



**NOTICE REGARDING
INCURRENCE OF FINANCIAL OBLIGATION**

**PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON
STATE OF WASHINGTON PUBLIC WORKS BOARD
BROADBAND CONSTRUCTION FUNDING CONTRACT**

Notice is hereby provided that on October 7, 2021, Public Utility District No. 2 of Grant County, Washington (the “District”) entered into a Broadband Construction Funding Contract (the “Contract”) with the State of Washington, acting through its Public Works Board (the “Board”), to provide funding for the construction of broadband infrastructure (the “Project”). Under the terms of the Contract, the Board has provided the District Project funding consisting of two components - a grant in the principal amount of \$810,000, and a loan in the principal amount of \$810,000 (the “Loan”). The Loan is a special fund obligation of the District, payable from and secured by a pledge of Net Revenue of the District’s Electric System junior to the payment of Operating Expenses and Parity Bonds and Junior Lien Bonds of the Electric System (as such terms are defined in the Contract). A redacted copy of the form of Contract is attached hereto.

Notes Regarding this Event Notice Filing. The District is filing this information as an event notice pursuant to its continuing disclosure undertakings on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access (“EMMA”) system. This information is only accurate as of its date. The provision of this information to EMMA is not intended as an offer to sell any security and the District does not intend that the Contract involve the offering to the public of any security of the District. No representation is made as to whether this information is material or important with respect to any particular outstanding debt issue of the District or whether other events have occurred with respect to the District or its outstanding debt that might be material or important to owners of the District outstanding debt.

Dated: October 13, 2021.

Attachments: Contract (Redacted)

CONTRACT FACE SHEET

Contract Number: PBC21-96104-003

PUBLIC WORKS BOARD BROADBAND PROGRAM

1. Contractor Grant County Public Utility, District 2 PO Box 878 Ephrata, WA 98823-0878		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative <div style="border: 1px solid black; height: 15px; width: 100%;"></div> <div style="border: 1px solid black; height: 15px; width: 100%;"></div> <div style="border: 1px solid black; height: 15px; width: 100%;"></div>		4. Public Works Board Project Manager <div style="border: 1px solid black; height: 15px; width: 100%;"></div> <div style="border: 1px solid black; height: 15px; width: 100%;"></div> <div style="border: 1px solid black; height: 15px; width: 100%;"></div>	
5. Contract Amount \$1,620,000	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Contract Start Date Contract Execution Date	8. Contract End Date October 31, 2037
9. Federal Funds (as applicable) N/A	Federal Agency N/A	CFDA Number N/A	
10. Tax ID # N/A	11. SWV # <div style="border: 1px solid black; height: 15px; width: 100%;"></div>	12. UBI # <div style="border: 1px solid black; height: 15px; width: 100%;"></div>	13. DUNS # N/A
14. Contract Purpose Provide funding under RCW 43.155.160 for the construction of Broadband Infrastructure to deliver affordable, high-speed broadband services to homes and businesses at speeds in excess of 25 megabits per second download and three megabits per second upload and that are scalable to the statutory broadband speed goals of 150 megabits per second symmetrical service.			
The Board, defined as the Washington State Public Works Board (BOARD), and Contractor (CONTRACTOR) acknowledge and accept the terms of this Contract (CONTRACT) and attachments and have executed this CONTRACT on the date below to start as of the date and year last written below. The rights and obligations of both Parties to this CONTRACT are governed by this CONTRACT and the following other documents incorporated by reference: Contract Terms and Conditions including Declarations Page; and Attachment I: Scope of Work, Attachment II: Attorney's Certification, and Attachment III: Indefeasible Rights of Use Agreement, if applicable.			
FOR THE CONTRACTOR		FOR PUBLIC WORKS BOARD	



DECLARATIONS

CLIENT INFORMATION

Legal Name: Grant County Public Utility ,District 2
 Contract Number:

PROJECT INFORMATION

Project Title: Area 15: Gloyd to Stratford
 Project City: Ephrata
 Project State: **Washington**
 Project Zip Code: 98823
 Project Area:

