

The Grantee 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 Grantee 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 COMMERCE, personnel duly authorized by COMMERCE, 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.

36. REGISTRATION WITH DEPARTMENT OF REVENUE

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

37. RIGHT OF INSPECTION

At no additional cost all records relating to the Grantee's performance under this Grant shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, 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 Grant. The Grantee shall provide access to its facilities for this purpose.

38. 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 Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

39. 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.

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40. SUBCONTRACTING

The Grantee may only subcontract work contemplated under this Grant if it obtains the prior written approval of COMMERCE.

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

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

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

41. SURVIVAL

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

42. TAXES

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

43. TERMINATION FOR CAUSE

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

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Grantee from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Grantee or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Grantee: (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 COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

44. TERMINATION FOR CONVENIENCE

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

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45. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Grantee to deliver to COMMERCE 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.

COMMERCE shall pay to the Grantee the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Grantee and COMMERCE 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 COMMERCE, 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 COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Grantee such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE 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 Grantee 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 except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Grantee, under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. 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;
- E. Transfer title to COMMERCE 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 COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. 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 Grantee and in which COMMERCE has or may acquire an interest.

46. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.

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- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

All reference to the Grantee under this clause shall also include Grantee's employees, agents or Subcontractors.

47. WAIVER

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

48. WORK HOURS AND SAFETY STANDARDS

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

SCOPE OF WORK

Funds awarded under this grant will be used for capital expenditures for the **Jefferson North Fiber Projects** to construct approximately 100 miles of fiber optic cable passing 1,076 rural homes and businesses and, estimating a 60% take, connecting 646 customers with up to 10/10Gbps service over a Passive Optical Network (PON) open access network in low density areas in the northeastern section of Jefferson County, specifically in the interior areas between Discovery Bay and the Strait of Juan De Fuca; the rural residential community east of Hwy 20 known as Woodland Hills; and on Marrowstone Island.

The broadband technology funded by this grant will result in minimum service speed to each of the above premises that reliably meets or exceeds 100 megabits per second download (Mbps) and between at least 20 Mbps and 100 Mbps and be scalable to a minimum of 100 Mbps symmetrical download and upload speeds.

Grantee must require that all retail internet service providers using the broadband funded through this grant to either participate in the Federal Communications Commission's Affordable Connectivity Program (ACP), or otherwise provide access to a broad-based affordability program to consumers with low incomes in the broadband infrastructure proposed service area that provides benefits commensurate with those provided under the ACP.

The location of the project is: in scattered sites within Jefferson County.

Project activities will include and not be limited to:

- **Preliminary Design** – Initial project design and planning.
- **Engineering** – Includes detailed design engineering, permitting and rights of way, creation of construction documents
- **Procurement** – Identification, ordering, receiving, and inventory of all necessary materials and equipment.
- **Marketing** – Customer communication and outreach. Includes general awareness campaign, and final customer acquisition.
- **Construction** – Advertisement of bids for OSP contractor. Contractor Selection. Construction Management. Advertisement of bids for drops contractor, selection. Management
- **Customer Connection/Completion** – Installation of network equipment in customer homes. Network connections and provision of internet service.

The project needs to meet all applicable Local, State, and/or Federal standards.

The "Copyright Provisions", Section 16 of the General Terms and Conditions, are not intended to apply to any architectural and engineering design work funded by this grant.

CERTIFICATION PERFORMANCE MEASURE – SCOPE OF WORK

The Grantee, by its signature, certifies that the declaration set forth above has been reviewed and approved by the Grantee's governing body as of the date and year written below.

DocuSigned by:

Kevin Street

DD02775FB8DD420

Grantee SIGNATURE, TITLE

8/15/2022 | 6:12 AM PDT

DATE

CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT

Type of Funding	Source Description	Amount
Grant	Washington State Department of Commerce	\$9,718,934.00
Other Grants		
Grant #1	N/A	\$0.00
Total Other Grants		\$0.00
Other Loans		
Loan #1	N/A	\$0.00
Total Loans		\$0.00
Other Local Revenue		
Source #1	JPUD	\$956,106.00
Source #2	Jefferson County	\$750,000.00
Total Local Revenue		\$1,706,106.00
Other Funds		
Source #1	N/A	\$0.00
Total Other Funds		\$0.00
Total Project Funding		\$11,425,040.00

CERTIFICATION PERFORMANCE MEASURE - AVAILABILITY OF FUNDS

The Grantee, by its signature, certifies that project funding from sources other than those provided by this Grant Agreement and identified above has been reviewed and approved by the Grantee's governing body or board of directors, as applicable, and has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this Grant Agreement, as of the date and year written below. The Grantee shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for COMMERCE's review upon reasonable request.

DocuSigned by:

Kevin Strutt

DD02775FB8DD420...
Grantee SIGNATURE, TITLE

8/15/2022 | 6:12 AM PDT

DATE

CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES

The Grantee, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the Project funded by this Grant Agreement, 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 Grantee shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

If any state funds are used by the Grantee for the purpose of construction, applicable State Prevailing Wages must be paid.

CERTIFICATION PERFORMANCE MEASURE – PREVAILING WAGES

The Grantee, by its signature, certifies that the declaration set forth above has been reviewed and approved by the Grantee's governing body as of the date and year written below.

DocuSigned by:

Grantee SIGNATURE, TITLE

8/15/2022 | 6:12 AM PDT

DATE



DocuSign Routing Form

Washington State Broadband Office

22-96810-010

Jefferson Co PUD

Jefferson North Fiber

Review by (Title):	Name:	Date:	Initials:
Contract Manager	Chelsea Bagwell	8/15/2022 6:53 AM PDT	DS CAB
SBO Infrastructure Programs Manager	Connie Rivera	8/15/2022 9:20 AM PDT	DS CR
LGD Deputy Assistant Director (before AD signature)	Tony Hanson	8/22/2022 6:30 AM PDT	DS TH

Certificate Of Completion

Envelope Id: 5FCFB1B9059445F4AC0C3FC7971FE21B

Status: Completed

Subject: Please DocuSign: 22-96810-010 Jefferson Co PUD Contract.docx, SBO Contract Routing Form.doc

Division:

Local Government

Program: WSBO

ContractNumber: 22-96810-010

DocumentType: Contract

Source Envelope:

Document Pages: 30

Signatures: 6

Envelope Originator:

Certificate Pages: 6

Initials: 3

Chelsea Bagwell

AutoNav: Enabled

1011 Plum Street SE

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chelsea.bagwell@commerce.wa.gov

IP Address: 198.239.106.133

Record Tracking

Status: Original

Holder: Chelsea Bagwell

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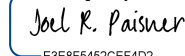
Signer Events**Signature****Timestamp**

Joel R. Paisner

joel@ascenitllp.com

Security Level: Email, Account Authentication
(None)

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Signed: 8/11/2022 11:40:50 AM

Signature Adoption: Pre-selected Style

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Electronic Record and Signature Disclosure:

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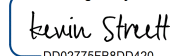
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Kevin Streett

kstreett@jeffpud.org

Security Level: Email, Account Authentication
(None)

DocuSigned by:



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Sent: 8/11/2022 9:17:54 AM

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Using IP Address: 64.184.177.194

Electronic Record and Signature Disclosure:

Accepted: 8/15/2022 6:12:13 AM

ID: 5ac9b8c9-c487-4894-9057-a49713f41e03

Chelsea Bagwell

chelsea.bagwell@commerce.wa.gov

Washington State Department of Commerce

Security Level: Email, Account Authentication
(None), Login with SSO

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Viewed: 8/15/2022 6:51:47 AM


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
Using IP Address: 198.239.106.229

Electronic Record and Signature Disclosure:


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Signer Events	Signature	Timestamp
<p>Connie Rivera connie.rivera@commerce.wa.gov Security Level: Email, Account Authentication (None)</p>	 Signature Adoption: Pre-selected Style Using IP Address: 198.239.157.62	<p>Sent: 8/15/2022 6:53:03 AM Viewed: 8/15/2022 9:19:40 AM Signed: 8/15/2022 9:20:04 AM</p>


