Washington State
Public Works Board
1011 Plum Street SE
Post Office Box 42525
Olympia, Washington 98504-2525

June 5, 2013

Sarah VanAusdle
City of Sequim
152 W. Cedar Street
Sequim, WA 98382

RE: Loan Contract Number: EW13-961-094

Dear Ms. Sarah VanAusdle:

Enclosed are two originals of your Construction Loan Contract. This Contract details the terms and conditions that will govern the agreement between us. Please review the terms and conditions of the Contract carefully. We recommend consulting with your legal advisor before accepting this loan offer.

When you have obtained the appropriate original signatures (do not use signature stamps), return both original contracts and all the attachments to the Public Works Board office within 60 calendar days of the date of this letter. Failure to return the contracts within this timeline may result in the loan offer being withdrawn.

After the Contracts have been signed by the Board, one fully executed original along with instructions for drawing funds will be mailed to you. We encourage you to store these and all pertinent documents associated with this project and loan offer in a file that is readily accessible to auditors for their periodic review.

We look forward to working with you over the course of your successful public works project. If you have any questions about this Contract, please contact me at the below listed address.

Sincerely,

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

Enclosures:
ATTACHMENT I: ATTORNEY'S CERTIFICATION
Form EZ1

Washington State
Public Works Board
1011 Plum Street SE
Post Office Box 42525
Olympia, Washington 98504-2525

Construction Loan Agreement between:

City of Sequim

and

Public Works Board

For:

Project Name: **Aerobic Digester Energy Efficiency Improvements**
Loan Number: **EW13-961-094**
Loan Type: **Energy/Water Loan**

Execution/Start Date: Contract Execution Date
(to be filled by the Public Works Board)

DECLARATIONS

CLIENT INFORMATION

Legal Name:	**City of Sequim**
Loan Number:	**EW13-961-094**
Award Year:	**2013**
State Wide Vendor Number:	**SWV0002070**

PROJECT INFORMATION

Project Title:	**Aerobic Digester Energy Efficiency Improvements**
Project City:	**Sequim**
Project State:	Washington
Project Zip Code:	**98382**

LOAN INFORMATION

Loan Amount:	**$520,000.00**
Total Estimated Cost:	**$595,000.00**
Total Estimated Funding:	**$595,000.00**
Loan Term:	**14**
Interest Rate:	**1.00%**
Payment Month:	June 1st
Loan Reimbursement Start Date:	**7/1/2012**
Time of Performance	36 months from Execution Date of this Contract to Project Completion.

SPECIAL CONDITIONS GOVERNING THIS LOAN AGREEMENT

None.

LOAN SECURITY CONDITION GOVERNING THIS LOAN AGREEMENT

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

DECLARATION (continued)

Loan Number: **EW13-961-094**
Project Title: **Aerobic Digester Energy Efficiency Improvements**

Scope of Work:
1. Prepare Investment Grade Energy Audit.
2. Prepare plans and specifications for public bidding.
3. Publicly bid the project and award to lowest responsible bidder.
4. Construct improvements will include replacing the existing four 25-HP submersible aerators in the aerobic digester basins at the City of Sequim Water Reclamation Facility (WRF) with fine buble diffusers and a dissolved oxygen (DO) sensor controlled variable frequency drive (VFD) controlled turboblowers.

CONTRACT FACE SHEET

Contract Number: EW13-961-094

Washington State Department of Commerce

PUBLIC WORKS BOARD
ENERGY AND WATER EFFICIENCY PROGRAM
CONSTRUCTION LOAN CONTRACT

1. Contractor City of Sequim 152 W. Cedar Street Sequim, WA 98382		**2. Contractor Doing Business As (optional)** N/A	
3. Contractor Representative N/A		**4. Public Works Board Representative**	
5. Contract Amount $520,000.00	**6. Funding Source** **Federal:** ☐ **State:** ☑ **Other:** ☐ **N/A:** ☐	**7. Contract Start Date** Contract Execution Date	**8. Contract End Date** June 1,2027
9. Federal Funds (as applicable) N/A	**Federal Agency** N/A	**CFDA Number** N/A	
10. Tax ID #	**11. SWV #** SWV0002070	**12. UBI #**	**13. DUNS #**

14. Contract Purpose

The Board, defined as the Washington State Public Works Board, and the Contractor have entered into this Contract to undertake an energy and/or water efficiency project that furthers the goals and objectives of the Washington State Public Works Program.

The Board and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contract Terms and Conditions including Declarations Page; and Attachment I: Attorney's Certification.