FUNDING INFORMATION

LOAN FUNDING:

Loan Amount: **\$810,000**
 Loan Term, if applicable: **15**
 Interest Rate: **0.44%**
 Payment Month: **October 31st**

GRANT FUNDING

Grant Amount: **\$810,000**
 Appropriation Number:

PROJECT TOTALS

Match Amount: **\$180,000**
 Total Estimated Funding: **\$1,620,000**
 Total Estimate Cost: **\$1,800,000**
 Contract Earliest Date for Construction
 Reimbursement: **October 23, 2020**
 Contract Time of Performance: 48 months from Execution Date of this Contract to Project Completion.

ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS LOAN AGREEMENT

N/A

LOAN SECURITY CONDITION GOVERNING THIS LOAN AGREEMENT

This CONTRACT is a special, limited revenue-secured obligation of the CONTRACTOR payable as provided herein. CONTRACTOR pledges Net Revenue of its ELECTRIC SYSTEM to the repayment of its obligations under this CONTRACT on a JUNIOR and subordinate basis to all payments related to CONTRACTOR'S PARITY BONDS and JUNIOR LIEN BONDS, as such terms are defined herein.

The CONTRACTOR'S obligations with respect to this CONTRACT shall not be deemed to constitute a general obligation or a pledge of the faith and credit of the CONTRACTOR, or a debt of any other utility system of the CONTRACTOR other than the ELECTRIC SYSTEM. No real or personal property or assets secure CONTRACTOR'S obligations under this CONTRACT. The full faith and credit of the CONTRACTOR is not pledged to the repayment of this CONTRACT. CONTRACTOR'S obligations hereunder are not subject to acceleration upon the occurrence of an event of default.

Definitions of the Loan Security Conditions of this loan agreement are found under ATTACHMENT I: ADDITIONAL CONTRACTOR SPECIFIC DEFINITIONS

SCOPE OF WORK

Attachment I: Project Scope of Work and Milestones



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CONTRACT TERMS AND CONDITIONS

Part 1: SPECIAL TERMS AND CONDITIONS

1.1 TERMS AND CONDITIONS FOR TRIBAL ENTITIES:

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

1.2 DEFINITIONS

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

- A. "CONTRACT" shall mean this BOARD Broadband Construction Funding CONTRACT.
- B. "CONTRACTOR" shall mean the local governments; Tribes; nonprofit organizations; cooperative associations; multiparty entities comprised of public entity members; limited liability companies organized for the purpose of expanding broadband access; and incorporated businesses or partnerships identified on the CONTRACT Face Sheet as a recipient of a BOARD loan or grant and performing service(s) under this CONTRACT and who is a Party to the CONTRACT, and shall include all employees and agents of the CONTRACTOR.
- C. "The BOARD" shall mean the State of Washington Public Works Board established in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the CONTRACT.
- D. "Declarations" and "Declared" shall refer to the project information, terms and conditions as stated on the Declarations Page of this CONTRACT, displayed within the CONTRACT in THIS STYLE for easier identification.
- E. "PUBLIC USE" any grant or loan to a private entity is conditioned upon a guarantee that the asset or infrastructure to be developed will be maintained for public use for a period of at least fifteen (15) years. PUBLIC USE is defined as that the portion of the broadband network funded in whole or in part by the BOARD shall remain available to connect unserved areas for a period of not less than fifteen (15) years from the date of completed construction.
- F. "Unserved Areas" shall have the meaning defined in RCW 43.330.530(10).
- G. "Maintained for Public Use" for purposes of this CONTRACT shall mean private entity recipients of BOARD Broadband funding shall be required to enter into a minimum fifteen (15) year Indefeasible Rights of Use Agreement (IRU) that includes rights of the BOARD to sub-lease the infrastructure that is subject to the IRU, for purposes of connecting unserved areas.