Electronic Record and Signature Disclosure:
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<p>Tony Hnason tony.hanson@commerce.wa.gov Washington State Department of Commerce Security Level: Email, Account Authentication (None)</p>	 Signature Adoption: Pre-selected Style Using IP Address: 76.135.16.129 Signed using mobile	<p>Sent: 8/15/2022 9:20:07 AM Viewed: 8/22/2022 6:28:49 AM Signed: 8/22/2022 6:30:23 AM</p>
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<p>Mark Barkley mark.barkley@commerce.wa.gov Assistant Director Washington State Department of Commerce Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:</p>  80312B04865C458... Signature Adoption: Pre-selected Style Using IP Address: 198.239.106.190	<p>Sent: 8/22/2022 6:30:25 AM Viewed: 8/22/2022 6:51:13 AM Signed: 8/22/2022 6:51:23 AM</p>
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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Will O'Donnell wodonnell@jeffpud.org Security Level: Email, Account Authentication (None)</p>		<p>Sent: 8/11/2022 9:17:52 AM Viewed: 8/11/2022 1:39:55 PM</p>
<p>Electronic Record and Signature Disclosure: Accepted: 5/5/2022 4:25:49 PM ID: ff07b2b9-b4db-4f1a-82c2-e7d43f4a4e51</p>		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/11/2022 9:17:52 AM
Certified Delivered	Security Checked	8/22/2022 6:51:13 AM
Signing Complete	Security Checked	8/22/2022 6:51:23 AM
Completed	Security Checked	8/22/2022 6:51:23 AM

Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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From time to time, Washington State Department of Commerce (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

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At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.15 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Washington State Department of Commerce:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: docusign@commerce.wa.gov

To advise Washington State Department of Commerce of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at docusign@commerce.wa.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Washington State Department of Commerce

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to docusign@commerce.wa.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Washington State Department of Commerce

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to docusign@commerce.wa.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Washington State Department of Commerce as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Washington State Department of Commerce during the course of your relationship with Washington State Department of Commerce.

Jefferson County PUD

RATE SCHEDULE

Wholesale Broadband Services

Effective ~~0609/2001/2021~~2022

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- A. The rates listed on this schedule are available to qualified Internet Service Providers (ISPs) desiring to use the PUD's wholesale fiber optic network. The PUD reserves the right, at its sole option to discontinue or modify services listed in this rate schedule at anytime.
- B. All wholesale fiber optic and wireless network services provided by the PUD are subject to the terms and conditions in the PUD's ~~Telecommunications-Broadband~~ Policies, as may be amended from time-to-time.
- ~~C.~~ The amount of any tax levied by any governmental entity, in accordance with the laws of the State of Washington, will be added to the charges shown in this rate schedule.

~~C.~~

~~D.~~ Rates listed in all tables below are monthly recurring charges unless otherwise noted.

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~~E.~~ The wholesale products delivered using the Passive Optical Network (PON) technology share one fiber to serve up to 64 customers.

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~~F.~~ The wholesale products delivered using active ethernet technology deliver service using a single fiber and port dedicated to one location.

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~~G.~~ All wholesale products are intended to serve only a single end user customer. It is prohibited to use the wholesale connections to connect or sell services to additional customers.

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~~H.~~ The District's fiber optic network is able to provide other features such as dark fiber, point-to-multipoint VLANs, and other backhaul solutions. The District is willing to sell such services under individual contractual arrangements. Please contact the District at broadband@jeffpud.org to discuss your needs.

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~~I.~~ The PUD may enter into contractual arrangements with an RSP for any services not included on this rate sheet. The PUD must get Board approval for any contract greater than \$1,000 in monthly recurring fees.

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~~J.~~ The PUD will offer a low-income discount for residential connections where somebody in a household meets the FCC's definition of those eligible for a discount. That definition currently includes anybody that is part of the Supplemental Nutrition Assistance Program (SNAP), Medicaid, Federal Public Housing Assistance, Supplemental Security Income, the Veterans and Survivors Pension Benefit, or certain Tribal Programs. The FCC may periodically change this definition. RSPs are required to pass this discount on to the qualifying household. RSPs are encouraged to match, and double the discount, but are not required to do so.

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~~K.~~ General Service Areas refer to sections within the PUD's service territory where aid-to-

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construction costs may apply in determining connection fees per new service drop.

L. Special Project Areas refer to designated zones within the PUD's service territory where grant- or other funding sources allow for the possible waiver of construction fee for new service drops of 1000 feet or less. Special Project Areas will be posted on the PUD's website when designated.

A.

B. ~~The products delivered with Residential Ethernet Services and Business Ethernet Services are intended to serve a single User location. It is prohibited to use the bandwidth from these products to connect to or sell services to additional customer locations.~~

C.A. ~~The District's fiber optic network is able to provide other features such as dark fiber, point-to-multipoint VLANs, and other backhaul solutions. The District is willing to sell such services under individual contractual arrangements. Please contact the District at broadband@jeffpud.org to discuss your needs.~~

D.A. ~~The PUD may enter into contractual arrangements with an RSP for any services not included on this rate sheet. The PUD must get Board approval for any contract greater than \$1,000 in monthly recurring fees.~~

E.A. ~~The PUD will offer a low-income discount for residential connections where somebody in a household meets the FCC's definition of those eligible for a discount. That definition currently includes anybody that is part of the Supplemental Nutrition Assistance Program (SNAP), Medicaid, Federal Public Housing Assistance, Supplemental Security Income, the Veterans and Survivors Pension Benefit, or certain Tribal Programs. The FCC may periodically change this definition. RSPs are required to pass this discount on to the qualifying household. RSPs are encouraged to match, and double the discount, but are not required to do so.~~

F.A. ~~General Service Areas refer to sections within the PUD's service territory where aid to construction costs may apply in determining connection fees per new service drop.~~

G.A. ~~Special Project Areas refer to designated zones within the PUD's service territory where grant or other funding sources allow for the possible waiver of construction fee for new service drops of 1000 feet or less. Special Project Areas will be posted on the PUD's website when designated.~~

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SET-UP OF NEW SERVICE PROVIDER SET-UP
Non-recurring. This is applied one time for a new ISP.

\$250 ~~non-recurring. This is applied one time for a new RSP.~~

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Service Provided using Passive Optical Network (PON) Technology.

These are wholesale broadband products delivered to customers using the PON network that uses one fiber to share bandwidth with up to 32 customers. Includes Residential PON Services and Business PON Services. Price per unique premises. Tier 1 technical support provided 24/7, higher tiers of support

available only during PUD's normal business hours. Includes data and/or Ethernet voice ports.

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RESIDENTIAL ~~ETHERNET PON~~ SERVICES:

100/100 Mbps Basic Access (per unique premises) Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports	\$35
250/250 Mbps Basic Access (per unique premises) Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports	\$40
1 Gbps/1 Gbps Basic Access (per unique premises) Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports	\$45
Premium Support (per unique premises) Added to any of the above products. Provides priority restoration following network outages.	\$10
Low Income Fiber-Internet Service Discount. The PUD will verify that somebody in a household qualifies for the low-income discount using the FCC definition. The discount will not apply if at some future time nobody in the household qualifies.	\$10 monthly discount. Only one discount per household.

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BUSINESS ~~PON-ETHERNET~~ SERVICES:

100/100 Mbps Basic Access (per unique premises) Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports	\$40
250/250 Mbps Basic Access (per unique premises) Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports	\$45
1 Gbps/1 Gbps Basic Access (per unique premises) Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports	\$50
Premium Support (per unique premises) Added to any of the above products. Provides priority restoration following network outages.	\$15

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Service Provided using Active Ethernet (Active-E) Technology

These wholesale broadband products are delivered to customers using a single dedicated fiber for each customer. Includes Business Ethernet Services and VLAN Off-Network Services.

