

Ward 1
Melvin Taylor
Deb Wilson

Ward 2
David Gakin
Jerry Rajcich

Ward 3
Kevin Moynihan
Scott Prato

Ward 4
Carrie Hubbard
Deb Hodgkin

Ward 5
Joshua Francy
Michelle Nipper

Ward 6
John Shaw
Sydney Swor



ABERDEEN CITY COUNCIL REGULAR MEETING AGENDA

200 E Market Street
Aberdeen City Hall
Wednesday, June 24, 2026
6:30 p.m.

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF THE AGENDA
5. PUBLIC COMMENT PERIOD

The public may comment on subjects of interest not listed on the agenda or items listed on the Consent Agenda. The City of Aberdeen requests that you provide your full name. If you reside in Aberdeen, please also include your Ward number; if you do not reside in Aberdeen, please state the city in which you live. Please limit comments to three (3) minutes to ensure all citizens have sufficient time to speak.

6. CONSENT AGENDA

Item on the Consent Agenda are considered to be routed by the Council and will be enacted on with a motion unless separate discussion is requested. Approval of the Consent Agenda authorizes the Mayor to implement each item in accordance with staff recommendations.

- A. Minutes from June 10, 2025
- B. Accounts Payable / Payroll

7. MAYOR'S REPORT
8. COUNCIL REPORTS

- A. Student Council Representative

9. STAFF REPORTS

- A. City Administrator's Report
- B. Director's Reports

10. PRESENTATIONS

- A. Downtown Aberdeen Association Update – Wil Russoul

11. REQUESTS FOR COUNCIL ACTION

A. Finance

1. Public Hearing

- a. Requesting City Council host a Public Hearing to receive public testimony regarding the Ordinance establishing Lift assistance penalties at licensed healthcare facilities & extending utility rate discount programs to the Ambulance and Emergency Medical Services Utility. (Bill #26-11)

- b. Requesting City Council host a Public Hearing to receive public testimony regarding the amended Ordinance for AMC 13.80.130 and the Ambulance Bill Charity Program. (Bill #26-05)
- c. Requesting City Council host a Public Hearing to receive public testimony regarding the amended Ordinance to amend AMC 13.64 Low-Income Senior Citizens – Rate Remission to include Low-Income Disabled Citizens (Bill #26-10).

2. Reports

- a. 2nd Reading, requesting City Council approve an Ordinance establishing Lift assistance penalties at licensed healthcare facilities & extending utility rate discount programs to the Ambulance and Emergency Medical Services Utility. (Bill #26-11)
- b. 2nd Reading, requesting City Council adopt the amended Ordinance for AMC 13.80.130 regarding the Ambulance Bill Charity Program. (Bill #26-05)
- c. 2nd Reading, requesting City Council adopt the Ordinance to amend AMC 13.64 Low-Income Senior Citizens – Rate Remission to include Low-Income Disabled Citizens. (Bill #26-10)

B. Public Safety

1. Reports

- a. Request recommending City Council approve the 2026-2028 EMS Agreement between the City of Aberdeen and the City of Cosmopolis.

2. Ordinance

- a. 1st Reading requesting City Council approve an ordinance amending AMC Chapter 12.04 to establish new sections related to a temporary alley closure program for protection of public health, safety and welfare. (Bill #26-09)

C. Public Works

1. Reports

- a. Request recommending the City Council authorize the Aberdeen Railroad Corridor Crossing Elimination and Safety Improvement Study Award Authorization.
- b. Request recommending City Council authorize the Public Works Director to sign FEMA Agreement 4906-DR-WA for obtaining federal and state emergency and disaster assistance funds.

2. Public Hearing

- a. Requesting City Council host a Public Hearing to receive public testimony regarding the Franchise Agreement with Forged Fiber 37, LLC. (Bill #26-12)
- b. Requesting City Council host a Public Hearing to receive public testimony regarding Title 17 Zoning Code Amendments. (Bill #26-07)

3. Ordinance / Resolution

- a. 2nd Reading requesting City Council approval of the Franchise Agreement with Forged Fiber 37, LLC. (Bill #26-08)

- b. 2nd Reading requesting City Council approval of the Title 17 Zoning Code Amendments. (Bill #26-07)
- c. Request recommending City Council approval of the Resolution Designating Authorized Representatives for Purposes of Obtaining Federal And/ Or State Emergency or Disaster Assistance Funds. (Res #2026-24)
- 4. Discussion
 - a. Discussion regarding the Vacant Building Code Revision.

D. Special Committee Items

- 1. Reports
 - a. Request recommending City Council allow the Department Heads to enter a contract with Teamsters upon acceptance.
 - b. Request recommending City Council adopt the reclassification of the Parks Director salary.
- 2. Appointments
 - A. Museum Transition Committee
 - 1. Councilmember John Shaw
 - 2. Councilmember Joshua Francy
 - 3. Ruth Hamilton, History98520
 - 4. Les Bolton, History98520
 - 5. George Donovan, Local Historian
 - 6. John Hughes, Former State Historian
 - B. Utility Rate Advisory Committee
 - 1. Ward 1: Kacey Ann Morrison
 - 2. Ward 3: Jim Sannes
 - 3. Ward 5: Patty Thomas
- 3. Resolution
 - a. Request recommending City Council approve the creation and appointments to the Museum Transition Committee by resolution. (Res #2026-25)
 - b. Request recommending City Council approve the creation of the AMC Review Committee and initial appointments. (Res #2026-26)

12. PUBLIC COMMENT PERIOD

13. GOOD OF THE ORDER

14. ADJOURNMENT

The City of Aberdeen does not discriminate against or exclude anyone from participation in public meetings. Requests for assistance should be made by contacting the Human Resources Department at 360-537-3207, 24 hours in advance of the meeting.
Thank you.

CITY OF ABERDEEN

Disbursement Report

Council Date: 06/24/2026



Please Note the Following Details:

1. Grand Total (for current reporting period only)
2. Disbursement Summary separates the totals by Accounts Payable and Payroll for ease of acknowledgment
3. Payment Detail will be attached to see the check number or ACH, date, and payee

Report Period:	From	To
	06/06/2026	06/19/2026

GRAND TOTAL:	\$	1,023,583.27
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DISBURSEMENT SUMMARY		
Accounts Payable Total:	\$	920,607.27
Checks:	\$	776,687.35
ACH / WIRES:	\$	62,487.00
ACH US BANK:	\$	81,432.92
Payroll Total:	\$	102,976.00
Checks:	\$	-
ACH:	\$	102,976.00

PAYMENT DETAIL				
Accounts Payable				
Check From	Check To	Total	** Notes	
0	0	\$ 81,432.92	US BANK Credit Card Payment (via wire)	
0	0	\$ 562.36	ACH Payments to Vendors/Pensioners	
190139	190147	\$ 61,924.64	Wire Payments / Online Pmts (GH PUD, Navia)	
190141	190141	\$ (17,342.74)	VOIDED CHECK / Reissued in Current Expenses	
26479	26497	\$ 1,864.71	Main Account Checks (Utility/Permit Refunds Primarily)	
93542	93656	\$ 792,165.38	Current Expenses for Council Approval	
Payroll				
Check From	Check To	Total	** Notes	
0	0	\$ 102,976.00	Payroll DRAW (via Direct Deposit)	
0	0	\$ -	Payroll (via Check)	
Payroll Liabilities				
Check From	Check To	Total	** Notes	
0	0	\$ -	Payroll Liabilities (via ACH)	
0	0	\$ -	Payroll Liabilities (via Check)	



CITY OF ABERDEEN
Washington
Since 1884

City Council Meeting Minutes

Aberdeen City Hall • Council Chambers
200 E. Market Street
Aberdeen, WA 98520
Aberdeenwa.gov

Meeting Date: June 10, 2026

Location: The physical location of the Council Meeting was at City Hall, 200 E. Market Street, Aberdeen, Washington. The meeting was conducted as a hybrid meeting with in-person and virtual participation options.

COUNCIL MEETING

Call to Order:

The regular meeting of the Aberdeen City Council was called to order at 6:30 p.m. by Mayor Orr.

Roll Call:

Francy, Gakin, Hubbard, Moynihan, Nipper, Rajcich, Shaw, Swor, Taylor, Wilson, and Mayor Orr. Noted Councilmember Gakin was attending online. **Motion by Council President Swor to excuse Councilmember Hodgkin's and Councilmember Prato's absences, seconded by Councilmember Nipper. Carried by voice vote.**

Flag Salute

Approval of the Agenda

Motion to approve the agenda by Council President Swor, seconded by Councilmember Nipper. Carried by voice vote.