1.3 AUTHORITY

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

1.4 CHANGE OF OWNERSHIP OR USE FOR CONTRACTOR-OWNED PROPERTY

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

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

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

1.5 COMPETITIVE BIDDING REQUIREMENTS

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

1.6 CONTRACT SUSPENSION

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

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

The BOARD shall notify the CONTRACTOR immediately upon lifting of the CONTRACT suspension.

1.7 DEFAULT IN REPAYMENT

Loan repayments shall be made on the loan in accordance with Section 1.19 of this CONTRACT. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a monthly penalty beginning on the first (1st) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be

one percent (1%) per month or twelve percent (12%) per annum. The same penalty terms shall apply at project completion if the repayment of loan funds in excess of eligible costs are not repaid at the time of the Project Completion Amendment is submitted, as provided for in Section 1.13.

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

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

1.8 DOCUMENTATION AND SECURITY

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

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

1.9 ELIGIBLE PROJECT COSTS

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

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

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

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

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

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

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

These terms supersede the terms in Section 2.2 Allowable Costs.

1.10 HISTORICAL AND CULTURAL RESOURCES

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

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

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

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

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

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

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

1.11 ORDER OF PRECEDENCE

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

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment 1 – Project Scope of Work and Milestones
- Attachment 2 – Attorney Certification

1.12 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

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

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

1.13 PROJECT COMPLETION AMENDMENT AND CERTIFIED PROJECT COMPLETION REPORT

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

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

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

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

1.14 PROJECT SIGNS

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

1.15 PUBLIC USE – PRIVATE APPLICANTS ONLY

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

1.16 PURPOSE

The Board and the CONTRACTOR have entered into this CONTRACT to undertake a broadband construction project that furthers the goals and objectives of the BOARD Broadband Program. The project will be undertaken by the CONTRACTOR and will include the activities described in the SCOPE OF WORK shown on the Declarations page. The project must be undertaken in accordance with the terms and conditions, and all applicable federal, state and local laws and ordinances, which by this reference are incorporated into this CONTRACT as though set forth fully herein.

1.17 RECAPTURE

The right of recapture under Section 2.33. Recapture, shall exist for a period not to exceed six (6) years following CONTRACT termination. In the event that the BOARD is required to institute legal proceedings to enforce the recapture provision, the BOARD shall be entitled to its costs thereof, including attorney's fees.

1.18 REIMBURSEMENT PROCEDURES AND PAYMENT

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

The BOARD shall reimburse the CONTRACTOR for eligible project expenditures up to the maximum funding amount under this CONTRACT, as identified in Section 1.9. When requesting reimbursement for costs incurred, the CONTRACTOR shall complete a digital Invoice Voucher (Form A19) referencing the SCOPE OF WORK project activity performed, and any appropriate documentation such as bills, invoices, and receipts. The Invoice Voucher must be certified by an official of the CONTRACTOR with authority to bind the CONTRACTOR.

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

- Proof of compliance with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act, as described in Section 1.10, and
- Signed BOARD Notice of CONTRACT Award and Notice to Proceed, which follows the formal award of a construction CONTRACT.

The CONTRACTOR shall submit all Invoice Vouchers and all required documentation per guidance in the BOARD Broadband Construction Handbook.

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

The BOARD will pay the CONTRACTOR upon acceptance of the work performed and receipt of properly completed invoices. Invoices shall be submitted to the BOARD.

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

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

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

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

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

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

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

In no event shall the total BOARD loan and/or grant exceed one hundred percent (100%) of the eligible actual project costs. At the time of project completion, the CONTRACTOR shall submit to the BOARD a Project Completion Amendment certifying the total actual project costs and local share. The final BOARD disbursement shall bring the total loan/grant to the lesser of one hundred percent (100%) of the eligible project costs or the total declared funding under this CONTRACT. The Project Completion Amendment shall serve as an amendment to this CONTRACT determining the final loan amount, local share, and interest rate.

In the event that the final costs identified in the Project Completion Amendment indicate that the CONTRACTOR has received BOARD monies in excess of one hundred percent (100%) of eligible costs, all funds in excess of one hundred percent (100%) shall be repaid to the BOARD by payment to the BOARD, or its successor, together with the submission of the Project Completion Amendment.