BUSINESS ETHERNET SERVICES

Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports

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<u>100/100 Mbps Basic Access (per unique premises)</u>	<u>\$100</u>
<u>250/250 Mbps Basic Access (per unique premises)</u>	<u>\$150</u>
<u>1 Gbps/1 Gbps Basic Access (per unique premises)</u>	<u>\$300</u>
<u>Premium Support (per unique premise) Added to any of the above products. Provides priority restoration following network outages.</u>	<u>\$15</u>
CUSTOMER VLAN OFF-NETWORK SERVICES: { Includes Premium Support) Includes PremiumSupport	
100 Mbps port – Month-to-Month billing	\$500
100 Mbps port – 3-Year Contract	\$300
100 Mbps port – 5-Year Contract	\$200
250 Mbps port – Month-to-Month billing	\$700
250 Mbps port – 3-Year Contract	\$500
250 Mbps port – 5-Year Contract	\$300
1 Gbps port – Month-to-Month billing	\$1,100
1 Gbps port – 3-Year Contract	\$900
1 Gbps port – 5-Year Contract	\$650
COLLOCATION:	
The following are monthly recurring charges for collocating equipment in District Facilities. The rates include cabinet or rack space, access to 20 amp AC power, and keyed entry for Customer access.	
Full Rack Space	\$500
Half Rack Space	\$250
One-Third Rack Space	\$170
One-Fourth Rack Space	\$125
DC Power – per each 5 amps of total installed breaker capacity	\$18
LABOR CHARGES: To be applied per hour to any work requested by Customer that is not included in a standard installation. Minimum charge is for ½ hour of time.	

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Standard Labor Charge	\$100 per hour
Overtime Labor Charge	\$150 per hour
CONNECTION FEE PER NEW SERVICE DROP	GENERAL SERVICE AREA: Aid to Construction charges may apply. Aid to Construction costs will be estimated per connection request.
	SPECIAL PROJECT AREA: Installation is generally free for any drop of 1,000 feet or less. The PUD reserves the right to apply special construction charges for -drops over that length. The PUD also reserves the right to bill extra charges for drops less than 1,000 feet that require construction under a significant amount of concrete, pavement pavement , or other impediments.

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Jefferson County PUD

RATE SCHEDULE

Wholesale Broadband Services

Effective 09/01/2022

- A. The rates listed on this schedule are available to qualified Internet Service Providers (ISPs) desiring to use the PUD's wholesale fiber optic network. The PUD reserves the right, at its sole option to discontinue or modify services listed in this rate schedule at anytime.
- B. All wholesale fiber optic and wireless network services provided by the PUD are subject to the terms and conditions in the PUD's Broadband Policies, as may be amended from time-to-time.
- C. The amount of any tax levied by any governmental entity, in accordance with the laws of the State of Washington, will be added to the charges shown in this rate schedule.
- D. Rates listed in all tables below are monthly recurring charges unless otherwise noted.
- E. The wholesale products delivered using the Passive Optical Network (PON) technology share one fiber to serve up to 64 customers.
- F. The wholesale products delivered using active ethernet technology deliver service using a single fiber and port dedicated to one location.
- G. All wholesale products are intended to serve only a single end user customer. It is prohibited to use the wholesale connections to connect or sell services to additional customers.
- H. The District's fiber optic network is able to provide other features such as dark fiber, point-to-multipoint VLANs, and other backhaul solutions. The District is willing to sell such services under individual contractual arrangements. Please contact the District at broadband@jeffpud.org to discuss your needs.
- I. The PUD may enter into contractual arrangements with an RSP for any services not included on this rate sheet. The PUD must get Board approval for any contract greater than \$1,000 in monthly recurring fees.
- J. The PUD will offer a low-income discount for residential connections where somebody in a household meets the FCC's definition of those eligible for a discount. That definition currently includes anybody that is part of the Supplemental Nutrition Assistance Program (SNAP),

Medicaid, Federal Public Housing Assistance, Supplemental Security Income, the Veterans and Survivors Pension Benefit, or certain Tribal Programs. The FCC may periodically change this definition. RSPs are required to pass this discount on to the qualifying household. RSPs are encouraged to match, and double the discount, but are not required to do so.

- K. General Service Areas refer to sections within the PUD's service territory where aid-to-construction costs may apply in determining connection fees per new service drop
- L. Special Project Areas refer to designated zones within the PUD's service territory where grant- or other funding sources allow for the possible waiver of construction fee for new service drops of 1000 feet or less. Special Project Areas will be posted on the PUD's website when designated.
- M. For services not listed below, contact broadband@jeffpud.org to discuss availability and contract rates.

NEW SERVICE PROVIDER SET-UP <i>Non-recurring. This is applied one time for a new ISP.</i>	\$250
Service Provided using Passive Optical Network (PON) Technology. <i>These are wholesale broadband products delivered to customers using the PON network that uses one fiber to share bandwidth with up to 32 customers. Includes Residential PON Services and Business PON Services. Price per unique premises. Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports</i>	
RESIDENTIAL PON SERVICES:	
100/100 Mbps Basic Access	\$35
250/250 Mbps Basic Access	\$40
1/1 Gbps Basic Access	\$45
3/3 Gbps Basic Access	\$100
Premium Support (per unique premises) <i>Added to any of the above products. Provides priority restoration following network outages.</i>	\$10
Low Income Internet Service Discount. <i>The PUD will verify that somebody in a household qualifies for the low-income discount using the FCC definition. The discount will not apply if at some future time nobody in the household qualifies. Only one discount per household.</i>	\$10 monthly discount.
BUSINESS PON SERVICES:	
100/100 Mbps Basic Access	\$40

250/250 Mbps Basic Access	\$45
1 Gbps/1 Gbps Basic Access	\$66
3/3 Gbps	\$133
5/5 Gbps	\$333
10/10 Gbps	\$667
Premium Support (per unique premises) <i>Added to any of the above products. Provides priority restoration following network outages.</i>	\$15
Service Provided using Active Ethernet (Active-E) Technology <i>These wholesale broadband products are delivered to customers using a single dedicated fiber for each customer. Includes Business Ethernet Services and VLAN Off-Network Services.</i>	
BUSINESS ACTIVE-E SERVICES <i>Tier 1 technical support provided 24/7, higher tiers of support available only during PUD's normal business hours. Includes data and/or Ethernet voice ports. Price per unique premises.</i>	
100/100 Mbps Basic Access	\$100
250/250 Mbps Basic Access	\$150
1/1 Gbps Basic Access	\$300
Premium Support (per unique premise) <i>Added to any of the above products. Provides priority restoration following network outages.</i>	\$15
CUSTOMER VLAN OFF-NETWORK SERVICES Includes Premium Support	
100 Mbps port – Month-to-Month billing	\$500
100 Mbps port – 3-Year Contract	\$300
100 Mbps port – 5-Year Contract	\$200
250 Mbps port – Month-to-Month billing	\$700
250 Mbps port – 3-Year Contract	\$500
250 Mbps port – 5-Year Contract	\$300
1 Gbps port – Month-to-Month billing	\$1,100
1 Gbps port – 3-Year Contract	\$900
1 Gbps port – 5-Year Contract	\$650

COLOCATION: <i>The following are monthly recurring charges for collocating equipment in District Facilities. The rates include cabinet or rack space, access to 20-amp AC power, and keyed entry for Customer access.</i>	
Full Rack Space	\$500
Half Rack Space	\$250
One-Third Rack Space	\$170
One-Fourth Rack Space	\$125
DC Power – per each 5 amps of total installed breaker capacity	\$18
LABOR CHARGES <i>To be applied per hour to any work requested by Customer that is not included in a standard installation. Minimum charge is for ½ hour of time.</i>	
Standard Labor Charge	\$100 per hour
Overtime Labor Charge	\$150 per hour
CONNECTION FEE PER NEW SERVICE DROP: GENERAL SERVICE AREA	Aid to Construction charges may apply. Aid to Construction costs will be estimated per connection request.
CONNECTION FEE PER NEW SERVICE DROP: SPECIAL PROJECT AREA	Installation is generally free for any drop of 1,000 feet or less. The PUD reserves the right to apply special construction charges for drops over that length. The PUD also reserves the right to bill extra charges for drops less than 1,000 feet that require construction under a significant amount of concrete, pavement, or other impediments.