Public Comments

Public comment period opened. Three comments taken.

Consent Agenda

Motion to approve the Consent Agenda including the minutes from May 27, 2026, accounts payable and payroll, check numbers 26476-26478, 93394-93414 and wires 190132-1900142 by Council President Swor, seconded by Councilmember Nipper. Carried by voice vote.

Mayors Report – Gave a report.

Student Council Representative Report – Justin Jacobs gave a report.

Council Reports – Councilmember Francy gave a report. Council President Swor gave a report.

Staff Reports – City Administrator Clemens gave a report. Director Williamsen gave a report.

Presentations – Annual update from Port of Grays Harbor with Kayla Dunlap. Capital Improvement Plan with Nick Bird.

Requests for Council Action

Finance: *Councilmember Shaw, no report given.*

1st Reading of Ordinance to amend AMC 13.64 Low-Income Senior citizens – Rate Remission to include Low-Income Disabled Citizens. (Bill #26-10) **Motion by Councilmember Shaw, seconded by Councilmember Francy. Discussion. Carried by voice vote.**

1st Reading of Ordinance to enact lift assistance penalties at licensed healthcare facilities & extending utility rate discount programs to include the Ambulance and Emergency Medical Services Utility. (Bill #26-11) **Motion by Councilmember Shaw, seconded by Councilmember Rajcich. Carried by voice vote.**

Public Safety: *Chair Hubbard gave a report.*

Requesting City Council approve the amendment to the current contract for fire suppression services between the City of Aberdeen and the Washington State Department of Corrections. **Motion by Councilmember Hubbard, seconded by Councilmember Nipper. Carried by voice vote.**

Requesting City Council approval of the Interlocal Agreement with the City of McCleary for temporary boarding of seized and impounded animals. **Motion by Councilmember Hubbard, seconded by Councilmember Wilson. Discussion. Motion by Councilmember Hubbard to amend RCA to say McCleary and not Westport in the second sentence of background rational section, seconded by Councilmember Nipper. Carried by voice vote. Motion by Councilmember Hubbard to approve as amended seconded by Councilmember Nipper. Carried by voice vote.**

Public Works: *Chair Francy, gave a report.*

1st Reading of Ordinance amending the fencing portion of the Zoning Code. (Bill #26-07) **Motion by Councilmember Francy, seconded by Councilmember Rajcich. Discussion. Carried by voice vote.**

1st Reading of the Franchise Agreement with Forged Fiber 37, LLC. (Bill #26-12) **Motion by Councilmember Francy, seconded by Councilmember Hubbard. Carried by voice vote.**

Request recommending City Council approve a resolution adopting the Revised and Extended Six Year Transportation Improvement Plan for the Years 2027 through 2032. (Resolution 2026-23). **Motion by Councilmember Francy, seconded by Councilmember Rajcich. Discussion. Motion by Councilmember Francy to amend the plan to add a section of sidewalk along Fuller Way from E Wishkah St to E Market St, seconded by Council President Swor. Carried by voice vote. Motion by Councilmember Francy to approve as amended seconded by Council President Swor. Carried by voice vote.**

Special Agenda Items: *Council President Swor, no report given.*

Request recommending City Council authorize the Mayor to sign the contract with History98520. **Motion by Council President Swor, seconded by Councilmember Hubbard. Discussion. Carried by voice vote.**

Request recommending City Council approve the deaccession of the items identified and recommended by the Museum Committee. **Motion by Council President Swor, seconded by Councilmember Francy. Carried by voice vote.**

Discussion regarding Willapa Behavioral Health & DOH – Council President Swor suggests a workshop to discuss this further. Councilmember Hubbard agrees to move forward with a workshop.

Public comment period opened. One comment taken.

Good of the Order – **Motion by Council President Swor to extend the meeting to 9:00p.m. seconded by Councilmember Francy. Carried by voice vote. Motion by Council President Swor to pursue with a workshop for the Willapa Behavior Health & Dept of Health discussion. Carried by voice vote.**

Motion by Council President Swor, seconded by Councilmember Francy to recess into executive session for up to 30 minutes with action not anticipated after for the purpose of and In accordance with RCW 42.30.110(1)(i) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency at 8:12p.m. Carried by voice vote. Motion to

reconvene by Councilmember Francy, seconded by Councilmember Nipper, reconvened at 8:29p.m. Carried by voice vote.
Motion to adjourn by Council President Swor, seconded by Councilmember Nipper. Carried by voice vote.

The meeting is adjourned at 8:30 p.m.

Katy Williamsen, FINANCE DIRECTOR

Douglas Orr, MAYOR



Request for Council Action

Date Action is Requested: June 24, 2026
Subject: 2nd Reading and Public Hearing - Lift assistance penalties at licensed healthcare facilities & extending utility rate discount programs to the Ambulance and Emergency Medical Services Utility. (Bill#26-11)

COMMITTEE:

- | | |
|---|--|
| ☒ Finance | ☐ Public Works |
| ☐ Public Safety | ☐ Special Agenda Item |

TYPE OF ACTION REQUESTED:

- | | |
|---|---|
| ☒ Ordinance No. Bill# 26-11 | ☐ Resolution No. |
| ☐ Motion | ☐ Discussion |
| ☐ No Action - Information Only | ☐ Other: |

SUMMARY OF REQUEST:

An ordinance requesting an amendment to AMC 13.80 that enacts penalties for licensed healthcare facilities that utilize Aberdeen EMS for non-emergent patient lift assistance and to extend utility rate discount programs to the Ambulance and Emergency Medical Services utility.

POLICY IMPLICATIONS:

- ☒ This action is in accordance with current policies and procedures.
- ☐ This action would require a new ☐ policy ☐ ordinance ☐ resolution ☐ other action from the Council.
- ☐ This action requires a revision to ☐ policy ☐ ordinance ☐ resolution ☐ other.
- ☐ Does not affect current policies and procedures.

FISCAL IMPACT:

Lift assistance penalties: \$1,000.00 in revenue per occurrence.

Utility rate discount program: Estimated 1.85% (\$45,000.00) decrease in EMS availability fee revenues.

BUDGETARY STATUS:

- ☐ Funds have already been authorized in this year's budget.
- ☐ This is an extra-budget expenditure.
- ☐ Funds will be requested for this action, if approved, in next year's budget.
- ☒ This action will bring in additional revenue. (potentially)
- ☐ This action will require city staff time and/or labor.
- ☐ This action has no budgetary implications.

☐ This action will reduce expenditures.

☒ Other: EMS revenue will decrease based on the number of rate payers who are eligible for the discount program.

BACKGROUND/RATIONALE:

Lift Assistance Penalty Program

This ordinance amends Chapter 13.80 of the Aberdeen Municipal Code by creating a new section authorizing the Fire Department to issue penalties to licensed care facilities that request Fire Department resources for non-emergent lift assists. Licensed care facilities are required by state law to have their own resources to be able lift and move their patients through their normal care in the facility. Occasionally licensed care facilities have been called 911 requesting Fire Department staff respond to their facilities to provide personnel to move patients instead of the facility having the appropriate staff or tools to do it themselves.

When on this type of call, crews are unavailable to respond to emergency calls. This can create a scenario where the emergency callers could be waiting for a response from resources farther away which potentially delays the response.

The ordinance holds care facilities financially responsible when requesting lift assistance in situations where no medical emergency exists and where staff, with appropriate training and equipment, should be able to manage the lift safely. The goal of the ordinance is to encourage licensed care facilities to staff appropriately and provide property training and equipment for their staff.

The proposed ordinance would allow the department to fine the facilities \$1,000 per incident. The City of Tacoma and Bellingham, among others, have instituted a similar ordinance.

Discount Program

At the direction of the Aberdeen City Council, based on the redocumentation for the Utility Rate Advisory Committee, this ordinance amends Chapter 13.80 of the Aberdeen Municipal Code to ensure that utility rate discount programs available to the City's traditional utility rate payers are extended to the Ambulance and Emergency Medical Services Utility.

It is estimated that approximately 675 utility customers may be eligible for this discount program. This will result in an approximate 1.85%, or \$45,000.00 reduction in the ambulance utility revenues.