1.19 REPAYMENT

Repayment of the loan under this CONTRACT shall include the declared **INTEREST RATE** per annum based on a three hundred and sixty (360) day year of twelve (12) thirty (30) day months. Interest will begin to accrue from the date each warrant is issued to the CONTRACTOR. The final payment shall be on or before the **CONTRACT END DATE** shown on the Declarations page, of an amount sufficient to bring the loan balance to zero (0).

Loan repayment installments are due on the day and month identified under the term "**PAYMENT MONTH**" on the Declarations Page. Payments are due each year during the term of the loan beginning one year from the date of CONTRACT execution. The first payment shall consist of accrued interest only and will be charged once a warrant has been issued prior to the PAYMENT MONTH. All subsequent payments shall consist of principal and accrued interest due on the specified **PAYMENT MONTH** date of each year during the remaining term of the loan.

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

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

1.20 REPORTS

The CONTRACTOR shall furnish the BOARD with:

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

E. Other reports as the BOARD may require.

1.21 SPECIAL CONDITIONS

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

1.22 SUB-CONTRACTOR DATA COLLECTION

CONTRACTOR will submit monthly progress reports, in a form and format consistent with the template to be provided by the Board and regarding work under this CONTRACT performed by sub-contractors and the portion of the CONTRACT funds expended for work performed by sub-contractors, including but not necessarily limited to minority-owned, women-owned, and veteran-owned business sub-contractors. "Sub-Contractors" shall mean sub-contractors of any tier.

1.23 TERMINATION FOR CAUSE

If the CONTRACTOR fails to comply with the terms of this CONTRACT, or fails to use the loan proceeds only for those activities identified in the SCOPE OF WORK, the BOARD may terminate the CONTRACT in whole or in part at any time. The BOARD shall notify the CONTRACTOR in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Nothing in this section shall affect the CONTRACTOR's obligation to repay the unpaid balance of the loan.

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

1.24 TERMINATION FOR CONVENIENCE

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

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

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

1.25 TERM OF LOAN

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

1.26 TIME OF PERFORMANCE

No later than Forty-eight (48) months after the date of CONTRACT execution the CONTRACTOR must reach project completion.

Failure to meet Time of Performance shall constitute default of this CONTRACT. In the event of extenuating circumstances, the CONTRACTOR may request from the BOARD, in writing, an extension to the deadline for project completion. Requests for extension must be submitted not less than 60 days prior to project completion deadline. The BOARD may extend the deadline, at its sole discretion. The BOARD considers extension requests on a case-by-case basis.

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

1.27 TWO-YEAR DEFERRAL FOR START-UP SYSTEMS

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

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

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

1.28 CULTURALLY RELEVANT SERVICES

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

1.29 TRIBAL HIRING PREFERENCE AND EMPLOYMENT PRACTICES

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

1.30 SOVEREIGN IMMUNITY

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

Part 2: GENERAL TERMS AND CONDITIONS

2.1 DEFINITIONS

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

- A. "Authorized Representative" shall mean the BOARD Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "BOARD" shall mean the Washington State Public Works BOARD created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the CONTRACT
- C. "Commerce" shall mean the Department of Commerce.
- D. "CONTRACTOR" shall mean the entity identified on the face sheet performing service(s) under this CONTRACT, and shall include all employees and agents of the CONTRACTOR.
- E. "PERSONAL INFORMATION" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "STATE" shall mean the state of Washington.
- G. "SUBCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this CONTRACT under a separate CONTRACT with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" mean SUBCONTRACTOR(s) in any tier.
- H. "TRIBAL LAW" means the resolutions, law, codes, and/or ordinances enacted by the CONTRACTOR executing this CONTRACT, and any of the CONTRACTOR's tribal court decisions interpreting the same. All references in this CONTRACT to tribal law shall include any successor, amended, or replacement law, as of the effective date of such successor, amended, or replacement law.