Exhibit 1

Jefferson County PUD
RATE SCHEDULE
Retail Broadband Services

Effective ~~August~~
~~19~~September 1, 2021~~2022~~

- A. The rates listed on this schedule are available to residents and businesses who are within reach to connect to the Jefferson PUD fiber network. The PUD reserves the right, at its sole option to discontinue or modify services and prices listed in this rate schedule at any time.
- B. All retail broadband and related services provided by the PUD are subject to the terms and conditions in the PUD's Retail Telecommunications Policies, as may be amended from time-to-time.
- C. The amount of any tax levied by any governmental entity, in accordance with the laws of the State of Washington, will be added to the charges shown in this rate schedule.
- D. Rates listed in all tables below are monthly recurring charges unless otherwise noted.
- E. The rates for payment-related issues such as late payment fees, charges for bad checks, etc. are the same as applied for residential electric service.
- F. The PUD may enter into contractual arrangements with a customer for any services not included on this rate sheet. The PUD must get Board approval for any contract greater than \$1,000 in monthly recurring fees.
- G. The PUD offers a low-income discount for residential connections where somebody in a household meets the FCC's definition of those eligible for a discount. That definition currently includes anybody that is part of the Supplemental Nutrition Assistance Program (SNAP), Medicaid, Federal Public Housing Assistance, Supplemental Security Income, the Veterans and Survivors Pension Benefit, or certain Tribal Programs. The FCC may periodically change this definition. Residential customers must request the discount and receiving the discount requires that the PUD approve eligibility.
- H. General Service Areas refer to sections within the PUD's service territory where aid-to-construction costs may apply in determining connection fees per new service drop.
- I. Special Project Areas refer to designated zones within the PUD's service territory where grant-or other funding sources allow for the possible waiver of construction fee for new service drops of 1000 feet or less. Special Project Areas will be posted on the PUD's website when designated.

Exhibit 1

Residential Retail Broadband Rates: Unlimited usage with no data caps. Does not include taxes or fees.	
Broadband	
Connection Fee per new Service Drop	GENERAL SERVICE AREA: Aid to Construction charges may apply. Aid to Construction costs will be estimated per connection request. SPECIAL PROJECT AREA: Installation is generally free for any drop of 1,000 feet or less. The PUD reserves the right to apply special construction charges for drops over that length. The PUD also reserves the right to bill extra charges for drops less than 1,000 feet that require construction under a significant amount of concrete, pavement or other impediments.
1500/1500 Mbps Broadband Access Unlimited usage with no data caps.	\$65/month
250/250 Mbps Broadband Access Unlimited usage with no data caps	\$75
1 Gbps/1 Gbps Broadband Access Unlimited usage with no data caps	\$9075/month
3 Gbps/3Gbps	\$150/month
Premium Service Adds to any rate above. Guarantees evening and weekend repair services for outages caused by the PUD network.	\$20
<u>Low-Income Discount</u>	<u>\$20/month</u> <u>Only one discount per month</u> <u>provided only to qualified households.</u>
ADDITIONAL RESIDENTIAL SERVICES AND PRODUCTS	
Wi-Fi <u>Mesh Modem Rental (1Gbps ports)</u>	<u>\$150/month per unit</u>
<u>Wi-Fi Mesh Modem Rental (10 Gbps ports)</u>	<u>\$25/month per unit</u>
<u>Home Control App Suite</u>	<u>\$15/month</u>

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Exhibit 1

Low Income Discount	\$20 per month Only one discount per month provided only to qualified households.
Voice over IP Telephone Service	
Local Telephone Line with numerous features and unlimited long distance calling to the continental United States and a few other countries.	\$20
Business Retail Rates:	
Broadband	
100/100 Mbps Broadband Access Unlimited usage with no data caps.	\$75

Exhibit 1

250/250 Mbps Broadband Access Unlimited usage with no data caps	\$85
Business Retail Broadband Rates: <u>Unlimited usage with no data caps</u>	
1 Gbps/1 Gbps Broadband Access Unlimited usage with no data caps <u>Includes 1 Static IP address</u>	<u>\$100/month</u>
3 Gbps/3 Gbps Broadband Access <u>Includes 1 Static IP address</u>	<u>\$200/month</u>
5 Gbps/5 Gbps Broadband Access <u>Includes dedicated fiber and port</u> <u>Includes block of 5 Static IP addresses</u>	<u>\$500/month</u>
10 Gbps/10 Gbps Broadband Access <u>Includes dedicated fiber and port</u> <u>Includes block of 13 Static IP addresses</u>	<u>\$1,000/month</u>
Premium Service Adds to any rate above. Guarantees evening and weekend repair services for outages caused by the PUD network.	\$25
ADDITIONAL BUSINESS SERVICES AND PRODUCTS	
<u>Wi-Fi Mesh Modem Rental (1Gbps ports)</u> Wi-Fi Modem Rental	<u>\$15/month per unit</u> \$40
<u>Wi-Fi Mesh Modem Rental (10 Gbps ports)</u>	<u>\$25/month per unit</u>
<u>Additional IP Addresses (block of 5)</u>	<u>\$25/month</u>
<u>Additional IP Addresses (block of 13)</u>	<u>\$50/month</u>
Voice over IP Telephone Service	
Local Telephone Line with numerous features and unlimited long distance calling to the continental United States and a few other countries.	\$30
Labor Charges To be applied per hour to any work requested by customer that is not included in a standard installation. Applies to both residential and business customers. Minimum charge is for ½ hour of time.	
Standard Labor Charge	\$100 per hour
Overtime Labor Charge	\$150 per hour
CONNECTION FEE PER NEW SERVICE DROP	
<u>GENERAL SERVICE AREA</u>	<u>Aid to Construction charges may apply. Aid to Construction costs will be estimated per connection request.</u>
<u>SPECIAL PROJECT AREA</u>	<u>Installation is generally free for any drop of 1,000 feet or less. The PUD reserves the right to apply special construction charges for drops over that length. The PUD also reserves the right to bill extra charges for drops less than 1,000 feet that require construction under a significant amount of</u>

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	<u>concrete, pavement, or other impediments.</u>
<u>PORT TOWNSEND BUSINESS DISTRICT LOAN PROJECT</u> <u>Requires proof of business license.</u>	<u>\$1,200 per premises.</u>

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Jefferson County PUD
RATE SCHEDULE
Retail Broadband Services
Effective September 1, 2022

- A. The rates listed on this schedule are available to residents and businesses who are within reach to connect to the Jefferson PUD fiber network. The PUD reserves the right, at its sole option to discontinue or modify services and prices listed in this rate schedule at any time.
- B. All retail broadband and related services provided by the PUD are subject to the terms and conditions in the PUD's Retail Telecommunications Policies, as may be amended from time-to-time.
- C. The amount of any tax levied by any governmental entity, in accordance with the laws of the State of Washington, will be added to the charges shown in this rate schedule.
- D. Rates listed in all tables below are monthly recurring charges unless otherwise noted.
- E. The rates for payment-related issues such as late payment fees, charges for bad checks, etc. are the same as applied for residential electric service.
- F. The PUD may enter into contractual arrangements with a customer for any services not included on this rate sheet. The PUD must get Board approval for any contract greater than \$1,000 in monthly recurring fees.
- G. The PUD offers a low-income discount for residential connections where somebody in a household meets the FCC's definition of those eligible for a discount. That definition currently includes anybody that is part of the Supplemental Nutrition Assistance Program (SNAP), Medicaid, Federal Public Housing Assistance, Supplemental Security Income, the Veterans and Survivors Pension Benefit, or certain Tribal Programs. The FCC may periodically change this definition. Residential customers must request the discount and receiving the discount requires that the PUD approve eligibility.
- H. General Service Areas refer to sections within the PUD's service territory where aid-to-construction costs may apply in determining connection fees per new service drop.
- I. Special Project Areas refer to designated zones within the PUD's service territory where grant-or other funding sources allow for the possible waiver of construction fee for new service drops of 1000 feet or less. Special Project Areas will be posted on the PUD's website when designated.

Exhibit 1

Residential Retail Broadband Rates: Unlimited usage with no data caps. Does not include taxes or fees.	
150/150 Mbps Broadband Access	\$65/month
1 Gbps/1 Gbps Broadband Access	\$75/month
3 Gbps/3Gbps Broadband Access	\$150/month
Low-Income Discount	-\$20/month Only one discount per month provided only to qualified households.
ADDITIONAL RESIDENTIAL SERVICES AND PRODUCTS	
Wi-Fi Mesh Modem Rental (1 Gbps ports)	\$15/month per unit
Wi-Fi Mesh Modem Rental (10 Gbps ports)	\$25/month per unit
Home Control App Suite	\$15/month
Voice over IP Telephone Service	
Local Telephone Line with numerous features and unlimited long distance calling to the continental United States and a few other countries.	\$20
Labor Charges To be applied per hour to any work requested by customer that is not included in a standard installation. Applies to both residential and business customers. Minimum charge is for ½ hour of time.	
Standard Labor Charge	\$100 per hour
Overtime Labor Charge	\$150 per hour
CONNECTION FEE PER NEW SERVICE DROP	
GENERAL SERVICE AREA	Aid to Construction charges may apply. Aid to Construction costs will be estimated per connection request.
SPECIAL PROJECT AREA	Installation is generally free for any drop of 1,000 feet or less. The PUD reserves the right to apply special construction charges for drops over that length. The PUD also reserves the right to bill extra charges for drops less than 1,000 feet that require construction under a significant amount of concrete, pavement, or other impediments.