RECOMMENDATION(S):

It is recommended that the City Council approve this ordinance.

REVIEWED BY LEGAL:

☒ YES

☐ NO

☒ NOT REQUIRED

ATTACHMENTS:

- Aberdeen Lift Assistance and Rate Discount Ordinance

Dave Golidng, Fire Chief

Staff Name



Staff Signature

Scott Prato, Finance Committee Chair

Committee Chair Name

Committee Chair Signature

This request aligns with the following City Council Values:

☐ Workforce Engagement & Development

☐ Vibrant, Safe & Healthy Community

☐ Economic Development

☐ Infrastructure Investment

☒ Fiscal Responsibility

☐ Communications & Outreach

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF ABERDEEN, WASHINGTON
ADOPTING ABERDEEN MUNICIPAL CODE SECTION 13.80.160 TO
ESTABLISH PENALTIES FOR MISUSE OF THE 911 DISPATCH
SYSTEM TO OBTAIN NON-EMERGENT LIFT ASSISTANCE BY
LICENSED HEALTHCARE FACILITIES; AMENDING ABERDEEN
MUNICIPAL CODE CHAPTER 13.80 SECTION 13.80.090 EXTENDING
UTILITY RATE DISCOUNT PROGRAMS TO THE AMBULANCE AND
EMERGENCY MEDICAL SERVICES UTILITY; PROVIDING FOR
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the Aberdeen Fire Department (“AFD”) has been dispatched via 911 to licensed care facilities within the City for the purpose of lifting residents who have no apparent injuries or emergent medical needs, despite such facilities being required by state law to have sufficient equipment and trained staff on duty at all times to respond to resident needs, and which laws implicitly require such facilities to perform non-emergency lifts without calling 911; and

WHEREAS, with ever-increasing 911 call volumes, it has become increasingly important to discourage private businesses from relying on public-emergency resources for non-emergent work; and

WHEREAS, when AFD personnel are at a facility performing a non-emergent lift assist, AFD personnel are not available for a true emergency, requiring the department to dispatch a unit that may be further away, thereby delaying assistance to a fire or life-threatening medical situation; and

WHEREAS, the City Council finds that it is in the best interest of the City and its residents to deter misuse of the 911 dispatch system by establishing monetary penalties to be assessed against licensed care facilities each time a facility causes AFD personnel to be dispatched for non-emergent lift assists; and

WHEREAS, the penalties established in this Ordinance only apply to licensed care facilities as defined herein; and

WHEREAS, the City offers discounts to residents with other utilities as established in Aberdeen Municipal Code Chapter (“AMC”) 13.64; and

WHEREAS, the City Council finds that it is in the best interest for the City to extend utility discount programs to its residents for the Ambulance and Emergency Medical Services Utility detailed in Aberdeen Municipal Code Chapter 13.80.

NOW THEREFORE, be it ordained by the Mayor and City council of the City of Aberdeen:

SECTION 1. AMC Section 13.80.160, Adopted. Aberdeen Municipal code section 13.80.160 is adopted as follows:

13.80.160 Penalty for non-emergency lift assistance at licensed care facilities.

A. *Purpose.* The purpose of this section is to discourage misuse of the 911 emergency system to dispatch personnel of the Aberdeen Fire Department or its partners for non-emergent lift assistance at licensed care facilities.

B. *Definitions.* For the purpose of this section, the following terms and phrases are defined as follows:

“Licensed care facility” means a licensed “nursing home” as defined in RCW 18.51.010, “assisted living facility” as defined in RCW 18.20.020, or “adult family home” as defined in RCW 70.128.010.

“Lift assist” means a response by an Aberdeen Fire Department emergency response unit, or the unit of another public safety department providing automatic or mutual aid to the City, to a licensed care facility for the purpose of lifting a resident.

“Non-emergent/non-emergency” means a determination, based upon an assessment by the commanding officer of the emergency response unit, that there is not an emergent medical condition or medical necessity justifying the presence of the emergency unit at the facility

C. *Determination of Non-Emergent Lift Assist.* Based upon the assessment undertaken by the commanding officer of an emergency response unit dispatched to a licensed care facility and their determination that no emergent medical condition or emergent medical necessity exists, but the staff of the facility desires that emergency response personnel complete a lift assist of a fallen patient, the officer shall declare the incident a non-emergent lift assist in their incident report.

D. *Assessment of Penalty.* The Fire Chief, or designee, shall be authorized to issue a penalty charge for each incident determined to be a non-emergency lift assist at licensed care facilities in the amount of \$1,000 per occurrence.

- E. *Administrative Decision.* Notice of the imposition of penalty charges under the provisions of this section shall be sent to the owner or management of the licensed care facility where the incident occurred; provided that, with respect to business premises, the owner, manager, or chief administrative agent regularly assigned and employed on the premises at the time of the occurrence shall be presumed to be the appropriate person to receive the notice, unless the City is notified otherwise.
- F. *Waiver of Imposition of Penalty.* In the event the Fire Chief, or designee, determines the City's assessment or determination was in error or there were other mitigating facts which the commanding officer did not possess at the time of the incident, the Fire Chief, or designee, may waive imposition of the applicable penalty(ies).
- G. *Appeal from Administrative Decision.* Any party subject to a penalty under the provisions of this section shall have a right of appeal to the Fire Chief, or designee. A notice of appeal must be submitted in writing no later than ten business days after issuance of the notice of the penalty and must be directed to the Fire Chief, at the address listed on the notice of penalty. The written appeal should include the penalty reference number and the party's reasoning why the determination of notice of non-emergency lift assist should be reconsidered. Within 30 days of receipt of a written appeal, the Fire Chief shall complete an impartial review of the appeal which will be reported to the appellant in writing. Unless a notice of appeal is properly filed in accordance with this section within ten business days of the issuance of notice of penalty, said penalty is deemed final.

SECTION 2. AMC Chapter 13.80, Section 13.80.90, subsection C.3, Amended. Aberdeen Municipal Code Chapter 13.80, Section 13.80.090, subsection C.3 is amended as follows:

C. Service fee exemptions – reductions.

3. Ambulance and Emergency Medical Services. Utility customers shall be eligible for ~~the city's Low Income Senior Citizens Discount utility rate discount programs~~ pursuant to chapter 13.64 AMC to the same extent as water and sewer utility customers.

SECTION 3. SEVERABILITY. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation.

SECTION 4. CORRECTIONS. The City Clerk and codifiers of the Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

SECTION 5. PUBLICATION BY SUMMARY. In lieu of publication of this Ordinance in its entirety, the attached summary of this Ordinance shall be published in the official newspaper

SECTION 6. EFFECTIVE DATE. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF ABERDEEN, WASHINGTON, AT A _____ MEETING THEREOF, THIS ____ DAY OF _____, 2026.

CITY OF ABERDEEN:

APPROVED AS TO FORM:

Douglas Orr, Mayor

Alexandra Kenyon, Corporation Counsel

ATTEST/AUTHENTICATED:

Katy Williamsen, Finance Director

SUMMARY FOR PUBLICATION
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABERDEEN, WASHINGTON ADOPTING ABERDEEN MUNICIPAL CODE SECTION 13.80.160 TO ESTABLISH PENALTIES FOR MISUSE OF THE 911 DISPATCH SYSTEM TO OBTAIN NON-EMERGENT LIFT ASSISTANCE BY LICENSED HEALTHCARE FACILITIES; AMENDING ABERDEEN MUNICIPAL CODE CHAPTER 13.80 SECTION 13.80.090 EXTENDING UTILITY RATE DISCOUNT PROGRAMS TO THE AMBULANCE AND EMERGENCY MEDICAL SERVICES UTILITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

Section 1: AMC section 13.80.160, Adopted. Adopting AMC 13.80.160 to create penalties for the misuse of 911 for non-emergent lift assistance by licensed care facilities.

Section 2: AMC Chapter 13.80, Section 13.80.90, Subsection C.3. Amended. Amending AMC Chapter 13.80, Section 13.80.090 Subsection C.3. to extend utility rate discounts identified in AMC 13.64 to the Ambulance and Emergency Medical Services Utility.

Section 3: Severability. Severing any portion declared unconstitutional or invalid, while retaining remaining portions.

Section 4: Corrections. Authorizing City Clerk and codifiers of the Ordinance to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

Section 5: Authorizing Publication by Summary. Authorizing publication of this summary in lieu of entirety.