FOR THE CONTRACTOR

Signature

Steven C. Burkett
Print Name

city manager
Title

6-13-13
Date

FOR PUBLIC WORKS BOARD

John LaRocque, Executive Director

Date

APPROVED AS TO FORM ONLY

This 3rd Day of December, 2012
Rob McKenna
Attorney General

Signature on file
Kathryn Wyatt
Assistant Attorney General

Approved as to form by:

6/13/2013
Craig A. Ritchie, City Attorney

Approved as to form by:

Craig A. Ritchie, City Attorney

TABLE OF CONTENTS

PUBLIC WORKS BOARD CONSTRUCTION LOAN PROGRAM 11

SPECIAL TERMS AND CONDITIONS 11

1.1 Definitions 11
1.2 Authority 11
1.3 Purpose 11
1.4 Order of Precedence 12
1.5 5- year deferral for start-up systems(deleted section) 12
1.6 Competitive Bidding Requirements 12
1.7 Loan Repayments 12
1.8 Eligible Project Costs 12
1.9 Historical and Cultural Resources 12
1.10 Performance Incentives 12
1.11 Project Completion Amendment and Certified Project Completion Report 14
1.12 Project Signs 14
1.13 Rate and Term of Loan 14
1.14 Recapture 14
1.15 Reimbursement Procedures and Payment 14
1.16 Repayment 16
1.17 Reports 16
1.18 Termination for Cause 16
1.19 Termination for Convenience 16
1.20 Time of Performance 16
1.21 Special Conditions 17
1.22 Loan Security 17

Part 2. GENERAL TERMS AND CONDITIONS 18

2.1 DEFINITIONS 18
2.2 ADMINISTRATIVE COST ALLOCATION 18
2.3 ALLOWABLE COSTS 18
2.4 ALL WRITINGS CONTAINED HEREIN 18
2.5 AMENDMENTS 18
2.6 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35 18
2.7 APPROVAL 18
2.8 ASSIGNMENT 19
2.9 ATTORNEYS' FEES 19
2.10 AUDIT 19
2.11 CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS 20
2.12 CODE REQUIREMENTS 21
2.13 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION 21
2.14 CONFORMANCE 21
2.15 COPYRIGHT PROVISIONS 21
2.16 DISALLOWED COSTS 22
2.17 DISPUTES 22
2.18 DUPLICATE PAYMENT 22
2.19 ETHICS/CONFLICTS OF INTEREST 22

2.20 GOVERNING LAW AND VENUE 22
2.21 INDEMNIFICATION 23
2.22 INDEPENDENT CAPACITY OF THE CONTRACTOR 23
2.23 INDUSTRIAL INSURANCE COVERAGE 23
2.24 LAWS 23
2.25 LICENSING, ACCREDITATION AND REGISTRATION 25
2.26 LIMITATION OF AUTHORITY 25
2.27 LOCAL PUBLIC TRANSPORTATION COORDINATION 26
2.28 NONCOMPLIANCE WITH NONDISCRIMINATION LAWS 26
2.29 NOTIFICATION OF TENANT RIGHTS/RESPONSIBILITIES 26
2.30 POLITICAL ACTIVITIES 26
2.31 PREVAILING WAGE LAWS 26
2.32 PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS 26
2.33 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION 27
2.34 PUBLICITY 27
2.35 RECAPTURE 27
2.36 RECORDS MAINTENANCE 28
2.37 REGISTRATION WITH DEPARTMENT OF REVENUE 28
2.38 RIGHT OF INSPECTION 28
2.39 SAVINGS 28
2.40 SEVERABILITY 28
2.41 SUBCONTRACTING 28
2.42 SURVIVAL 29
2.43 TAXES 29
2.44 TERMINATION FOR CAUSE / SUSPENSION 29
2.45 TERMINATION FOR CONVENIENCE 29
2.46 TERMINATION PROCEDURES 29
2.47 WAIVER 30
2.48 WORK HOURS AND SAFETY STANDARDS 30

ATTACHMENT I: ATTORNEY'S CERTIFICATION 32

PUBLIC WORKS BOARD
CONSTRUCTION LOAN PROGRAM

SPECIAL TERMS AND CONDITIONS

1.1 Definitions

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

A. "Contract" shall mean this Construction Loan Contract.

B. "Contractor" shall mean the local government identified on the Contract Face Sheet performing service(s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.

C. "The Board" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the Contract.

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

E. **AWARD YEAR** shall mean the calendar year in which the funds were awarded to the Board for use in making loans under this program.

F. **PAYMENT MONTH** shall mean the day and month of the year in which payments are due.

G. Unless otherwise amended, the CONTRACT END DATE, as displayed on the Face Sheet, shall occur in the final year of the **LOAN TERM**, as counted from the **AWARD YEAR**. The actual date of contract execution shall have no effect on the CONTRACT END DATE.