Exhibit 1

Business Retail Broadband Rates:	
Unlimited usage with no data caps. Includes Business App Control Suite.	
1 Gbps/1 Gbps Broadband Access Includes 1 Static IP address	\$100/month
3 Gbps/3 Gbps Broadband Access Includes 2 fixed IP address	\$200/month
5 Gbps/5 Gbps Broadband Access Includes dedicated fiber and port Includes up to 5 fixed IP addresses	\$500/month
10 Gbps/10 Gbps Broadband Access Includes dedicated fiber and port Includes up to 5 fixed IP addresses	\$1,000/month
ADDITIONAL BUSINESS SERVICES AND PRODUCTS	
Wi-Fi Mesh Modem Rental (1Gbps ports)	\$15/month per unit
Wi-Fi Mesh Modem Rental (10 Gbps ports)	\$25/month per unit
Additional IP Addresses	
Additional IP Addresses (block of 5)	\$25/month
Additional IP Addresses (block of 13)	\$50/month
Voice over IP Telephone Service	
Local Telephone Line with numerous features and unlimited long distance calling to the continental United States and a few other countries.	\$30
Labor Charges	
To be applied per hour to any work requested by customer that is not included in a standard installation. Applies to both residential and business customers. Minimum charge is for ½ hour of time.	
Standard Labor Charge	\$100 per hour
Overtime Labor Charge	\$150 per hour
CONNECTION FEE PER NEW SERVICE DROP	
GENERAL SERVICE AREA	Aid to Construction charges may apply. Aid to Construction costs will be estimated per connection request.
SPECIAL PROJECT AREA	Installation is generally free for any drop of 1,000 feet or less. The PUD reserves the right to apply special construction charges for drops over that length. The PUD also reserves the right to bill extra charges for drops less than 1,000 feet that require construction under a significant amount of concrete, pavement, or other impediments.
PORT TOWNSEND BUSINESS DISTRICT LOAN PROJECT Requires proof of business license.	\$1,200 per premises.

Jefferson County PUD Internet Services

Acceptable Use Policy

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Free Speech Policy

Jefferson County Public Utility District No. 1 ("JPUD") is committed to operating a network that values your right to open and free speech. It is the intent of this Acceptable Use Policy and the related Internet Service Subscriber Agreement to be administered and interpreted to protect your rights to open and free speech.

JPUD is also committed to the following principles regarding the delivery of internet service:

OPEN ACCESS

JPUD's network and Service will be Open Access to all providers who meet the service standard requirements for operating on our network.

NO DATA CAPS

JPUD does not currently enforce specific limitations on the amount of Internet data utilized by its customers through data caps or usage-based billing.

NETWORK NEUTRALITY

JPUD honors network neutrality principles and will not block, slow, or monitor traffic to any particular websites (subject only to reasonable network management requirements).

DISPUTE RESOLUTION

JPUD has adopted a Customer Dispute process, at the end of this Acceptable Use Policy, to provide a review of operational decisions made pursuant to the Acceptable Use Policy and Internet Service Subscriber Agreement.

JPUD does not monitor your usage of the Internet, the web pages you visit, review your on-line correspondence or any similar activity unless the nature of that activity is unlawful or is contrary to reasonable network management requirements.

Introduction

JPUD seeks to provide our customers with the best Internet service possible, and we have adopted this Acceptable Use Policy ("Policy") to help accomplish this. This Policy outlines acceptable use of JPUD Internet Services and any associated services (the "Service"), as well as examples of permissible and prohibited conduct for using the Service to access the Internet. This Policy, including its customer use restrictions, is in

addition to the restrictions contained in the JPUD Internet Service Subscriber Agreement (the "Agreement"). Any use of JPUD's Internet Services constitutes agreement to all terms in this Policy and the Agreement.

JPUD may revise this Policy from time to time by posting a new version on our web site. All revised versions of the Policy are effective immediately upon posting and after email notification to customers. JPUD customers should regularly visit our web site and review this Policy to ensure that their activities conform to the most up to date Policy.

Customer Responsibility

You are personally responsible for all use of the Service under your account. As a customer, it is your responsibility to secure your computer equipment so that it is not subject to external threats such as viruses, spam, and other methods of external intrusion. Failure to comply with these or any other JPUD policies could result in the suspension or termination of the Service. JPUD reserves the right to immediately terminate the Service and the Agreement if you engage in any ~~of the prohibited activities listed in this Policy~~ unlawful activity

Prohibited Uses

You agree to use JPUD Internet Service only for lawful purposes.

The following list of prohibited uses is provided as an example only, other uses may also be found to be in violation of JPUD's Acceptable Use Policy. You may not use, or allow others to use, the Service or JPUD equipment, either directly or indirectly, to:

- post, store, transmit, promote, or facilitate the distribution of any information, data or material which is libelous, obscene, unlawful, threatening, defamatory, or illegal, including but not limited to, material that would constitute or encourage copyright or trademark infringement, a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law;

- enable persons under 18 years of age to obtain material that is prohibited by law to be sent or displayed.

- post, transmit, promote, or facilitate the distribution of any unsolicited advertising, including but not limited to, mass or bulk e-mail, promotional materials or other forms of solicitation to other individuals or entities;

- participate in the collection of email addresses or other identifiers of others without their prior consent, or participate in the use of software (including "spyware") designed to facilitate this activity;

- collect, or attempt to collect, personal information about others without their prior consent;

impersonate any person or entity, engage in sender address falsification, forge anyone else's digital or manual signature, or perform any other fraudulent activity;

access any other person's computer system, software, or data without their knowledge and consent; breach the security of JPUD or another user; or attempt to circumvent the user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for you, logging into or making use of a server or account you are not expressly authorized to access, or probing the security of other host, networks, or accounts;

resell the Service, or otherwise make available to anyone outside the primary residence or primary business location, the ability to use the Service;

restrict, inhibit, or otherwise interfere with the ability of other persons to use or enjoy the service, including, without limitation, posting or transmitting any information or software that contains a worm, virus, or other harmful feature, or generating levels of traffic sufficient to impede others' ability to send or retrieve information;

restrict, inhibit, interfere with, or otherwise disrupt JPUD's Service or any JPUD host, server, backbone network, node or service, or otherwise cause a performance degradation to any JPUD facilities used to deliver the Service;

interfere with telecommunication or computer networking service to any user, host, or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges and attempts to crash a host;

violate the rules, regulations, or policies applicable to any network, server, computer database, or web site that you access.

Inappropriate Content and Transmissions

JPUD reserves the right, but does not have the obligation, to refuse to transmit or post, and to remove or block any information or materials, in whole or in part, that is offensive, indecent, or otherwise inappropriate under any local, state or federal law. Neither JPUD nor its affiliates, suppliers or agents have any obligation to monitor ~~transmissions or postings made on~~ the Service. However, JPUD and its affiliates, suppliers or agents have the right to monitor these transmissions and postings from time to time for violations of this Policy and to disclose, block, or remove them if in violation of local, state or federal law.

Network, Bandwidth, Data Storage and Other Limitations

You must comply with all current bandwidth, data storage, and other limitations on the Service established by JPUD and its suppliers. You must ensure that activity on your account does not improperly restrict, inhibit, or degrade any other user's use of the

Service, nor represent (in the sole judgment of JPUD) an unusually large burden on the network. In addition, you must ensure that your activities do not improperly restrict, inhibit, disrupt, degrade or impede JPUD's ability to deliver the Service and monitor the Service, backbone, network nodes, and/or other network services.