Section 6: Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED: _____ day of _____, 2026

Signed: /s/ Douglas Orr, Mayor

Attest: /s/ Katy Williamsen, Finance Director

Request for Council Action

Date Action is Requested: **April 29, 2026**
Subject: **2nd Reading and Public Hearing - Ambulance Bill Charity Program**

COMMITTEE:

- | | |
|---|--|
| ☒ Finance | ☐ Public Works |
| ☐ Public Safety | ☐ Special Agenda Item |

TYPE OF ACTION REQUESTED:

- | | |
|--|---|
| ☒ Ordinance No. Bill#26-05 | ☐ Resolution No. |
| ☐ Motion | ☐ Discussion |
| ☐ No Action - Information Only | ☐ Other: |

SUMMARY OF REQUEST:

Ordinance amending Aberdeen Municipal Code 13.80.130 extending the low-income Charity Policy from ambulance billing to the residents of the City.

POLICY IMPLICATIONS:

- ☐ This action is in accordance with current policies and procedures.
- ☐ This action would require a new ☐ policy ☐ ordinance ☐ resolution ☐ other action from the Council.
- ☒ This action requires a revision to ☐ policy ☒ ordinance ☐ resolution ☐ other.
- ☐ Does not affect current policies and procedures.

FISCAL IMPACT:

Potential of a slight decrease in EMS billing revenue.

BUDGETARY STATUS:

- ☐ Funds have already been authorized in this year's budget.
- ☐ This is an extra-budget expenditure.
- ☐ Funds will be requested for this action, if approved, in next year's budget.
- ☐ This action will bring in additional revenue.
- ☐ This action will require city staff time and/or labor.
- ☒ This action has no budgetary implications.
- ☐ This action will reduce expenditures.
- ☐ Other:

BACKGROUND/RATIONALE:

It has been determined that AMC 13.80.130, which governs a previously adopted charitable program to assist low-income patients with ambulance-related expenses, was written to apply only to non-residents. This ordinance would expand the program’s eligibility to include residents.

In most cases, residents are not subject to ambulance billing due to provisions of the EMS utility fee. However, there is a limited subset of circumstances in which residents may incur charges for ambulance services after insurance payments have been applied. This most commonly occurs during interfacility transports, such as transfers from a local hospital to another facility for a higher level of care. This ordinance would extend financial assistance to low-income residents in these situations.

RECOMMENDATION(S):

It is recommended that the City Council adopt this amended Ordinance for AMC 13.80.130 regarding the Ambulance Bill Charity Program.

REVIEWED BY LEGAL: ☒ YES ☐ NO ☐ NOT REQUIRED

ATTACHMENTS:

- Draft of ordinance amending AMC 13.80.130

Dave Golding, Fire Chief

Staff Name



Staff Signature

Committee Chair Name

Committee Chair Signature

This request aligns with the following City Council Values:

- | | |
|---|---|
| ☐ Workforce Engagement & Development | ☒ Vibrant, Safe & Healthy Community |
| ☐ Economic Development | ☐ Infrastructure Investment |
| ☐ Fiscal Responsibility | ☐ Communications & Outreach |

Bill # 26-05

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF ABERDEEN, WASHINGTON,
AMENDING ABERDEEN MUNICIPAL CODE SECTION 13.80.130
RELATING TO ELIGIBILITY FOR THE CITY'S CHARITY POLICY
RELATED TO AMBULANCE BILLING; PROVIDING FOR
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City of Aberdeen ("City") operates an ambulance service under authority of Aberdeen Municipal Code ("AMC") Chapter 13.80 (Ambulance and Emergency Medical Services Utility); and

WHEREAS, the City provides for financial relief from ambulance bills under a charity policy for non-residents pursuant to AMC Section 13.80.130; and

WHEREAS, the City desires to extend the current charity policy contained in AMC Section 13.80.130 to City residents;

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ABERDEEN:

SECTION 1. AMC SECTION 13.80.130, AMENDED. Aberdeen Municipal Code Section 13.80.130, entitled "Charity policy for low-income non-residents," is hereby re-named and amended as follows::

13.80.130 Low-income ~~Charity policy for low-income for non-residents~~

The Fire Chief may waive or reduce direct billing charges not covered by third-party payers if payment would create a financial hardship. The Fire Chief may consider current federal poverty guidelines for the state of Washington and other relevant factors in determining whether a financial hardship exists. This policy is available to low-income residents and non-residents.

SECTION 2. SEVERABILITY. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation be declared unconstitutional or

invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation.

SECTION 3. CORRECTIONS. The City Clerk and codifiers of the Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

SECTION 4. PUBLICATION BY SUMMARY. In lieu of publication of this Ordinance in its entirety, the attached summary of this Ordinance shall be published in the official newspaper.

SECTION 5. EFFECTIVE DATE. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF ABERDEEN, WASHINGTON, AT A _____ MEETING THEREOF, THIS ____ DAY OF _____, 2026.

CITY OF ABERDEEN:

APPROVED AS TO FORM:

Douglas Orr, Mayor

Alexandra Kenyon, Corporation Counsel

ATTEST/AUTHENTICATED:

Katy Williamsen, Finance Director

Bill # 26-05

SUMMARY FOR PUBLICATION
ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF ABERDEEN, WASHINGTON,
AMENDING ABERDEEN MUNICIPAL CODE SECTION 13.80.130
RELATING TO ELIGIBILITY FOR THE CITY'S CHARITY POLICY
RELATED TO AMBULANCE BILLING; PROVIDING FOR
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

Section 1: AMC Section 13.80.130 Amended. Amending AMC 13.80.130 to extend the low-income charity policy related to ambulance bills to residents of the City of Aberdeen.

Section 2: Severability. Severing any portion declared unconstitutional or invalid, while retaining remaining portions.

Section 3: Corrections. Authorizing City Clerk and codifiers of the Ordinance to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

Section 3: Authorizing Publication by Summary. Authorizing publication of this summary in lieu of entirety.

Section 4: Effective Date.

This Ordinance shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED: _____ day of _____, 2026

Signed: /s/ Douglas Orr, Mayor

Attest: /s/ Katy Williamsen, Finance Director



CITY OF ABERDEEN
Washington
Since 1884

Request for Council Action

Date Action is Requested: June 24, 2026

Subject: **2nd Reading and Public Hearing of Ordinance to amend AMC 13.64 Low-Income Senior Citizens – Rate Remission to include Low-Income Disabled Citizens (Bill #26-10).**

COMMITTEE:

- | | |
|---|--|
| ☒ Finance | ☐ Public Works |
| ☐ Public Safety | ☐ Special Agenda Item |

TYPE OF ACTION REQUESTED:

- | | |
|---|-------------------------------------|
| ☒ Ordinance | ☐ Resolution |
| ☐ Motion | ☐ Discussion |
| ☐ No Action - Information Only | ☐ Other |

SUMMARY OF REQUEST:

Amend AMC 13.64 to include Low-Income Disabled Citizens for rate remission.

POLICY IMPLICATIONS:

- ☐ This action is in accordance with current policies and procedures.
- ☒ This action would require a new ☐ policy ☒ ordinance ☐ resolution ☐ other action from the Council.
- ☐ This action requires a revision to ☐ policy ☐ ordinance ☐ resolution ☐ other.
- ☐ Does not affect current policies and procedures.

FISCAL IMPACT:

This action will allow qualifying Low-Income Disabled Citizens to receive a 20% discount on their utility bill.

BUDGETARY STATUS:

- ☐ Funds have already been authorized in this year's budget.
- ☐ This is an extra-budget expenditure.
- ☐ Funds will be requested for this action, if approved, in next year's budget.
- ☐ This action will bring in additional revenue.
- ☐ This action will require city staff time and/or labor.
- ☐ This action has no budgetary implications.
- ☐ This action will reduce expenditures.
- ☒ Other: This will reduce revenue to Utility Funds & the General Fund

BACKGROUND/RATIONALE:

This action will amend AMC 13.64 Low-Income Senior Citizens – Rate Remission to include Low-Income Disabled Citizens. This will allow qualifying Low-Income Disabled Citizens to receive a 20% discount on their utility bill. To qualify, Low-Income Disabled Citizens will need to provide proof of income and they must fall within 200% of the poverty guidelines and must be classified as disabled by the Social Security Administration.