H. The **DEFERRAL PERIOD** shall be from the date of contract execution until one year after the date of project completion. The total Deferral Period shall not exceed 4 years in length.

1.2 Authority

Acting under the authority of Chapter 43.155 RCW, the Board has awarded the Contractor an Energy and Water Efficiency Construction Loan for an approved public works project.

1.3 Purpose

The Board and the Contractor have entered into this Contract to undertake an energy and/or water efficiency project that furthers the goals and objectives of the Washington State Public Works Program. The project will be undertaken by the Contractor and will include the activities described in the **SCOPE OF WORK** shown on the Declarations page. The project must be undertaken in accordance with the loan terms and conditions, and all applicable federal, state and local laws and ordinances, which by this reference are incorporated into this Contract as though set forth fully herein.

1.4 Order of Precedence

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

A. Applicable federal and state of Washington statutes and regulations.

B. Special Terms and Conditions including attachments.

C. General Terms and Conditions.

1.5 5- year deferral for start-up systems (deleted section)

This section has been deleted but title retained for document continuity.

1.6 Competitive Bidding Requirements

The Contractor shall comply with the provisions of RCW 43.155.060 regarding competitive bidding requirements for projects assisted in whole or in part with money from the Public Works Program.

1.7 Loan Repayments

Loan repayments shall be made on the loan in accordance with Section 1.16 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 amount 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 1.11.

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.

1.8 Eligible Project Costs

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

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

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

1.9 Historical and Cultural Resources

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

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 05-05, coordinate with the Washington State Department of Archaeology and Historic Preservation (DAHP), including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed project funded by this Contract. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing 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 artifacts are discovered during construction, the Contractor shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

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

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

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

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

1.10 Performance Incentives

The Contractor shall complete the project no later than thirty-six (36) months after the date of contract execution.

Should the Contractor complete the project within twenty-four (24) months of the date of contract execution, the Contractor may choose one of the two following incentives upon project completion:

Option A: The repayment period will be increased by twelve (12) months, not to exceed the life of the asset, OR:

Option B: The interest rate will be decreased by one-quarter of one percent (0.25%).

Should the Contractor complete the project within twelve (12) months of the date of contract execution, the Contractor may choose one of the following two incentives upon project completion:

Option C: The repayment period will be increased by thirty-six (36) months, not to exceed the life of the asset, OR;

Option D: The interest rate will be decreased by up to one-half of one percent (0.50%).

Once an option is selected, the Contract shall be modified to note the appropriate change and no further adjustment to the Contract for Performance Incentives shall be authorized. Irrespective of the performance incentive chosen, at no point in time shall the minimum loan interest rate be less than 0.25%.

The calculation of interest rate and term adjustments will apply to the remaining payments beginning from the date the Project Completion report is certified.

1.11 Project Completion Amendment and Certified Project Completion Report

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

A. A certified statement that the project, as described in the declared **SCOPE OF WORK**, is complete and, if applicable, meets required standards.

B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in the **SCOPE OF WORK**.

C. Certification that all costs associated with the project have been incurred and have been accounted for. Costs are incurred when goods and services are received and/or contract work is performed.

D. A final voucher for the remaining eligible funds.

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

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

1.12 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 Washington State Public Works Trust Fund as a participant in the project.

1.13 Rate and Term of Loan

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

1.14 Recapture

The right of recapture shall exist for a period not to exceed three (3) 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.

These terms supersede the terms in Section 2.31. Recapture.

1.15 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. Therefore, subject to the availability of funds, warrants shall be issued to the Contractor for reimbursement of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with the declared **SCOPE OF WORK**.

The Board shall reimburse the Contractor for eligible project expenditures up to the maximum loan amount under this contract, as identified in Section 1.8. When requesting reimbursement for costs incurred, the Contractor shall submit a signed and completed Invoice Voucher (Form A19),

referencing the **SCOPE OF WORK** project activity performed, and any appropriate documentation such as bills, invoices, and receipts. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

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

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

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

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

Contracts Administration Unit
Department of Commerce
PO Box 42525
Olympia, WA 98504-2525

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

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

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

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

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

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

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

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

1.16 Repayment

Loan repayment installments are due on the day and month identified under the term: **PAYMENT MONTH** on the Declarations Page. Payments are due each year during the term of the loan beginning at the end of the Deferral Period. Interest only will be charged for this payment if a warrant is issued prior to this date. All subsequent payments shall consist of principal and accrued interest due on the specified **PAYMENT MONTH** date of each year during the remaining term of the loan.