Violation of Acceptable Use Policy

Although JPUD has no obligation to monitor the Service and/or the network, in order to protect the network, the Service and JPUD users, JPUD and its suppliers reserve the right at any time to monitor bandwidth, usage, transmissions, and content from time to time to operate the Service; ~~to identify violations of this Policy; and/or to protect the network, the Service and JPUD users.~~ If the Service is used in a way that ~~JPUD or its suppliers, in their sole discretion, believe~~ violates this Policy, JPUD or its suppliers may take any responsive actions they deem appropriate. These actions include, but are not limited to, temporary or permanent removal of content, filtering of Internet transmissions, and the immediate suspension or termination of all or any portion of the Service. None of JPUD or its affiliates, suppliers, or agents will have any liability for any these responsive actions.

These actions are not JPUD's exclusive remedies and JPUD may take any other legal or technical action it deems appropriate. JPUD reserves the right to investigate suspected violations of this Policy, including the gathering of information from the user or users involved and the complaining party, if any, and examination of material on JPUD's servers and network. During an investigation, JPUD may suspend the account or accounts involved and/or remove or block material that potentially violates this Policy. You expressly authorize JPUD and its suppliers to cooperate with (i) law enforcement authorities in the investigation of suspected legal violations, and (ii) system administrators at other Internet service providers or other network or computing facilities in order to enforce this Policy. This cooperation may include JPUD providing available personally identifiable information about you to law enforcement or system administrators, including, but not limited to, username, subscriber name, and other account information. Upon termination of your account, JPUD is authorized to delete any files, programs, data and e-mail messages associated with your account, consistent with its legal obligations.

The failure of JPUD or its suppliers to enforce this Policy, for whatever reason, shall not be construed as a waiver of any right to do so at any time. You agree that if any portion of this Policy is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect.

~~You agree to indemnify, defend and hold harmless JPUD, its affiliates, suppliers and agents against all claims and expenses (including reasonable attorney fees) resulting from you engaging in a violation of this Policy or of any other posted JPUD policy~~

~~related to the Service. Your indemnification will survive any termination of the Subscriber Agreement.~~

Customer Dispute of Claimed Violation of Acceptable Use Policy

Informal Conference

A Customer who disputes a claimed violation of the Acceptable Use Policy shall have the right to an informal conference with JPUD's Broadband Director in the District.

1. Informal conferences shall take place during normal business hours, 9:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.
2. The Customer may either appear in person in the District's office or confer by telephone.
3. JPUD's Broadband Director shall have the authority to reach agreements with the Customer to restore the Service.

Appeal Hearings

If a Customer is not satisfied with the determination of JPUD's Broadband Director during the informal conference, the Customer may schedule a hearing with the District Hearing Officer.

The Hearing Officer and any Deputy or Assistant Hearing Officers shall be management-level employees and shall be appointed by the Commission from employees whose other duties are not connected with the ~~credit section of~~ Broadband Department, ~~depending on the issue~~.

A written appeal by a Customer must be filed with the Hearing Officer within five (5) business days after the determination of the informal conference.

In response to a timely appeal, the Hearing Officer shall arrange an appeal hearing at a mutually convenient and accessible location or conduct the hearing by telephone. Such hearing must be scheduled during normal business hours – 9:00 a.m. to 4:30 p.m., Monday through Friday, and within seven (7) business days of the Customer's appeal.

If the Customer requests, a record will be made of the proceedings. The Hearing Officer may use a tape recorder or other means of preserving a record which he/she deems appropriate; the Customer may provide, at his/her own expense, a court reporter, or supplemental means of providing a record. The Customer shall have the right to ~~counsel~~ counsel.

The Customer shall open the hearing with a statement of the nature of the appeal and shall present whatever evidence the Customer deems relevant. The Customer shall have the reasonable right to examine the records of the District relating to his/her account. After the Customer has completed presenting his/her appeal, the appropriate District personnel shall provide the District's position. The Customer shall have the right to rebuttal.

The Hearing Officer shall provide the Customer with a written decision setting forth (a) the nature of the Customer's appeal; (b) the decision of the Hearing Officer; and (c) the reasons for the decision of the Hearing Officer. The written decision shall be promptly sent to the Customer by certified mail and may also be communicated by telephone.

In no event will an appeal of JPUD action taken pursuant to this Acceptable Use Policy prevent JPUD from taking any action that in its judgement protects the Service, the Customer and/or its vendors. Any claims must be filed pursuant to Washington state law.

Digital Millennium Copyright Act

JPUD is committed to complying with U.S. copyright and related laws, and requires all customers and users of the Service to comply with these laws. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") to report alleged infringements. It is JPUD 's policy in accordance with the DMCA and other applicable laws to reserve the right to restrict the use of or terminate Services provided to any customer who is either found to infringe third party copyright or other intellectual property rights, including alleged repeat infringers, or who JPUD believes in its sole discretion is or may likely be infringing these rights. JPUD may terminate the Service of any such customer at any time with or without notice. Copyright owners may report alleged infringements of their works that are committed using the Services by sending JPUD 's authorized agent a notification of claimed infringement that satisfies the requirements of the DMCA. Upon JPUD's receipt of a satisfactory notice of claimed infringement for these works, JPUD will take appropriate action. If the affected customer believes in good faith that the allegedly infringing works have been removed or blocked by mistake or misidentification, then that person may send a counter notification to JPUD. Upon JPUD's receipt of a counter notification that satisfies the requirements of DMCA, JPUD will provide a copy of the counter notification to the person who sent the original notification of claimed infringement and will follow the DMCA's procedures with respect to a received counter notification. In all events, you expressly agree that JPUD will not be a party to any disputes or lawsuits regarding alleged copyright infringement.

Contact:	DMCA Agent
Mail	JPUD No. 1 Attn: Copyright Claims 310 Four Corners Rd Port Townsend, WA 98368
E-mail	dmca@jeffpud.org

Jefferson County PUD Internet Services

Acceptable Use Policy

Free Speech Policy

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JPUD may revise this Policy from time to time by posting a new version on our web site. All revised versions of the Policy are effective immediately upon posting and after email notification to customers. JPUD customers should regularly visit our web site and review this Policy to ensure that their activities conform to the most up to date Policy.

Customer Responsibility

You are personally responsible for all use of the Service under your account. As a customer, it is your responsibility to secure your computer equipment so that it is not subject to external threats such as viruses, spam, and other methods of external intrusion. Failure to comply with these or any other JPUD policies could result in the suspension or termination of the Service. JPUD reserves the right to immediately terminate the Service and the Agreement if you engage in any unlawful activity

Prohibited Uses

You agree to use JPUD Internet Service only for lawful purposes.

The following list of prohibited uses is provided as an example only, other uses may also be found to be in violation of JPUD's Acceptable Use Policy. You may not use, or allow others to use, the Service or JPUD equipment, either directly or indirectly, to:

- post, store, transmit, promote, or facilitate the distribution of any information, data or material which is libelous, obscene, unlawful, threatening, defamatory, or illegal, including but not limited to, material that would constitute or encourage copyright or trademark infringement, a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law;

- enable persons under 18 years of age to obtain material that is prohibited by law to be sent or displayed.

- post, transmit, promote, or facilitate the distribution of any unsolicited advertising, including but not limited to, mass or bulk e-mail, promotional materials or other forms of solicitation to other individuals or entities;

- participate in the collection of email addresses or other identifiers of others without their prior consent, or participate in the use of software (including "spyware") designed to facilitate this activity;

- collect, or attempt to collect, personal information about others without their prior consent;

impersonate any person or entity, engage in sender address falsification, forge anyone else's digital or manual signature, or perform any other fraudulent activity;

access any other person's computer system, software, or data without their knowledge and consent; breach the security of JPUD or another user; or attempt to circumvent the user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for you, logging into or making use of a server or account you are not expressly authorized to access, or probing the security of other host, networks, or accounts;

resell the Service, or otherwise make available to anyone outside the primary residence or primary business location, the ability to use the Service;

restrict, inhibit, or otherwise interfere with the ability of other persons to use or enjoy the service, including, without limitation, posting or transmitting any information or software that contains a worm, virus, or other harmful feature, or generating levels of traffic sufficient to impede others' ability to send or retrieve information;

restrict, inhibit, interfere with, or otherwise disrupt JPUD's Service or any JPUD host, server, backbone network, node or service, or otherwise cause a performance degradation to any JPUD facilities used to deliver the Service;

interfere with telecommunication or computer networking service to any user, host, or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges and attempts to crash a host;

violate the rules, regulations, or policies applicable to any network, server, computer database, or web site that you access.