Household Size	200% poverty guideline (Monthly Income)	200% poverty guideline (Annual Income)
1	\$2,608	\$31,300
2	\$3,525	\$42,300
3	\$4,442	\$53,300
4	\$5,358	\$64,300
5	\$6,275	\$75,300
6	\$7,192	\$86,300
7	\$8,108	\$97,300
8	\$9,025	\$108,300

City staff estimates that we will have an increase of roughly 500 customers that will qualify for the 20% discount due to this amendment, this increase will lead to a 1.45% reduction in Utility revenue for enterprise funds and a 1.09% decrease in revenue to the general fund due to a reduction in associated Utility Tax. We currently have 174 customers that qualify for the Low-Income Senior Discount.

RECOMMENDATION(S):

Approve the Ordinance amending AMC 13.64 to include Low-Income Disabled Citizens for Rate Remission.

REVIEWED BY LEGAL: ☒ YES ☐ NO ☐ NOT REQUIRED

ATTACHMENTS:

Ordinance
Disability Discount Rate Analysis

Katy Williamsen, Finance Director

Staff Name

Scott Prato

Committee Chair Name

Staff Signature

Committee Chair Signature

This request aligns with the following City Council Values:

- | | |
|---|--|
| ☐ Workforce Engagement & Development | ☐ Vibrant, Safe & Healthy Community |
| ☐ Economic Development | ☐ Infrastructure Investment |
| ☒ Fiscal Responsibility | ☐ Communications & Outreach |

BILL # 26-10

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF ABERDEEN, WASHINGTON AMENDING ABERDEEN MUNICIPAL CODE CHAPTER 13.64; ESTABLISHING A NEW CODE DEFINITION SECTION 13.64.015; PROVIDING FOR UTILITY RATE DISCOUNTS FOR LOW-INCOME DISABLED CITIZENS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Aberdeen (“City”) provides water and sewer utility services, and

WHEREAS, RCW 74.38.070 authorizes the city to provide utility services at reduced rates for “low-income senior citizens” or “other low-income citizens” provided the terms are defined; and

WHEREAS, currently chapter 13.64 provides for a utility rate discount for “low-income senior citizens”, and the City Council finds that it is in the best interest of the City to also provide the discount for “low-income disabled citizens”; and

WHEREAS, the terms “low-income senior citizen” and “low-income disabled citizen” are not currently clearly defined under the City code; and

WHEREAS, the City Council finds that it is in the best interest of the City to establish a clear definition of the terms consistent with RCW 74.38.070;

NOW THEREFORE, be it ordained by the Mayor and City Council of the City of Aberdeen:

SECTION 1. ABERDEEN MUNICIPAL CODE (“AMC”) CHAPTER 13.64, AMENDED. Aberdeen Municipal code chapter 13.64 is amended in accordance with Exhibit A.

SECTION 2. SEVERABILITY. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation.

SECTION 3. CORRECTIONS. The City Clerk and codifiers of the Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

SECTION 4. PUBLICATION BY SUMMARY. In lieu of publication of this Ordinance in its entirety, the attached summary of this Ordinance shall be published in the official newspaper

SECTION 5. EFFECTIVE DATE. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF ABERDEEN, WASHINGTON, AT A _____ MEETING THEREOF, THIS ____ DAY OF _____, 2026.

CITY OF ABERDEEN:

APPROVED AS TO FORM:

Douglas Orr, Mayor

Alexandra Kenyon, Corporation Counsel

ATTEST/AUTHENTICATED:

Katy Williamsen, Finance Director

SUMMARY FOR PUBLICATION
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABERDEEN, WASHINGTON AMENDING ABERDEEN MUNICIPAL CODE CHAPTER 13.64; ESTABLISHING A NEW CODE DEFINITION SECTION; PROVIDING FOR UTILITY RATE DISCOUNTS FOR LOW-INCOME DISABLED CITIZENS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

Section 1: AMC chapter 13.64, Amended. Amending AMC 13.64 to create utility rate discount for low-income disabled citizens and establishing a new code section 13.64.015 to define “low-income senior citizens”, “low-income disabled citizen”, and “utility customer”.

Section 2: Severability. Severing any portion declared unconstitutional or invalid, while retaining remaining portions.

Section 3: Corrections. Authorizing City Clerk and codifiers of the Ordinance to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

Section 4: Authorizing Publication by Summary. Authorizing publication of this summary in lieu of entirety.

Section 5: Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED: _____ day of _____, 2026

Signed: /s/ Douglas Orr, Mayor

Attest: /s/ Katy Williamsen, Finance Director

Low-income disability rate revenue impact analysis calculations

Utility	Monthly rate	Additional Customers on discount	Total Revenue per month (for customers on discount)	20% Discount on revenue	12 month Discount total	2026 Budgeted Operational Revenue	% of Reduction in Revenue
Sewer	77.12	500	38,560.00	7,712.00	92,544.00	6,400,000.00	1.45%
Water	41.54	500	20,770.00	4,154.00	49,848.00	5,150,000.00	0.97%
EMS	67.54	675	45,589.50	9,117.90	109,414.80	5,907,428.57	1.85%
			104,919.50	20,983.90	251,806.80	17,457,428.57	1.44%

Utility Tax reduction	2026 Budgeted Utility Tax Revenue	% of Reduction in Revenue to the GF
13,527.24	1,235,900.00	1.09%



Request for Council Action

Date Action is Requested: June 24, 2026
Subject: City of Cosmopolis EMS Agreement

COMMITTEE:

- | | |
|---|---|
| ☐ Finance | ☐ Public Works |
| ☒ Public Safety | ☐ Special Agenda Item: |

TYPE OF ACTION REQUESTED:

- | | |
|---|---|
| ☐ Ordinance No. | ☐ Resolution No. |
| ☒ Motion | ☐ Discussion |
| ☐ No Action - Information Only | ☐ Other: |

SUMMARY OF REQUEST:

Request from Public Safety that the City Council authorize the Mayor to execute an Agreement between the City of Aberdeen and the City of Cosmopolis for the delivery of EMS services to Cosmopolis.

POLICY IMPLICATIONS:

- ☐ This action is in accordance with current policies and procedures.
- ☐ This action would require a new ☐ policy ☐ ordinance ☐ resolution ☐ other action from the Council.
- ☐ This action requires a revision to ☐ policy ☐ ordinance ☐ resolution ☐ other.
- ☒ Does not affect current policies and procedures.

FISCAL IMPACT:

EMS revenue of \$50,925 per month.

BUDGETARY STATUS:

- ☐ Funds have already been authorized in this year's budget.
- ☐ This is an extra-budget expenditure.
- ☐ Funds will be requested for this action, if approved, in next year's budget.
- ☐ This action will bring in additional revenue.
- ☐ This action has no budgetary implications.
- ☐ This action will reduce expenditures.
- ☒ Other: Collects budgeted EMS revenue from the City of Cosmopolis.

BACKGROUND/RATIONALE:

The Agreement continues the relationship between Aberdeen and Cosmopolis where Aberdeen provides EMS services to Cosmopolis. It increases the rate from 80% per utility to 100%, bringing Cosmopolis residents in line with Aberdeen.

This agreement is for the time period of July 1, 2026 through December 31, 2028 and included annual rate increased that mirror Aberdeen's

RECOMMENDATION(S):

It is recommended that the Aberdeen City Council approve the 2026-2028 EMS Agreement between the City of Aberdeen and the City of Cosmopolis.

REVIEWED BY LEGAL: ☐ YES ☐ NO ☒ NOT REQUIRED

Same as previously reviewed agreements with the only edits being dates and rates.

ATTACHMENTS:

- 2026-2028 Cosmopolis EMS Agreement

Dave Golding, Fire Chief

Staff Name



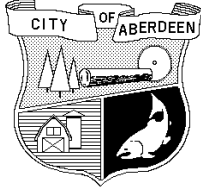
Staff Signature

Committee Chair Name

Committee Chair Signature

This request aligns with the following City Council Values:

- | | |
|---|--|
| ☐ Workforce Engagement & Development | ☐ Vibrant, Safe & Healthy Community |
| ☐ Economic Development | ☐ Infrastructure Investment |
| ☒ Fiscal Responsibility | ☐ Communications & Outreach |



2026-2028 AGREEMENT EMERGENCY MEDICAL SERVICES

**between
CITY OF ABERDEEN
and
CITY OF COSMOPOLIS**

July 1, 2026 through December 31, 2028

THIS AGREEMENT is between the City of Aberdeen for its Fire Department (“Aberdeen”), a Washington municipal corporation, and the City of Cosmopolis (“Cosmopolis”), a Washington municipal corporation.