2.2 ALLOWABLE COSTS

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

2.3 ALL WRITINGS CONTAINED HEREIN

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

2.4 AMENDMENTS

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

2.5 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE “ADA” 28 CFR PART 35 (not applicable to Tribes)

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

2.6 APPROVAL

This CONTRACT shall be subject to the written approval of the BOARD and shall not be binding until so approved. The CONTRACT may be altered, amended, or waived only by a written amendment executed by both Parties.

2.7 ASSIGNMENT

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

2.8 ATTORNEYS' FEES

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

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

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

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

2.10 CODE REQUIREMENTS

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

2.11 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. “Confidential Information” as used in this section includes:
 - 1. All material provided to the CONTRACTOR by the BOARD that is designated as “confidential” by the BOARD;

2. All material produced by the CONTRACTOR that is designated as “confidential” by the BOARD; and
 3. All personal information in the possession of the CONTRACTOR that may not be disclosed under state or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B.** The CONTRACTOR shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The CONTRACTOR shall use Confidential Information solely for the purposes of this CONTRACT and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the BOARD or as may be required by law. The CONTRACTOR shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the CONTRACTOR shall provide the BOARD with its policies and procedures on confidentiality. The BOARD may require changes to such policies and procedures as they apply to this CONTRACT whenever the BOARD reasonably determines that changes are necessary to prevent unauthorized disclosures. The CONTRACTOR shall make the changes within the time period specified by the BOARD. Upon request, the CONTRACTOR shall immediately return to the BOARD any Confidential Information that the BOARD reasonably determines has not been adequately protected by the CONTRACTOR against unauthorized disclosure.
- C.** Unauthorized Use or Disclosure. The CONTRACTOR shall notify the BOARD within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

2.12 CONFORMANCE

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

2.13 CONFLICT OF INTEREST

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

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

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

2.14 COPYRIGHT

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

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

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

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

2.15 DISALLOWED COSTS

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

2.16 DISPUTES

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

The request for a dispute hearing must:

- be in writing;

- state the disputed issues;
- state the relative positions of the Parties;
- state the CONTRACTOR's name, address, and CONTRACT number; and
- mailed to the BOARD Chair and the other party's (respondent's) Representative within three (3) working days after the Parties agree that they cannot resolve the dispute.

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

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

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

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

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

2.17 DUPLICATE PAYMENT

The CONTRACTOR certifies that work to be performed under this CONTRACT does not duplicate any work to be charged against any other CONTRACT, SUBCONTRACT, or other source.

2.18 GOVERNING LAW AND VENUE

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

2.19 INDEMNIFICATION

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

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

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

2.20 INDEPENDENT CAPACITY OF THE CONTRACTOR

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

2.21 INDUSTRIAL INSURANCE COVERAGE

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

2.22 INSURANCE

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

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

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

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

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

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

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

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

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

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

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

2.23 LAWS

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

Washington State Laws and Regulations

- A. Affirmative action, RCW 41.06.020 (1).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17A RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Office of minority and women’s business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. Open public meetings act, Chapter 42.30 RCW.
- H. Prevailing wages on public works, Chapter 39.12 RCW.
- I. Public records act, Chapter 42.56 RCW.
- J. State Executive Order 05-05 Archaeological and Cultural Resources.

2.24 LICENSING, ACCREDITATION AND REGISTRATION

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

2.25 LIMITATION OF AUTHORITY

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

2.26 LOCAL PUBLIC TRANSPORTATION COORDINATION

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

2.27 NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

2.28 PAY EQUITY

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

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

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

2.29 POLITICAL ACTIVITIES

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

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

2.30 PREVAILING WAGE LAW

The CONTRACTOR certifies that all CONTRACTORS and SUBCONTRACTORS performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this CONTRACT, including but not limited to the filing of the “Statement of Intent to Pay Prevailing Wages” and “Affidavit of Wages Paid” as required by RCW 39.12.040. The CONTRACTOR shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for the BOARD’s review upon request.