Inappropriate Content and Transmissions

JPUD reserves the right, but does not have the obligation, to refuse to transmit or post, and to remove or block any information or materials, in whole or in part, that is offensive, indecent, or otherwise inappropriate under any local, state or federal law. Neither JPUD nor its affiliates, suppliers or agents have any obligation to monitor the Service. However, JPUD and its affiliates, suppliers or agents have the right to monitor these transmissions and postings from time to time for violations of this Policy and to disclose, block, or remove them if in violation of local, state or federal law.

Network, Bandwidth, Data Storage and Other Limitations

You must comply with all current bandwidth, data storage, and other limitations on the Service established by JPUD and its suppliers. You must ensure that activity on your account does not improperly restrict, inhibit, or degrade any other user's use of the Service, nor represent (in the sole judgment of JPUD) an unusually large burden on the

network. In addition, you must ensure that your activities do not improperly restrict, inhibit, disrupt, degrade or impede JPUD's ability to deliver the Service and monitor the Service, backbone, network nodes, and/or other network services.

Violation of Acceptable Use Policy

Although JPUD has no obligation to monitor the Service and/or the network, in order to protect the network, the Service and JPUD users, JPUD and its suppliers reserve the right at any time to monitor bandwidth, usage, transmissions, and content from time to time to operate the Service. If the Service is used in a way that violates this Policy, JPUD or its suppliers may take any responsive actions they deem appropriate. These actions include, but are not limited to, temporary or permanent removal of content, filtering of Internet transmissions, and the immediate suspension or termination of all or any portion of the Service. None of JPUD or its affiliates, suppliers, or agents will have any liability for any these responsive actions.

These actions are not JPUD's exclusive remedies and JPUD may take any other legal or technical action it deems appropriate. JPUD reserves the right to investigate suspected violations of this Policy, including the gathering of information from the user or users involved and the complaining party, if any, and examination of material on JPUD's servers and network. During an investigation, JPUD may suspend the account or accounts involved and/or remove or block material that potentially violates this Policy. You expressly authorize JPUD and its suppliers to cooperate with (i) law enforcement authorities in the investigation of suspected legal violations, and (ii) system administrators at other Internet service providers or other network or computing facilities in order to enforce this Policy. This cooperation may include JPUD providing available personally identifiable information about you to law enforcement or system administrators, including, but not limited to, username, subscriber name, and other account information. Upon termination of your account, JPUD is authorized to delete any files, programs, data and e-mail messages associated with your account, consistent with its legal obligations.

The failure of JPUD or its suppliers to enforce this Policy, for whatever reason, shall not be construed as a waiver of any right to do so at any time. You agree that if any portion of this Policy is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect.

Customer Dispute of Claimed Violation of Acceptable Use Policy

Informal Conference

A Customer who disputes a claimed violation of the Acceptable Use Policy shall have the right to an informal conference with JPUD's Broadband Director in the District.

1. Informal conferences shall take place during normal business hours, 9:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.
2. The Customer may either appear in person in the District's office or remotely via video or audio connection.
3. JPUD's Broadband Director shall have the authority to reach agreements with the Customer to restore the Service.

Appeal Hearings

If a Customer is not satisfied with the determination of JPUD's Broadband Director during the informal conference, the Customer may schedule a hearing with the District Hearing Officer.

The Hearing Officer and any Deputy or Assistant Hearing Officers shall be management-level employees and shall be appointed by the Commission from employees whose other duties are not connected with the Broadband Department.

A written appeal by a Customer must be filed with the Hearing Officer within five (5) business days after the determination of the informal conference.

In response to a timely appeal, the Hearing Officer shall arrange an appeal hearing at a mutually convenient and accessible location or conduct the hearing by telephone. Such hearing must be scheduled during normal business hours – 9:00 a.m. to 4:30 p.m., Monday through Friday, and within seven (7) business days of the Customer's appeal.

If the Customer requests, a record will be made of the proceedings. The Hearing Officer may use a tape recorder or other means of preserving a record which he/she deems appropriate; the Customer may provide, at his/her own expense, a court reporter, or supplemental means of providing a record. The Customer shall have the right to counsel

The Customer shall open the hearing with a statement of the nature of the appeal and shall present whatever evidence the Customer deems relevant. The Customer shall have the reasonable right to examine the records of the District relating to his/her account. After the Customer has completed presenting his/her appeal, the appropriate District personnel shall provide the District's position. The Customer shall have the right to rebuttal.

The Hearing Officer shall provide the Customer with a written decision setting forth (a) the nature of the Customer's appeal; (b) the decision of the Hearing Officer; and (c) the reasons for the decision of the Hearing Officer. The written decision shall be promptly sent to the Customer by certified mail and may also be communicated by telephone.

In no event will an appeal of JPUD action taken pursuant to this Acceptable Use Policy prevent JPUD from taking any action that in its judgement protects the Service, the Customer and/or its vendors. Any claims must be filed pursuant to Washington state law.

Digital Millennium Copyright Act

JPUD is committed to complying with U.S. copyright and related laws, and requires all customers and users of the Service to comply with these laws. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") to report alleged infringements. It is JPUD 's policy in accordance with the DMCA and other applicable laws to reserve the right to restrict the use of or terminate Services provided to any customer who is either found to infringe third party copyright or other intellectual property rights, including alleged repeat infringers, or who JPUD believes in its sole discretion is or may likely be infringing these rights. JPUD may terminate the Service of any such customer at any time with or without notice. Copyright owners may report alleged infringements of their works that are committed using the Services by sending JPUD 's authorized agent a notification of claimed infringement that satisfies the requirements of the DMCA. Upon JPUD's receipt of a satisfactory notice of claimed infringement for these works, JPUD will take appropriate action. If the affected customer believes in good faith that the allegedly infringing works have been removed or blocked by mistake or misidentification, then that person may send a counter notification to JPUD. Upon JPUD's receipt of a counter notification that satisfies the requirements of DMCA, JPUD will provide a copy of the counter notification to the person who sent the original notification of claimed infringement and will follow the DMCA's procedures with respect to a received counter notification. In all events, you expressly agree that JPUD will not be a party to any disputes or lawsuits regarding alleged copyright infringement.

Contact:	DMCA Agent
Mail	JPUD No. 1 Attn: Copyright Claims 310 Four Corners Rd Port Townsend, WA 98368
E-mail	dmca@jeffpud.org

Jefferson County PUD Internet Services Subscriber Agreement

This Internet Service Subscriber Agreement (the “Agreement”) sets forth the terms and conditions under which Jefferson County Public Utility District No. 1 (“JPUD”) will provide Internet service to you (“Customer”) at your home or business. By subscribing to or using JPUD’s Internet services and/or any related products, equipment, or services, you agree to all of the terms and conditions set forth in this Agreement.

Agreement and Term

The Agreement, in addition to the terms and conditions provided below, also incorporates the following policies:

- JPUD Acceptable Use Policy
- JPUD Customer Service Policies
- JPUD Data Privacy Guidelines

The Acceptable Use Policy, Customer Service Policies and Data Privacy Guidelines apply to the Agreement, but in the event of a conflict, this Agreement shall govern. In the event of any conflict between this Agreement and the Acceptable Use Policy, the Acceptable Use Policy shall govern.

This Agreement shall have an initial term of one month and shall automatically renew each month for additional one-month periods, unless either Party provides notice of termination.

Service and Equipment

JPUD will provide you with interactive access to the Internet from a connection in your home or business (the “Service”). The type of service, monthly rates and installation costs are those you have requested in writing or selected via JPUD’s customer web portal. This Agreement contains all the terms and conditions for JPUD to provide the Service, and unless set forth in writing in this Agreement, no other representation, warranty, term or condition shall be binding on JPUD.