Repayment of the loan under this Contract shall include the declared **INTEREST RATE** per annum based on a three hundred and sixty (360) day year of twelve (12) thirty (30) day months. Interest will begin to accrue from the date each warrant is issued to the Contractor. The final payment shall be on or before the "CONTRACT END DATE" shown on the Contract Face Sheet, of an amount sufficient to bring the loan balance to zero.

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

1.17 Reports

The Contractor shall furnish the Board with:

A. Project Status Reports with each Invoice Voucher,

B. Project Reports at the end of each fiscal year,

C. Certified Project Completion Report at project completion (as described in Section 1.12), and

D. Other reports as the Board may require.

1.18 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 2.40 Termination for Cause/Suspension.

1.19 Termination for Convenience

The Board may terminate this contract in the event that state funds are no longer available to the Board, or are not appropriated for the purpose of meeting the Board's obligations under this contract. Termination will be effective when the Board sends written notice of termination to the Contractor. Nothing in this section shall affect the Contractor's obligation to repay the unpaid balance of the loan.

These terms supersede the terms in Section 2.41 Termination for Convenience.

1.20 Time of Performance

No later than thirty six (36) months after the date of contract execution the Contractor must reach project completion.

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

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

1.21 Special Conditions

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

1.22 Loan Security

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

Part 2. GENERAL TERMS AND CONDITIONS

2.1 DEFINITIONS

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

A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.

B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.

C. "BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Contract

D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

E. "State" shall mean the state of Washington.

F. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2.2 ADMINISTRATIVE COST ALLOCATION

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

2.3 ALLOWABLE COSTS

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

2.4 ALL WRITINGS CONTAINED HEREIN

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

2.5 AMENDMENTS

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

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

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

2.7 APPROVAL

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

2.8 ASSIGNMENT

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

2.9 ATTORNEYS' FEES

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

2.10 AUDIT

A. General Requirements

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

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

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

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

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

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

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

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

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

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

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

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

C. Documentation Requirements

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

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

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

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

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

A. Contractor, defined as the primary participant and it principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
   A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
   B. Have not within a three-year period preceding this 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;
   C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section; and
   D. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.

B. Where the Contractor is unable to certify to any of the statements in this contract, the Contractor shall attach an explanation to this contract.

C. The Contractor agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the BOARD.

D. The Contractor further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

a) The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

b) Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.

E. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the BOARD for assistance in obtaining a copy of these regulations.

2.12 CODE REQUIREMENTS

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

2.13 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

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

2. All material provided to the Contractor by the BOARD that is designated as "confidential" by the BOARD;

3. All material produced by the Contractor that is designated as "confidential" by the BOARD; and

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

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

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

2.14 CONFORMANCE

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

2.15 COPYRIGHT PROVISIONS

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

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

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

and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the BOARD.

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

2.16 DISALLOWED COSTS

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

2.17 DISPUTES

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

The request for a dispute hearing must:

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

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

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

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

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

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

2.18 DUPLICATE PAYMENT

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

2.19 ETHICS/CONFLICTS OF INTEREST

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

2.20 GOVERNING LAW AND VENUE

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

2.21 INDEMNIFICATION

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

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

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

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

2.22 INDEPENDENT CAPACITY OF THE CONTRACTOR

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

2.23 INDUSTRIAL INSURANCE COVERAGE

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

2.24 LAWS

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

United States Laws, Regulations and Circulars (Federal)

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

B. Environmental Protection and Review
Coastal Barrier Resources Act of 1982, 16 U.S.C. 3501 et seq.

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

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

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

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

D. Labor and Safety Standards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Nondiscrimination in Federally Assisted Programs.

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

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

F. Office of Management and Budget Circulars
Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

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

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

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

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

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

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

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

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

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

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

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

Washington State Laws and Regulations

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

2.25 LICENSING, ACCREDITATION AND REGISTRATION

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

2.26 LIMITATION OF AUTHORITY

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

2.27 LOCAL PUBLIC TRANSPORTATION COORDINATION

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

2.28 NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

2.29 NOTIFICATION OF TENANT RIGHTS/RESPONSIBILITIES

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

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

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

2.30 POLITICAL ACTIVITIES

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

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

2.31 PREVAILING WAGE LAWS

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

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

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

2.32 PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

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

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

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

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

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

2.33 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

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

2.34 PUBLICITY

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

2.35 RECAPTURE

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

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

2.36 RECORDS MAINTENANCE

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

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

2.37 REGISTRATION WITH DEPARTMENT OF REVENUE

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

2.38 RIGHT OF INSPECTION

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

2.39 SAVINGS

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

2.40 SEVERABILITY

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

2.41 SUBCONTRACTING

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

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

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

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

2.42 SURVIVAL

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

2.43 TAXES

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

2.44 TERMINATION FOR CAUSE / SUSPENSION

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

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

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

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

2.45 TERMINATION FOR CONVENIENCE

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

2.46 TERMINATION PROCEDURES

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

A. Stop work under the Contract on the date, and to the extent specified, in the notice;

B. Place no further orders or subcontracts for materials, services, or facilities related to the Contract;

C. Assign to the BOARD all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the BOARD has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of the BOARD; and

