

# CONTRACT FACE SHEET

Contract Number: PC23-96103-123

## PUBLIC WORKS BOARD CONSTRUCTION LOAN CONTRACT

<b>1. Contractor</b> City of Lynden 300 4th Street Lynden, WA 98264		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative</b> N/A		<b>4. Public Works Board Representative</b> N/A	
<b>5. Contract Amount</b> \$5,500,000.00	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Contract Start Date</b> Contract Execution Date	<b>8. Contract End Date</b> June 1, 2043
<b>9. Federal Funds (as applicable)</b> N/A	<b>Federal Agency</b> N/A	<b>CFDA Number</b> N/A	
<b>10. Tax ID #</b>	<b>11. SWV #</b> SWW-000-770-801	<b>12. UBI #</b>	<b>13. DUNS #</b>
<b>14. Contract Purpose</b> Fund a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets, roads, bridges, drinking water systems, stormwater systems, sanitary sewage systems, or solid waste facilities, including recycling facilities.			
The BOARD, defined as the Washington State Public Works Board and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents that are incorporated by reference: Contract Terms and Conditions including Declarations Page; and Attachment I: Attorney's Certification.			
<b>FOR THE CONTRACTOR</b>		<b>FOR PUBLIC WORKS BOARD</b>	
_____ Signature		_____ Kathryn A. Gardow, Public Works Board Chair	
_____ Print Name		_____ Date	
_____ Title		<b>APPROVED AS TO FORM ONLY</b>	
_____ Date		Date: September 21, 2021 _____ Dawn C. Cortez Assistant Attorney General	



# DECLARATIONS

## CLIENT INFORMATION

Legal Name: City of Lynden  
Loan Number: PC23-96103-123

## PROJECT INFORMATION

Project Title: Pine Street Bridge over Pepin Creek  
Project City: Lynden  
Project State: Washington  
Project Zip Code: 98264

## LOAN INFORMATION

Loan Amount: \$5,500,000.00  
Total Estimated Cost: \$5,557,000.00  
Total Estimated Project Funding: \$5,500,000.00  
Loan Forgiveness % (if applicable): 0%  
Loan Term: 20  
Interest Rate: 1.39%  
Payment Month: June 1<sup>st</sup>  
Loan Reimbursement Start Date: November 5, 2022  
Time of Performance: 60 months from Execution Date of this Contract to Project Completion.

## SPECIAL TERMS AND CONDITIONS GOVERNING THIS LOAN AGREEMENT

## LOAN SECURITY CONDITION GOVERNING THIS LOAN AGREEMENT

This loan is a general obligation of the LOCAL GOVERNMENT

## SCOPE OF WORK

Construct the necessary bridge for the future Pepin Creek relocated channel. Construct the necessary new Pepin Creek channel from Main Street north under the proposed Pine Street bridge and the approach (about 1000 feet). The project costs may include but are not limited to: engineering, cultural and historical resources, environmental documentation, review, permits, public involvement, bid documents, construction (including necessary street approaches and utility connections), and construction management. The project needs to meet all applicable Local, State, and/or Federal standards



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# CONTRACT TERMS AND CONDITIONS

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## PUBLIC WORKS BOARD CONSTRUCTION LOAN PROGRAM

### Part 1. 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.

#### 1.2 Authority

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

#### 1.3 Purpose

The BOARD and the Contractor have entered into this Contract to undertake a local public works project that furthers the goals and objectives of the Washington State Public Works Program. The project will be undertaken by the Contractor and will include the activities described in the **SCOPE OF WORK** shown on the Declarations page. The project must be undertaken in accordance with the loan terms and conditions, and all applicable federal, state and local laws and ordinances, which are incorporated by reference.

#### 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**

If the project financed by this Contract is to develop a system to deliver previously unavailable services, and revenue from those services is to repay the loan, the new system is eligible for a deferral of loan payments for sixty (60) months after the Contract execution date. The Contractor may provide a written request to the BOARD requesting a 5-year deferral for an eligible system. The BOARD may approve the deferral request.

Interest accrues for the aforementioned sixty (60) months. The accrued interest only payment is due June 1 of the 6th year of the loan term. Interest and principal payments are due on June 1 of the 7th year of the loan term.

### **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 Default in Repayment**

Loan repayments shall be made on the loan in accordance with Section 1.18 of this Contract. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a monthly penalty beginning on the first (1st) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be one percent (1%) per month or twelve percent (12%) per annum. The same penalty terms shall apply at project completion if the repayment of loan funds in excess of eligible costs are not repaid at the time of the Project Completion Amendment is submitted, as provided for in Section 1.13.

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

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

### **1.8 Investment Grade Audit**

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

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

### **1.9 Sub-Contractor Data Collection**

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

### **1.10 Eligible Project Costs**

The Eligible project costs must consist of expenditures eligible under Washington Administrative Code (WAC) 399-30-030 and be related only to project activities described in 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 **LOAN REIMBURSEMENT START DATE** shown in the Declarations are eligible for reimbursement under this Contract. Eligible costs will be paid according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

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

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

### **1.11 Historical and Cultural Resources**

Prior to commencing construction, Contractor shall complete the requirements of Governor's Executive Order 21-02, or, as an alternative to completion of Governor's Executive Order 21-02, Contractor shall complete Section 106 of the National Historic Preservation Act, as applicable. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to indemnify, defend and hold harmless the BOARD and the State of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 21-02, coordinate with the Washington State Department of Archaeology and Historic Preservation (DAHP), including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed project funded by this Contract. Contractor agrees to avoid, minimize, or mitigate impacts to cultural resource as a continuing pre-requisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural resources are discovered during construction, the Contractor shall immediately stop work and notify the local historical preservation officer and the state's historic preservation officer at DAHP. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

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

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44.040 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and, WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02.