Cosmopolis hereby retains Aberdeen provide the services described below, specifically advanced emergency medical services. Any inconsistency between this Agreement and the Scope of Work will be resolved in favor of this Agreement. Aberdeen will perform the Work according to the terms and conditions of this Agreement.

TERMS AND CONDITIONS:

1. Scope of Work - Emergency Medical Services.

1.1 Respond to emergency medical calls. Aberdeen agrees to respond to emergency medical calls within the city limits of Cosmopolis. Aberdeen shall perform all necessary services in regard to responding to any such call.

1.2 Prior right for service. The services provided by Aberdeen shall be subject to the prior right of Aberdeen to the use of any and all EMS personnel and equipment for the purpose of responding to EMS calls within the corporate limits of Aberdeen and its other service areas.

1.3 Level of Response. The officer in charge of the fire department, or any unit thereof, shall exercise his/her judgment, from the information received, as to the amount and type of equipment which may be needed in Cosmopolis at the time information is received, that a medical emergency exists in said areas, the appropriate Aberdeen equipment needed to respond, and the amount and type of equipment which may be spared from Aberdeen at the time.

1.3.1 Aberdeen will initially stand-by for public/lift assistance, unknown if injury motor vehicle accidents, and unknown if injury or medical issue type calls. Aberdeen will respond if an injury or illness is found to have occurred. Aberdeen may choose to initially respond to these incidents based on dispatch information.

1.4 Discretion. Aberdeen's determination of available resources and appropriate level of response are entirely within its sole discretion and no action or inaction on the part of such commanding officer of the fire department, or any unit thereof, shall create any liability against Aberdeen or such individual.

2. Compensation.

2.1 Base Compensation. Cosmopolis shall pay a monthly availability charge equal to the City of Aberdeen's monthly EMS availability fee for each non-exempt utility user classification. Cosmopolis shall provide documentation showing the number of utility users within its jurisdiction within 5 days of the commencement of this Agreement and then by October 1st of each year for the following year.

Effective Date	Aberdeen Rate
July 1, 2026	\$67.54
January 1, 2027	\$69.56
January 1, 2028	\$71.65

2.1.1 Availability fee changes. In the event that Aberdeen increases or decreases the EMS availability fee, Aberdeen will notify Cosmopolis in writing of the change with a minimum of 30 days notice.

2.2 Additional compensation - patient transportation. In addition to the emergency medical response described above, in the event of transportation of individual EMS patients by Aberdeen, Aberdeen may charge Cosmopolis at the current rates adopted by the Aberdeen City Council.

2.3 Invoices and due dates. Aberdeen will invoice Cosmopolis the monthly EMS availability fee on or about the fiftieth day of each month, and those invoices are payable within 30 days of receipt of the invoice.

3. Term. The term of this agreement will be July 1, 2026 through December 31, 2028, unless sooner terminated as provided in this Agreement.

3.1 Termination for Cause. This agreement may be terminated for cause for violation of any material term of this agreement. Any violation of the other provisions of this Contract must be corrected. Written notice of contract violation will be provided to the offending party who will have ten (10) business days to correct the violation. Failure to correct the violation will give rise to termination for cause. In lieu of terminating this

contract, the parties may agree in writing to alternative corrective measures.

- 3.2 Termination on Mutual Agreement.** The parties may agree in writing to terminate this contract at any time.
 - 3.3 Termination for Convenience.** Either party may terminate this contract with ninety (90) days written notice.
 - 3.4 Effect of Termination.** Termination does not affect amounts earned up to the effective date of termination.
- 4. Nondiscrimination.** Neither the Consultant nor any person acting on behalf of the Consultant will not by reason of race, creed, color, national origin, sex, sexual orientation, honorably discharged doctrine or military status, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability, discriminate against any person who is qualified and available to perform the work to which the employment relates, or in the provision of services under this agreement.
- 5. Indemnification.** The parties will indemnify each other against actions, liabilities, loss, damages and expenses resulting from injury or death of any person or loss of or damage to any tangible real or tangible personal property to the extent that such injury, death, loss or damage is proximately caused by the indemnifying party's negligent act or omission or intentional misconduct or that of its agents, employees or subcontractors in connection with the performance of its obligations under this Agreement, provided that the indemnifying party has been notified in writing as soon as practicable of any such claim.
- 5.1 No third party beneficiaries.** It is expressly understood and agreed that neither Aberdeen nor any of its officers, agents or employees shall be liable in damages to Cosmopolis or to any resident thereof or property owner therein or to any third party for failure in the performance of this agreement in any respect.
 - 5.2 Workers Compensation Limited Waiver of Immunity.** It is specifically understood that the indemnification provided constitutes the waiver of the parties' waiver of immunity under Title 51 RCW solely for the purposes of this indemnification. The parties have mutually negotiated this waiver. This clause will survive the termination or expiration of this agreement and will continue to be in effect for any claims or causes of action arising at any time.
- 6. Insurance.** Each party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and/or injuries to persons arising out of its

activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance, or lack thereof, of insurance and/or self-insurance shall not limit the liability of any party.

7. **Modification.** No waiver, alteration or modification of any of the provisions of this Agreement will be binding unless in writing and signed by the authorized representatives of the parties as identified in Section 10 of this Agreement.
8. **Independent Contractor.** Nothing in this Agreement shall construe Aberdeen or any of its employees or agents to be the employees, agents, or representatives of Cosmopolis. Aberdeen shall be an independent contractor and shall have responsibility for and control over the details and means for performing the work described herein.
10. **Written Notice.** All communications regarding this Agreement will be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice will become effective as of the date of mailing by registered or certified mail, and will be deemed sufficiently given if sent to the addressee at the address stated in the Agreement or such other address specified in writing:

CITY OF ABERDEEN

200 East Market Street
Aberdeen, WA 98520
Attn: Fire Chief
Tel: (360) 537-3262

CITY OF COSMOPOLIS

PO Box 2007
Cosmopolis, WA 98537
Attn: Mayor
Tel: (360) 532-9230

11. **Nonwaiver of Breach.** The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances will not be construed to be a waiver or relinquishment of such covenants, agreements, or options, and the same will be and remain in full force and effect.
12. **Attorney's Fees, Governing Law and Venue.** In the event of any litigation arising out of this Agreement, the prevailing party will be reimbursed for reasonable attorneys' fees from the other party. This Agreement will be governed by and construed in accordance with the laws of the state of Washington and the rules of the Washington Supreme Court as applicable. Venue for an action arising out of this Agreement will be in Grays Harbor County Superior Court.
13. **Severability.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not

affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

- 14. Entire Agreement.** This Agreement is the complete expression of the terms of hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties.

THE PARTIES have executed this Agreement on the _____ day of _____, 20____.

CITY OF ABERDEEN

CITY OF COSMOPOLIS

Douglas Orr, Mayor

Linda Springer, Mayor

Attest:

Attest:

City Clerk

City Clerk

Request for Council Action

Date Action is Requested: June 24, 2026
Subject: **An ordinance amending AMC Chapter 12.04 to establish new sections related to a temporary alley closure program for protection of public health, safety and welfare.**

COMMITTEE:

- | | |
|---|--|
| ☐ Finance | ☐ Public Works |
| ☒ Public Safety | ☐ Special Agenda Item |

TYPE OF ACTION REQUESTED:

- | | |
|---|---|
| ☒ Ordinance No. | ☐ Resolution No. |
| ☐ Motion | ☐ Discussion |
| ☐ No Action - Information Only | ☐ Other: |

SUMMARY OF REQUEST: The ordinance allows the public works director, based on recommendations from the chief of police to temporarily close alleys to the general public. Unauthorized entry into a closed alley can result in a fine of up to \$1,000 or up to 90 days in jail. Business owners, utility workers, emergency responders, and city contractors retain access during closures.

POLICY IMPLICATIONS:

- ☐ This action is in accordance with current policies and procedures.
- ☒ This action would require a new ☐ policy ☒ ordinance ☐ resolution ☐ other action from the Council.
- ☐ This action requires a revision to ☐ policy ☐ ordinance ☐ resolution ☐ other.
- ☐ Does not affect current policies and procedures.