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

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

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

2.47 WAIVER

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

2.48 WORK HOURS AND SAFETY STANDARDS

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

ATTACHMENT I: ATTORNEY'S CERTIFICATION

PUBLIC WORKS BOARD
ENERGY AND WATER EFFICIENCY PROGRAM
CONSTRUCTION LOAN CONTRACT
City of Sequim
EW13-961-094

I, _____, hereby certify:

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

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

Based on the foregoing, it is my opinion that:

1. The Contractor is a public body, properly constituted and operating under the laws of the State of Washington, empowered to receive and expend federal, state and local funds, to contract with the State of Washington, and to receive and expend the funds involved to accomplish the objectives set forth in their application.

2. The Contractor is empowered to accept the Public Works Trust Fund 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 Public Works Trust Fund loan extended by the Public Works Board with respect to such project. The Contractor is not a party to litigation which will materially affect its ability to repay such loan on the terms contained in the Contract.

4. Assumption of this obligation would not exceed statutory and administrative rule debt limitations applicable to the Contractor.

Craig A. Ritchie _____ 6/13/13 _____

Signature of Attorney Date

CRAIG A. RITCHIE

Name

609 W. WASHINGTON #17 SEQUIM WA 98382

Address

Received:

MAY 12 2014

City of Sequim
Planning / Public Works

STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000

May 8, 2014

Sarah VanAusdle
City Of Sequim
152 W. Cedar Street

Sequim, WA 98382

RE: Public Works Trust Fund Loan Agreement Number EW13-961-094

Dear " Sarah VanAusdle:

Enclosed is a fully executed original of an amendment to your Public Works Trust Fund Loan Agreement EW13-961-094. Please keep this original with the other local records related to your approved Public Works Trust Fund Loan Agreement.

If you have any questions or need additional information, please do not hesitate to call me at (360) 725-3088 or email me at Connie.Rivera@commerce.wa.gov.

Sincerely,

Connie Rivera
Contracts Administration Unit
Project Manager

Enclosure

April 23, 2014

Sarah VanAusdle
City Of Sequim
152 W. Cedar Street
Sequim, WA 98382

RE: Amendment to Loan Agreement/Contract EW13-961-094

Dear Ms. VanAusdle:

Attached is an amendment that the Public Works Board requests you to sign. The purpose of this amendment is to rectify a processing error that resulted in an incorrect version of the 'Part 2: General Conditions' section to be printed out; causing many citations to be inaccurately referenced within the contract.

Please have both of the originals signed and dated by the appropriate authorities, and return them to the Contracts Administration Unit within 60 days of the date of this letter.

After the amendments are signed by the Board or its designee, an original executed amendment will be returned to you for your files.

If you have any questions, or need additional information, please contact me at the below listed address

Many thanks for your assistance.

Sincerely,

Jeff Hinckle
CAU Staff
(360) 725-3060
Jeff.hinckle@commerce.wa.gov

Enclosures

Received:
MAY 12 2014
City of Sequim
Planning / Public Works

AMENDMENT FACE SHEET

Contract Number: EW13-961-094
Amendment Number: A
Washington State Department of Commerce
Energy and Water Efficiency Program

1. Contractor City of Sequim 152 W. Cedar Street Sequim, WA 98382		**2. Contractor Doing Business As (optional)** N/A
3. Contractor Representative (only if updated) N/A		**4. Public Works Board Representative (only if updated)** N/A
5. Original Contract Amount $520,000.00	**6. Amendment Amount** N/A	**7. New Contract Amount** N/A
8. Amendment Funding Source **Federal:** ☐ **State:** ☑ **Other:** ☐ **N/A:** ☐	**9. Amendment Start Date** Amendment Execution Date	**10. Contract End Date** June 1, 2027
11. Federal Funds (as applicable): N/A	**Federal Agency:** N/A	**CFDA Number:** N/A

12. Amendment Purpose:

The purpose of this amendment is to rectify a processing error that caused the incorrect version of 'Part 2: General Conditions' to be included in the contract.