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

### **1.12 Performance Incentives**

The Contractor shall complete the project no later than sixty (60) months after the date of Contract execution.

Should the Contractor submit the Certified Project Completion Report within forty-eight (48) 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 twenty-four (24) 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 submit the Certified Project Completion Report within thirty-six (36) 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 sixty (60) 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.

### **1.13 Project Completion Amendment and Certified Project Completion Report**

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

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

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.

### **1.14 Project Signs**

If the Contractor displays, during the period covered by this Contract, signs or markers identifying those agencies participating financially in the approved project, the sign or marker must identify the Washington State Public Works Board as a participant in the project.

### **1.15 Rate Loan Forgiveness 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 amount of loan forgiveness (if applicable) shall be as stated on the attached Declarations Page, and identified therein as LOAN FORGIVENESS %. 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.

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

### **1.16 Recapture**

The right of recapture under Section 2.31. Recapture shall exist for a period not to exceed six (6) years following Contract termination. In the event that the Board is required to institute legal proceedings to enforce the recapture provision, the BOARD shall be entitled to its costs, including attorney's fees.

### **1.17 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 1.10. When requesting reimbursement for costs incurred, the Contractor shall submit all Invoice Vouchers and any required documentation electronically through the Department of Commerce's (COMMERCE) Contracts Management System (CMS), which is available through the Secure Access Washington (SAW) portal; referencing the **SCOPE OF WORK** project activity performed, and any appropriate documentation such as bills, invoices, and receipts. If the Contractor has constraints preventing access to COMMERCE's online A-19 portal, a hard copy A-19 form may be provided by the BOARD Project Manager upon request.

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

- Proof of compliance with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act, as described in Section 1.11, and
- Signed Public Works Board Notice of Contract Award and Notice to Proceed, which follows the formal award of a construction contract.

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.

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

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

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

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

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

#### **1.18 Repayment**

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

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

In the event that the BOARD approves the Contractor's request for a deferral as outlined in Section 1.5, then the first loan repayment is due sixty (60) months after Contract execution. Interest accrues for the sixty (60) months after Contract execution. The accrued interest only will be charged for this payment if a warrant is issued prior to this date. Interest and principal payments are due on the declared **PAYMENT MONTH** date of each year during the remaining term of the loan. The Contractor has the right to repay the unpaid balance of the loan in full at any time or make accelerated payments without penalty.

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

#### **1.19 Reports**

The Contractor shall furnish the BOARD with:

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

#### **1.20 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.

#### **1.21 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.

#### **1.22 Time of Performance**

No later than sixty (60) 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.

#### **1.23 Contract Suspension**

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

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

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

**1.24 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.

**1.25 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. "COMMERCE" shall mean the Department of Commerce.
- C. "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.
- D. "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
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

### **2.2 Allowable Costs**

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

### **2.3 ALL WRITINGS CONTAINED HEREIN**

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

### **2.4 AMENDMENTS**

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

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

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

### **2.6 APPROVAL**

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

## **2.7 ASSIGNMENT**

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

## **2.8 ATTORNEYS' FEES**

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

## **2.09 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.

## **2.10 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.

## **2.11 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.



## **2.12 CONFLICT OF INTEREST**

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

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

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

## **2.13 COPYRIGHT PROVISIONS**

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

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

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

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

## **2.14 DISALLOWED COSTS**

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

## **2.15 DISPUTES**

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

The request for a dispute hearing must:

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

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

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

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

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

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

## **2.16 DUPLICATE PAYMENT**

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

## **2.17 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.

## **2.18 INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, BOARD, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom. The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

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

The Contractor's Obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees, and (b) the Contractor, its subcontractors, agents or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors, agents, or employees.

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.

#### **2.19 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.

#### **2.20 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.

#### **2.21 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.

#### **2.22 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.

#### **2.23 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.

#### **2.24 Local Public Transportation Coordination**

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

#### **2.25 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.

## **2.26 PAY EQUITY**

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

- A. Employees are “similarly employed” if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- B. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
  - 1. A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
  - 2. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
  - 3. A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

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

## **2.27 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, except as provided in Section 1.14.

### **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**

In the event BOARD determines the Contractor has failed to comply with the material conditions of this contract in a timely manner, BOARD has the right to suspend or terminate this contract. Before suspending or terminating the contract, BOARD shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law.

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

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

#### **2.41 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**

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

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

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

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
- C. Assign to the BOARD, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the BOARD has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to the BOARD and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the Contract had been completed, would have been required to be furnished to the BOARD;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this Contract, which is in the possession of the Contractor and in which the BOARD has or may acquire an interest.

#### **2.43 TREATMENT OF ASSETS**

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

#### **2.44 WAIVER**

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

# ATTACHMENT I: ATTORNEY'S CERTIFICATION

## PUBLIC WORKS BOARD CONSTRUCTION LOAN PROGRAM

City of Lynden  
PC23-96103-123

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

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the **City of Lynden** (the Contractor); and

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

Based on the foregoing, it is my opinion that:

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name