2.31 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

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

2.32 PUBLICITY

The CONTRACTOR agrees not to publish or use any advertising or publicity materials in which the state of Washington or the BOARD’s name is mentioned, or language used from which the

connection with the state of Washington's or the BOARD's name may reasonably be inferred or implied, without the prior written consent of the BOARD.

2.33 RECAPTURE

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

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

2.34 RECORDS MAINTENANCE

The CONTRACTOR shall maintain all books, records, documents, data and other evidence relating to this CONTRACT and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this CONTRACT.

CONTRACTOR shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by BOARD, personnel duly authorized by BOARD, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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

2.35 REGISTRATION WITH DEPARTMENT OF REVENUE

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

2.36 RIGHT OF INSPECTION

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

2.37 SAVINGS

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

2.38 SEVERABILITY

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

2.39 SUBCONTRACTING

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

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

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

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

2.40 SURVIVAL

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

2.41 TAXES

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

2.42 TERMINATION FOR CAUSE

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

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

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

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

2.43 TERMINATION FOR CONVENIENCE

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

2.44 TERMINATION PROCEDURES

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

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

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

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

- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this CONTRACT, which is in the possession of the CONTRACTOR and in which the BOARD has or may acquire an interest.

2.45 TREATMENT OF ASSETS

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

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

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

2.46 WAIVER

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

ATTACHMENT I: PROJECT SCOPE OF WORK AND MILESTONES

Project Title: Area 15: Gloyd to Stratford Legal Entity: Grant County Public Utility, District 2 Contract Number: PBC21-96104-003	Project lead or primary contact <div style="border: 1px solid black; height: 15px; width: 100%;"></div> <div style="border: 1px solid black; height: 15px; width: 100%;"></div> <div style="border: 1px solid black; height: 15px; width: 100%;"></div>
Project Area: Grant County Public Utility, District 2 30 C St SW, Ephrata, WA 98823 Grant County Washington	

Project Scope Statement:

Project will provide residents and businesses within the proposed geographic area with access to high-speed internet, reliable broadband service at speeds and bandwidth that support their ability to work, study and stay connected in their day-to-day lives.

The project will be integrated into the Grant PUD's existing fiber backbone network and will pass approximately 153 households and/or business. Customer counts are determined based on residential and commercial electrical service accounts within the project area.

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

Project Milestones:

Milestone Title/Outcome:	Possible Constraints:
Field data collection complete	N/A
Design & engineering stage complete	N/A
All permits received	N/A
Construction begins	N/A
Area cabinet site is set	N/A
Completed installation of cable one	Construction Dates based on getting 2-24 hardware by 2/15/21 Weather and materials delays Completion of Build 14: Rd 9/HWY 283
Completed installation of cable two	Construction Dates based on getting 2-24 hardware by 2/15/21 Weather and materials delays Completion of Build 14: Rd 9/HWY 283
Splicing and testing of cable 1 Splicing and testing of cable 2	Delays in the cable installation
Serviced released and available to customers	Delays in the construction and testing process

ATTACHMENT II: ATTORNEY CERTIFICATION

PUBLIC WORKS BOARD BROADBAND CONSTRUCTION PROGRAM

CONTRACTOR: Grant County Public Utility, District 2

CONTRACT Number: PBC21-96104-003

I, Mitchell Delebarre, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the Grant County Public Utility District (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 properly constituted and operating under the laws of the State of Washington, empowered to receive and expend federal, state and local funds, to CONTRACT with the State of Washington, and to receive and expend the funds involved to accomplish the objectives set forth in their application.
2. The CONTRACTOR is empowered to accept the BOARD financial assistance and to provide for repayment of the loan as set forth in the CONTRACT.
3. There is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the CONTRACTOR from repaying the loan extended by the BOARD with respect to such project. The CONTRACTOR is not a party to litigation which will materially affect its ability to repay such loan on the terms contained in the CONTRACT.
4. Assumption of this obligation would not exceed statutory and administrative rule debt limitations applicable to the CONTRACTOR.

Address

**ATTACHMENT III: INDEFEASIBLE RIGHTS OF USE
AGREEMENT, IF APPLICABLE**