The Board, defined as the Washington State Public Works Board, and Borrower/Contractor acknowledge and accept the terms of this Agreement/Contract As Amended and attachments and have executed this Contract on the date below to start as of this date of execution. The rights and obligations of both parties to this Agreement/Contract As Amended are governed by this Agreement/Contract Amendment and the following other documents incorporated by reference: Declarations Page, Amendment Terms and Conditions including all attachments. A copy of this Agreement/Contract Amendment shall be attached to and made a part of the original Agreement/Contract between the Board and the Borrower/Contractor. Any reference in the original Contract to "Agreement" or "Contract" shall mean the "Agreement As Amended" or "Contract As Amended," respectively.

FOR THE BORROWER/CONTRACTOR

Signature

Steven Burkett
Print Name

city manager
Title

4-25-14
Date

Approved as to form by:
4/25/2014
Craig A. Ritchie, City Attorney

FOR PUBLIC WORKS BOARD

Stan Finkelstein, Public Works Board Chair

May 6, 2014
Date

APPROVED AS TO FORM ONLY

This (17)th Day of March, 2014
Bob Ferguson
Attorney General

Signature on File
Kathryn Wyatt
Assistant Attorney General

AMENDMENT DECLARATIONS

CLIENT INFORMATION

Legal Name	City of Sequim
Loan Number	EW13-961-094
Amendment Number	A
Award Year	2013
State Wide Vendor Number	SWV0002070-00

PROJECT INFORMATION

Project Title	Aerobic Digester Energy Efficiency Improvements
Project City	Sequim
Project State	Washington
Project Zip	98382

LOAN TERMS and CONDITIONS

Loan Amount	$520,000.00
Loan Term	14
Interest Rate	1.00
Loan Reimbursement Start Date	7/1/2012
Payment Month	June 1
Time of Performance	36 months from Contract Execution to Project Completion date.

AMENDMENT DECLARATIONS (continued)

SCOPE OF WORK

Loan Number	EW13-961-094
Project Title	Aerobic Digester Energy Efficiency Improvements
Amendment Number	A
Scope of Work	1. Prepare Investment Grade Energy Audit. 2. Prepare plans and specifications for public bidding. 3. Publicly bid the project and award to lowest responsible bidder. 4. Construct improvements will include replacing the existing four 25-HP submersible aerators in the aerobic digester basins at the City of Sequim Water Reclamation Facility (WRF) with fine buble diffusers and a dissolved oxygen (DO) sensor controlled variable frequency drive (VFD) controlled turboblowers.

AMENDMENT TERMS AND CONDITIONS

Contract Number: EW13-961-094
Amendment Number: A
Washington State Department of Commerce
Energy and Water Efficiency Program

Contractor/Borrower: City of Sequim
Contract Number: EW13-961-094
Amendment Number: A

The Public Works Board (or its successors), a department of the State of Washington, (hereafter referred to as the "Board") and the Contractor, listed on the Face Sheet, agree to amend the declared loan by modifying the following sections as set for below.

Part 2: GENERAL TERMS AND CONDITIONS

2.1. DEFINITIONS

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

A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.

B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.

C. "BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Contract

D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

E. "State" shall mean the state of Washington.

F. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2.2. ALLOWABLE COSTS

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

2.3. ALL WRITINGS CONTAINED HEREIN

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

2.4 AMENDMENTS

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

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

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

2.6 APPROVAL

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

2.7 ASSIGNMENT

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

2.8 ATTORNEYS' FEES

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

2.9 AUDIT

A. General Requirements

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

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

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

The Board reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

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

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

B. State Funds Requirements

Contractors expending $100,000 or more in total state funds in a fiscal year must have a financial audit as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS). The Schedule of State Financial Assistance must be included. The schedule includes:

Grantor agency name
State program name
BARS account number
Grantor
Agency contract number
Contract award amount including amendments (total grant award)
Beginning balance
Current year revenues

Current year expenditures
Ending balance
Program total

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

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

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

C. Documentation Requirements

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

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

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

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter and Management Decision Letter, where applicable.

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

2.10 CODE REQUIREMENTS

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

2.11 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

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

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

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the Board or as

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

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

2.12 CONFORMANCE

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

2.13 COPYRIGHT PROVISIONS

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

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

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

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

2.14 DISALLOWED COSTS

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

2.15 DISPUTES

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

The request for a dispute hearing must:

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

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

2.16 DUPLICATE PAYMENT

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

2.17 ETHICS/CONFLICT OF INTEREST

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

2.18 GOVERNING LAW AND VENUE

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

2.19 INDEMNIFICATION

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

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

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

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

2.20 INDEPENDENT CAPACITY OF THE CONTRACTOR

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

2.21 INDUSTRIAL INSURANCE COVERAGE

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

2.22 LAWS

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

Washington State Laws and Regulations

A. Affirmative action, RCW 41.06.020 (11).

B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.