FISCAL IMPACT: Initial costs for high security gates are up to \$50,000. Closing the alleys is expected to significantly reduce criminal activity, littering, and public health concerns such as defecation and urination. These reductions will decrease the need for frequent cleanup, saving City staff time and resources currently required to service the alleys multiple times per day.

BUDGETARY STATUS:

- ☒ Funds have already been authorized in this year's budget.
- ☒ This is an extra-budget expenditure.
- ☐ Funds will be requested for this action, if approved, in next year's budget.
- ☐ This action will bring in additional revenue.
- ☐ This action will require city staff time and/or labor.

- ☐ This action has no budgetary implications.
- ☐ This action will reduce expenditures.
- ☐ Other: Purchase will be paid for by restricted use seizure funds

BACKGROUND/RATIONALE:

THE ORDINANCE ESTABLISHES A FORMAL PROCESS THAT ALLOWS THE PUBLIC WORKS DIRECTOR, UPON RECOMMENDATION FROM THE CHIEF OF POLICE TO TEMPORARILY CLOSE PUBLIC ALLEYS WHEN RECURRING CRIMINAL ACTIVITY, HEALTH HAZARDS, FIRES, SANITATION ISSUES, OR OTHER UNSAFE CONDITIONS ARE DOCUMENTED. IT OUTLINES CRITERIA FOR INITIATING A CLOSURE, REQUIRES DOCUMENTATION OF PROBLEMS AND PRIOR MITIGATION EFFORTS, AND LIMITS CLOSURES TO 90-DAY PERIODS UNLESS RENEWED. ACCESS FOR PROPERTY OWNERS, BUSINESSES, UTILITIES, EMERGENCY RESPONDERS, AND AUTHORIZED SERVICE PROVIDERS MUST BE MAINTAINED, AND UNAUTHORIZED ENTRY INTO A CLOSED ALLEY IS CLASSIFIED AS A MISDEMEANOR SUBJECT TO FINES OR JAIL TIME.

THE ORDINANCE ALSO CREATES PROCEDURES FOR MONITORING, REPORTING, AND APPEALS. THE POLICE AND PUBLIC WORKS DEPARTMENTS MUST REVIEW EACH CLOSURE'S IMPACT ON CRIME, SAFETY, SANITATION, BUSINESS OPERATIONS, AND POSSIBLE DISPLACEMENT TO OTHER AREAS, WITH AN ANNUAL REPORT SUBMITTED TO THE CITY COUNCIL. ADJACENT PROPERTY OR BUSINESS OWNERS MAY APPEAL CLOSURE DECISIONS TO THE CITY ADMINISTRATOR. THE NEW CHAPTER IS ADDED TO THE ABERDEEN MUNICIPAL CODE TO GIVE THE CITY A CLEAR, ACCOUNTABLE MECHANISM FOR ADDRESSING DANGEROUS ALLEY CONDITIONS WHILE BALANCING PUBLIC ACCESS AND SAFETY.

RECOMMENDATION(S): IT IS THE RECOMMENDATION OF THE PUBLIC SAFETY COMMITTEE THAT THE ABERDEEN CITY COUNCIL APPROVE THE ORDINANCE ALLOWING FOR TEMPORARY ALLEY CLOSURES.

REVIEWED BY LEGAL: ☒ YES ☐ NO ☐ NOT REQUIRED

ATTACHMENTS:

- See attached draft ordinance

Dale Green

Staff Name

Committee Chair Name

Staff Signature

Committee Chair Signature

This request aligns with the following City Council Values:

- | | |
|---|--|
| ☒ Workforce Engagement & Development | ☒ Vibrant, Safe & Healthy Community |
| ☒ Economic Development | ☒ Infrastructure Investment |
| ☒ Fiscal Responsibility | ☒ Communications & Outreach |

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF ABERDEEN, WASHINGTON, AMENDING ABERDEEN MUNICIPAL CODE CHAPTER 12.04 TO ESTABLISH NEW SECTIONS RELATED TO A TEMPORARY ALLEY CLOSURE PROGRAM FOR THE PROTECTION OF PUBLIC HEALTH, SAFETY, AND WELFARE; PROVIDING AUTHORITY FOR TEMPORARY CLOSURE OF CERTAIN ALLEYS; ESTABLISHING CRITERIA, PROCEDURES, ACCESS REQUIREMENTS, ENFORCEMENT PROVISIONS, AND REPORTING REQUIREMENTS; AND ADDING A NEW CHAPTER TO THE ABERDEEN MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council finds that certain public alleys have become locations for recurring criminal activity, illegal drug use, unlawful encampments, fires, hazardous waste accumulation, vandalism, and other activities that threaten public health and safety; and

WHEREAS, the City expends significant public resources addressing these conditions through law enforcement, public works, sanitation, and emergency response efforts; and

WHEREAS, the City Council finds that temporary and targeted alley closures may provide an additional tool to disrupt drug-related activities and protect public health and safety while preserving access for adjacent property owners, businesses, utilities, and emergency responders; and

WHEREAS, the City Council desires to have short-term and long-term City actions to enhance safety and well-being and disrupt drug-related criminal activity in the Downtown area and in other areas of the City; and

WHEREAS, the City Council desires to establish a limited and accountable process for temporary alley closures; and

WHEREAS, the Aberdeen Municipal Code does not currently contain a provision specifically addressing the closure of alleys for public safety reasons; and

WHEREAS, without a mechanism to close an alley, a public right of way, the City has limited ability to control access to alleys; and

WHEREAS, because alleys are narrow and contain vestibules, various trash receptacles, and other impediments to clear lines of sight for enforcement, alleys can become attractive areas for criminal activity.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ABERDEEN, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT. The City Council hereby adopts Aberdeen Municipal Code section 12.04 and reads as follows:

12.04.040 PURPOSE. The purpose of this chapter is to provide a mechanism for temporary closure of public alleys where documented conditions pose a substantial threat to public health, safety, or welfare and where temporary closure is reasonably necessary to mitigate such conditions.

12.04.050 DEFINITIONS.

- A. "Alley" means any public right-of-way designated as an alley and maintained by the City.
- B. "Closure Area" means the portion of an alley designated for temporary closure under this chapter.
- C. "Temporary Closure" means the restriction of public access to an alley for a defined period through installation of fencing, gates, barriers, signage, or other measures approved by the Public Works Director.

12.04.060 AUTHORITY TO INITIATE CLOSURE.

- A. The Public Works Director or designee is authorized to temporarily close any alley for entry or travel by the general public based on a recommendation of the Chief of Police that such a closure is necessary or appropriate in order to prevent criminal activity occurring in or emanating from the alley.
- B. The request shall include:
 - 1. Identification of the alley proposed for closure;
 - 2. Documentation of recurring public safety, criminal, health, sanitation, or fire-related concerns;
 - 3. A description of prior mitigation efforts;
 - 4. An explanation of why temporary closure is reasonably necessary; and
 - 5. A proposed duration of closure.

12.04.070 CLOSURE DETERMINATION.

- A. Upon receipt of a recommendation from the Chief of Police, the Public Works Director or designee may authorize a temporary alley closure if the Public Works Director finds:
 - 1. Repeated incidents have occurred within the alley that threaten public health or safety;
 - 2. Alternative mitigation measures have proven ineffective or insufficient; and
 - 3. The benefits of temporary closure outweigh the impacts on public access.
- B. Prior to implementation, the Public Works Director shall provide written notice to adjacent property owners and businesses by posting such notice at the property.

12.04.080 DURATION.

- A. No temporary closure shall exceed ninety (90) days without review.
- B. The Public Works Director may renew a closure for additional periods of up to ninety (90) days upon a written finding that closure remains necessary.
- C. In no event shall a closure remain in effect longer than one year without approval by the City Council.

12.04.090 ACCESS.

Unless otherwise ordered, the alley shall remain open to access by the following persons: owners and occupants of the abutting properties and their guests; agents of utilities with facilities in the alley or serving the abutting properties; agents of garbage and recycling collection companies serving the abutting properties; delivery services; government employees and emergency personnel in the performance of their duties, and permittees under a street obstruction permit or temporary right of way use permit issued pursuant to Title 12. Upon ordering the closure, the Public Works Director shall cause the alley to be posted with no admittance signs. The Public Works Director may also cause the alley to be enclosed with fencing or barricades in addition to posting with no admittance signs.