JPUD reserves the right to modify the terms of this Agreement from time to time by posting a notice of a new version of this document on JPUD’s web site. In addition, JPUD will provide an email notification of the new version to all customers at the email provided in the Customer Application. All revised copies of the Agreement are effective immediately upon sending of the email notification. Accordingly, JPUD customers should regularly visit our web site and review the notifications regarding the Agreement to ensure that their activities conform to the most recent version. Your continued use of the Service and/or any related products, equipment or services following modification to this Agreement shall be deemed as acceptance of such modification.

Installation and Access

You agree that JPUD, its employees, contractors, and agents may enter your home or business (the "Premises") where the Service is scheduled to be provided and/or JPUD's equipment is installed at reasonable times for the purposes of installing, adjusting, repairing, replacing, maintaining, upgrading, moving or removing any JPUD equipment as necessary. You represent that you either own the Premises or have the proper rights and permissions from the Premises' owner to grant JPUD access to perform the activities necessary to provide the Service. You also agree to allow access for the purpose of checking operation and performance of the Service and JPUD's equipment. You may always ask for proper identification anytime a JPUD employee, contractor, or agent requests entry onto your Premises. If proper identification is not provided, you may refuse access to the Premises.

JPUD shall provide all customer equipment necessary to provide the Service which shall remain the property of JPUD unless otherwise stated.

General Subscriber Obligations

You are accepting this Agreement on behalf of yourself and any person who accesses the Service through the connection in your home or business. You assume responsibility to ensure that all other users understand this Agreement and comply with its terms. Your acceptance of the Service from JPUD constitutes your agreement with, and acceptance of, the JPUD Acceptable Use Policy and the Data Privacy Guidelines on our website.

Subscription to the Service is restricted to individuals of at least 18 years of age and to businesses. By subscribing to the Service, you certify that you are at least 18 years of age or are a business operating in the State of Washington.

By subscribing to the Service, you agree that we may provide to you by use of electronic communications required notices, agreements, and other information concerning JPUD, including changes to this Agreement, the Authorized Use Policy, and the Privacy Statement, and marketing materials related to the Service.

You agree that your application for the Service provides JPUD with accurate, complete and current information, including your legal name, address, telephone number(s) and payment data (i.e., credit, debit or credit card numbers and expiration dates) upon subscribing to the Service. You agree to promptly inform JPUD if there is any change in the information you provided to JPUD at the time of enrollment. Failure to provide accurate information constitutes a breach of this Agreement and may result in termination of the Service.

The Service is provided to you at the service address listed on your application for the Service. You may not transfer your rights and obligations under this Agreement to any other person or service address without written approval of JPUD.

Service & Installation Charges

You agree to pay any and all fees and recurring charges associated with your chosen level of the Service. You further acknowledge that you have been informed of the rates for these services in effect at the time of installation for the type of service you select. You agree to pay any local, state and/or federal taxes, surcharges, and fees imposed or levied on or with respect to your subscription to or use of the Service. JPUD reserves the right to change the amount of charges, surcharges, and fees from time to time at its discretion and upon 30 days' notice to you by electronic mail.

Pre-payment of charges for installation and the first billing period is due when account is activated. Bills are sent on Customer's anniversary bill day for the period to come. The payment is due within 21 days.

If we have not received payment during the 21-day period, the payment is considered late. A late notice will be issued if we have not received payment within 30 days of the due date. If the account is not paid within 56 days of the due date, the account may be terminated. A \$10 reactivation fee will be charged to reactivate the account. If you discontinue service or your service is terminated, you agree to pay a reconnect charge before reconnection. You further agree to be charged and to pay any outstanding balance in the event of cancellation, deactivation, or termination of your account. In the case of a check returned for non-sufficient funds, JPUD will charge a returned check fee of \$20.00. You will be responsible for all expenses (including reasonable attorneys' fees) incurred by JPUD in collecting any unpaid amounts due in accordance with this Agreement. Note, please refer to JPUD Customer Service Policies regarding JPUD's policies for Customer Rights.

Service and Performance

JPUD will make reasonable efforts to assure that the Service will be available to you 24 hours per day 7 days per week. It is possible, however, that there will be interruptions of service or reduction in performance. JPUD shall not be liable for interruptions caused by failure of equipment or services, failure of communications, power outages, or any other interruptions to the Service.

JPUD shall not be liable for performance deficiencies caused or created by any equipment you use in connection with the Service. JPUD is not responsible to provide for the proper installation, operation and maintenance of any equipment not provided by JPUD used in connection with the Service. Further, you shall ensure that such equipment is technically and operationally compatible with the Service and in compliance with applicable Federal Communications Commission rules and regulations.

Customer Use of the Service

You agree to comply with the JPUD Acceptable Use Policy, and you acknowledge receipt of a copy of that policy.

You are personally responsible for all use of the Service under your account. You agree not to resell, redistribute, assign, transfer, or sublicense your access to the Service in any manner. You agree not to use the Service in any manner that is contradictory to the JPUD Acceptable Use Policy. You agree that any violation of this Agreement shall authorize JPUD to immediately disconnect the Service to you and terminate this Agreement without notice.

You agree not to alter, modify or tamper with the equipment provided by JPUD, or the configuration of such equipment as set by JPUD.

You agree not to use the Service for commercial purposes that are competitive with JPUD's business (e.g., use the Services to sell Internet access services, point-to-point data transport services, VoIP services, etc., to third parties within JPUDs service area).

LIMITATION OF LIABILITY: NO WARRANTIES

PLEASE READ THIS SECTION CAREFULLY. IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY, MADE ON BEHALF OF JPUD AND ALL ITS AFFILIATES.

JPUD MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS OF ANY PROVIDED SERVICE OR EQUIPMENT FOR ANY PARTICULAR PURPOSE. JPUD IS NOT RESPONSIBLE FOR ANY INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES SUFFERED BY CUSTOMER FROM, INCLUDING BUT NOT LIMITED TO, LOSS OF DATA, DELAYS, MIS- OR NON-DELIVERIES, OR SERVICE INTERRUPTIONS FOR ANY REASON. JPUD SHALL HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS OR PROCEEDINGS RESULTING FROM OTHERS ACCESSING THE SERVICE OR ANY EQUIPMENT RELATED TO THE SERVICE, VIRUSES, AND ANY USE OF THE SERVICE OR EQUIPMENT THAT IS UNLAWFUL, THAT INFRINGES UPON ANY PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY OR INTERLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

IN THE EVENT THAT JPUD IS HELD LIABLE FOR DAMAGES ARISING OUT OF OR RELATING TO THE SERVICES, THIS AGREEMENT OR ITS OBLIGATIONS UNDER THIS AGREEMENT FROM A COURT WITH JURISDICTION, JPUD'S AGGREGATE LIABILITY SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY THE CUSTOMER TO JPUD FOR THE SERVICE FOR THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH DAMAGES.

JPUD IS EXPRESSLY NOT RESPONSIBLE OR LIABLE FOR THE CONTENT OF ANY TRANSMISSION ACROSS ITS NETWORK.

Indemnification

You agree to indemnify, defend and hold harmless JPUD, affiliated companies, partners, licensors, commissioners, employees and agents from and against all losses, expenses, damages, liabilities, and costs, including reasonable attorneys' fees, arising out of any violation of this Agreement, the selection or use of your personal information, including your identity, or any activity related to your account by you or any other person accessing the Service using your account.

You agree to make payment of all proper charges for labor and services required under this Agreement and you shall indemnify JPUD and hold it harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished pursuant to this Agreement; your failure of performance under this Agreement; or your negligence in the performance of your duties under this Agreement, or any act or omission on your part or your agents, employees, or servants. JPUD is not obligated to indemnify you, and you shall defend and indemnify JPUD hereunder, for any claims by any third party arising from the Service provided to you.

Termination

This Agreement, the license provided herein, and your right to use the Service may be terminated by JPUD at any time for any reason, with 30 days written notice by JPUD to you. In addition, you may terminate this Agreement at any time by notifying JPUD Customer Service. If the customer cancels service, all JPUD equipment must be returned to JPUD's office in good working order within 60 days, or the customer will be charged \$150. Note, please refer to JPUD Customer Service Policies regarding JPUD's policies for Customer Rights.

Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules and jurisdictions for any claim or cause of action shall lie in Jefferson County, Washington. This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each Party. No failure by either Party to enforce any right(s) hereunder shall constitute a waiver of such right(s).