C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.

D. Discrimination-human rights commission, Chapter 49.60 RCW.

E. Ethics in public service, Chapter 42.52 RCW.

F. Housing assistance program, Chapter 43.185 RCW

G. Interlocal cooperation act, Chapter 39.34 RCW.

H. Noise control, Chapter 70.107 RCW.

I. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.

J. Open public meetings act, Chapter 42.30 RCW.

K. Prevailing wages on public works, Chapter 39.12 RCW.

L. Public records act, Chapter 42.56 RCW.

M. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.

N. Shoreline management act of 1971, Chapter 90.58 RCW.

O. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

P. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.

Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.

R. State environmental policy, Chapter 43.21C RCW.

S. State Executive Order 05-05 Archeological and Cultural Resources.

2.23 LICENSING, ACCREDITATION AND REGISTRATION

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

2.24 LIMITATION OF AUTHORITY

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

2.25 LOCAL PUBLIC TRANSPORTATION COORDINATION

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

2.26 NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

2.27 POLITICAL ACTIVITIES

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

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

2.28 PREVAILING WAGE LAW

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

2.29 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

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

2.30 PUBLICITY

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

2.31 RECAPTURE

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

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

2.32 RECORDS MAINTENANCE

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

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

2.33 REGISTRATION WITH DEPARTMENT OF REVENUE

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

2.34 RIGHT OF INSPECTION

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

2.35 SAVINGS

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

2.36 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.

2.37 SUBCONTRACTING

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

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

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the Board if the Subcontractor fails to comply with any applicable term or

condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the Board for any breach in the performance of the Contractor's duties.

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

2.38 SURVIVAL

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

2.39 TAXES

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

2.40 TERMINATION FOR CAUSE / SUSPENSION

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

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

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

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

2.41 TERMINATION FOR CONVENIENCE

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

2.42 TERMINATION PROCEDURES

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

A. Stop work under the Contract on the date, and to the extent specified, in the notice;

B. Place no further orders or subcontracts for materials, services, or facilities related to the Contract;

C. Assign to the State all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Board has the right, at its discretion, to settle or pay

any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of the Board; and

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

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

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

2.43 WAIVER

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

Washington State
Public Works Board
1011 Plum Street SE
Post Office Box 42525
Olympia, Washington 98504-2525

July 19, 2016

Sarah VanAusdle
City Of Sequim
152 W. Cedar Street
Sequim, WA 98382

RE: **Project Completion Amendment and Final Voucher for**
PWB Energy & Water Efficiency (EWE) Program Contract EW13-961-094
Project Name: Aerobic Digester Energy Efficiency Improvements

Dear Ms. VanAusdle:

Enclosed are two originals of the Project Completion Amendment including Attachment I: Certified Project Completion Report for PWB EWE Loan EW13-961-094.

Please have both originals of the amendment signed and dated by the appropriate authorities, and return them to my office within 60 days of the date of this letter.

After the amendments are signed by the Board or its designee, an original executed amendment will be returned to you for your files.

If you have any questions or need additional information, please do not hesitate to call me at (360) 725-3162 or email me at Isaac.Huang@commerce.wa.gov.

Sincerely,

Isaac Huang
Public Works Board Staff

Enclosures

AMENDMENT DECLARATIONS

Amendment Title	Construction Completion Amendment
Amendment Number	Amendment X

CLIENT INFORMATION

Legal Name	City of Sequim
Loan Number	EW13-961-094

PROJECT INFORMATION

Title	Aerobic Digester Energy Efficiency Improvements
Project City	Sequim
Project State	Washington
Project Zip	98382

LOAN TERMS and CONDITIONS

Loan Amount	$520,000.00
De-obligation	0
Final Loan Amount	$520,000.00
Loan Term	14
Current Interest Rate	1.00
Final Interest Rate	1.00
Loan Reimbursement Start Date	7/1/2012
Payment Month	June 1

AMENDMENT DECLARATIONS (continued)

SCOPE OF WORK

Amendment Title	Construction Completion Amendment
Loan Number	EW13-961-094
Amendment #	Amendment X
Title	Aerobic Digester Energy Efficiency Improvements
Scope of Work	1. Prepare Investment Grade Energy Audit. 2. Prepare plans and specifications for public bidding. 3. Publicly bid the project and award to lowest responsible bidder. 4. Construct improvements will include replacing the existing four 25-HP submersible aerators in the aerobic digester basins at the City of Sequim Water Reclamation Facility (WRF) with fine buble diffusers and a dissolved oxygen (DO) sensor controlled variable frequency drive (VFD) controlled turboblowers.

AMENDMENT FACE SHEET

Loan Number: EW13-961-094
PROJECT COMPLETION AMENDMENT

Washington State Department of Commerce

PUBLIC WORKS BOARD
ENERGY AND WATER EFFICIENCY PROGRAM

1. Contractor City Of Sequim 152 W. Cedar Street Sequim, WA 98382		**2. Contractor Doing Business As (optional)** N/A
3. Contractor Representative (only if updated) N/A		**4. Public Works Board Representative (only if updated)** N/A
5. Original Contract Amount $520,000.00	**6. De-Obligation**	**7. Final Contract Amount** $520,000.00
8. Amendment Funding Source **Federal:** ☐ **State:** ☑ **Other:** ☐ **N/A:** ☐	**9. Amendment Start Date** Amendment Execution Date	**10. Amendment End Date** June 1, 2027
11. Federal Funds (as applicable): N/A	**Federal Agency:** N/A	**CFDA Number:** N/A

12. Amendment Purpose:

The purpose of this amendment is to certify the project completion for this Public Works Board Energy and Water Efficiency Loan.

The Board, defined as the Washington State Public Works Board and Borrower/Contractor acknowledge and accept the terms of this Agreement/Contract As Amended and attachments and have executed this Agreement/Contract Amendment on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Agreement/Contract As Amended are governed by this Agreement/Contract Amendment and the following other documents incorporated by reference: Amendment Terms and Conditions, including Attachment I: Certified Project Completion Report. A copy of this Agreement/Contract Amendment shall be attached to and made a part of the original Agreement/Contract between the Board and the Borrower/Contractor. Any reference in the original Agreement/Contract to the "Agreement" or the "Contract" shall mean the "Agreement As Amended" or "Contract As Amended," respectively.

FOR THE BORROWER/CONTRACTOR	FOR PUBLIC WORKS BOARD
_____ Signature	_____ Stan Finkelstein, Public Works Board Chair
_____ Print Name	_____ Date
_____ Title	**APPROVED AS TO FORM ONLY**
_____ Date	This 22nd Day of March, 2013 Bob Ferguson Attorney General
Approved as to form by: _____ Kristina Nelson-Gross City Attorney	Signature on File Kathryn Wyatt Assistant Attorney General

AMENDMENT TERMS AND CONDITIONS

Contract Number: EW13-961-094
PUBLIC WORKS BOARD
PROJECT COMPLETION AMENDMENT
ENERGY AND WATER EFFICIENCY PROGRAM

Loan Number: **EW13-961-094**
Project Name: **Aerobic Digester Energy Efficiency Improvements**
Contractor: **City of Sequim**

The purpose of this amendment is to acknowledge the project has been certified complete and the final contract amount, interest rate, term and local share on the above referenced contract have been adjusted, if necessary, as reflected below.

The Public Works Board, (or its successor) a department of the state of Washington and the Contractor agree to amend the above referenced contract as described below.

The amount of the loan shall be the **Final Loan Amount** as identified on the Declarations Page. The interest rate shall be the **Final Interest Rate** as identified on the Declarations Page, per annum on the outstanding balance. The loan term shall be the **Loan Term** as identified in the Declarations page.

ATTACHMENT I: CERTIFIED PROJECT COMPLETION REPORT

PUBLIC WORKS BOARD
ENERGY AND WATER EFFICIENCY PROGRAM

Loan Number: **EW13-961-094**
Project Name: **Aerobic Digester Energy Efficiency Improvements**

Contractor: **City of Sequim**
Address: 152 W. Cedar Street

Sequim, WA 98382

Chief Executive Officer Certification

The Chief Executive Officer of the Borrower/Contractor certifies that:

- To the best of his/her knowledge, the financial information and data provided in this report is true and correct as of the signature date indicated below, and no project costs listed in this report incurred before the declared Loan Reimbursement Start Date or after the date of the project completion;
- Records supporting the information provided in this report are on file and will be made available by the Borrower/Contractor upon request; and

Signature of Chief Executive Officer

Title

Print Name

Date of Signature

Project Engineer or Consultant Certification

The Project Engineer or Consultant of the Borrower/Contractor certifies that:

- To the best of his/her knowledge, the data provided in this report is true and correct as of the signature date indicated below;
- The project was completed in accordance with the Loan Agreement/Contract's Scope of Work; and
- The project was completed on JUNE 24, 2016
(Actual Date of Project Completion)

Signature of Project Engineer or Consultant

CITY ENGINEER
Title

MATTHEW KLONTZ
Print Name

8/24/2016
Date of Signature