12.04.100 UNAUTHORIZED ENTRY.

It is unlawful for any person not identified in Section 12.04.090 to knowingly enter or remain within a designated Closure Area without authorization. Violation of this section shall constitute a misdemeanor punishable as provided in AMC Chapter 1.12 General Penalty-Civil Violations. Violation of this Chapter is a misdemeanor punishable by a fine in any sum not to exceed \$1,000 or by imprisonment for a term not to exceed 90 days, or by both such fine and imprisonment.

12.04.110 REVIEW AND MONITORING.

A. The Police Department and Public Works Department shall monitor each closure and evaluate:

1. Criminal activity;
2. Fire incidents;
3. Public health concerns;
4. Sanitation conditions;
5. Business impacts; and
6. Displacement effects to nearby areas.

B. The City Administrator shall provide a report to the City Council at least annually summarizing all closures implemented under this chapter.

12.04.120 APPEAL.

Any adjacent property owner or business owner may appeal a closure decision to the City Administrator within ten (10) business days of receiving notice. The City Administrator shall issue a written decision on the appeal within twenty (20) business days after receipt of the appeal. The decision of the City Administrator shall be the final decision of the City.

SECTION 2. SEVERABILITY. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation.

SECTION 3. CORRECTIONS. The City Clerk and codifiers of the Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

SECTION 4. PUBLICATION BY SUMMARY. In lieu of publication of this Ordinance in its entirety, the attached summary of this Ordinance shall be published in the official newspaper.

SECTION 5. EFFECTIVE DATE. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF ABERDEEN, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS __ DAY OF _____, 2026.

CITY OF ABERDEEN:

APPROVED AS TO FORM:

Douglas Orr, Mayor

Alexandra Kenyon, Corporation Counsel

ATTEST/AUTHENTICATED:

Katy Williamsen, Finance Director



CITY OF ABERDEEN
Washington
Since 1884

Request for Council Action

Date Action is Requested: 6/24/2026
Subject: **Aberdeen Railroad Corridor Crossing Elimination and Safety Improvement Study Award Authorization**

COMMITTEE:

- | | |
|--|--|
| ☐ Finance | ☒ Public Works |
| ☐ Public Safety | ☐ Special Agenda Item |

TYPE OF ACTION REQUESTED:

- | | |
|---|---|
| ☐ Ordinance No. | ☐ Resolution No. |
| ☒ Motion | ☐ Discussion |
| ☐ No Action - Information Only | ☐ Other: |

SUMMARY OF REQUEST:

Authorize execution of a \$240,000 grant to complete a planning study of the Heron St, Division St, W Wishkah Ave, W First St, Maple St, Myrtle St, and 30th St crossings consistent with the Railroad Crossing Elimination Grant submitted in September 2024.

POLICY IMPLICATIONS:

- ☒ This Action is in Accordance with Current Policies and Procedures.
- ☐ This Action would Require a New ☐ Policy ☐ Ordinance ☐ Resolution ☐ Other Action from the City Council.
- ☐ This Action Requires a Revision to ☐ Policy ☐ Ordinance ☐ Resolution ☐ Other.
- ☐ This Action Does Not Affect Current Policies and Procedures.

FISCAL IMPACT:

Project Number: City-2025-0001
Amount Requested: \$240,000 (FRA), \$50,000 (City – 130 Fund), \$10,000 (Hoquiam)
Source of Funding: Distribution noted above.
City Fund/Department: 305/Arterial Streets
In Budget? ☒ Yes ☐ No
Supplemental Budget? ☐ Yes ☒ No ☐ Uncertain
BARS Numbers: Expenditure: 305-00-595-690-60-33

BUDGETARY STATUS:

- ☒ Funds Have Already been Authorized in this Year's Budget.
- ☐ This is an Extra-Budget Expenditure.



CITY OF ABERDEEN

Washington
Since 1884

- ☒ Funds will be Requested for this Action, if Approved, in Next Year's Budget.
- ☒ This Action Will Bring in Additional Revenue.
- ☒ This Action Will Require City Staff Time and/or Labor.
- ☐ This Action has no Budgetary Implications.
- ☐ This Action Will Reduce Expenditures.
- ☐ Other:

BACKGROUND/RATIONALE:

In 2024, as a result of a committee formed to address railroad train horn noise complaints, the City applied for a Railroad Crossing Elimination Grant. The purpose of this grant is to evaluate opportunities to reduce the number of crossings through the project corridor, identify appropriate safety enhancements, and set the stage for a future quiet zone. The scope of work and budget for professional services to complete the work will be requested separately.

RECOMMENDATION(S):

The City Council shall authorize the Mayor or FRA authorized staff member to execute Railroad Corridor Crossing Elimination and Safety Improvement Agreement.

ATTACHMENTS:

- FEMA DR 4906 Agreement
- FEMA DR 4906 Declaration

Rick Sangder

Director Name

Director Signature

Joshua Francy

Committee Chair Name

Committee Chair Signature

This request aligns with the following City Council Values:

- | | |
|---|---|
| ☐ Workforce Engagement & Development | ☒ Vibrant, Safe & Healthy Community |
| ☒ Economic Development | ☒ Infrastructure Investment |
| ☒ Fiscal Responsibility | ☒ Communications & Outreach |

Attachment 1

GENERAL TERMS AND CONDITIONS

Revision Date: April 16, 2025

General Terms and Conditions

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ATTACHMENT 1

This Grant Agreement (Agreement) is between the Federal Railroad Administration (FRA) and the Recipient identified in Attachment 2: Project-Specific Terms and Conditions. This Agreement, including the Agreement cover sheet, this Attachment 1, Attachment 2, and Exhibits A–C, constitutes the entire Agreement between FRA and the Recipient regarding the Project as defined in Attachment 2. All prior discussions and understandings concerning the scope and subject matter of this agreement are superseded by this Agreement.

This Agreement is governed by and subject to 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and the U.S. Department of Transportation (USDOT) implementing regulations at 2 C.F.R. part 1201.

ARTICLE 1: TERMS AND CONDITIONS

1.1 General Terms and Conditions

This Attachment 1: General Terms and Conditions, is part of the Agreement between FRA and the Recipient. This Attachment 1 contains the standard terms and conditions governing the administration of this Agreement and the execution of the Project. The General Terms and Conditions incorporate by reference the information contained in Attachment 2 and the Exhibits to this Agreement.

1.2 Project-Specific Terms and Conditions

Attachment 2: Project-Specific Terms and Conditions, is part of the Agreement between FRA and the Recipient. Attachment 2 contains Project-Specific Terms and Conditions, which may include special terms and conditions.

1.3 Program-Specific Clauses

Article 26 of this Attachment 1 contains the applicable program-specific clauses. The Recipient will comply with the program-specific clauses below that are associated with the grant program identified in Attachment 2 of this Agreement. In the event that the Recipient's grant is not authorized under a program listed below, Article 26 does not apply.

(a) For Projects funded under the Interstate Rail Compacts program (49 U.S.C. § 22910), the Recipient will comply with the program-specific clauses in Article 26.1.

(b) For Projects funded under the Railroad Crossing Elimination program (49 U.S.C. § 22909), the Recipient will comply with the program-specific clauses in Article 26.2.

(c) For Projects funded under the Consolidated Rail Infrastructure and Safety Improvements program (49 U.S.C. § 22907), the Recipient will comply with the program-specific clauses in Article 26.3.

(d) For Projects funded under the Restoration and Enhancement program (49 U.S.C. § 22908), the Recipient will comply with the program-specific clauses in Article 26.4.

(e) For Projects funded under the Federal-State Partnership for Intercity Passenger Rail program (49 U.S.C. § 24911) and Federal-State Partnership for State of Good Repair (as authorized in Sections 11103 and 11302 of the Passenger Rail Reform and Investment Act of 2015 (Title XI of the Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94 (2015))), the Recipient will comply with the program-specific clauses in Article 26.5.

1.4 Exhibits

Exhibits A–C are part of the Agreement between FRA and the Recipient. The Recipient will comply with Exhibits A–C.

ARTICLE 2: FRA ROLE AND RESPONSIBILITIES

2.1 FRA Role

(a) FRA is responsible for funding disbursements to the Recipient under this Agreement. FRA will also conduct oversight and monitoring activities to assess Recipient progress against established performance goals and to assess compliance with terms and conditions, including the Statement of Work and other requirements of this Agreement.

(b) If this award is made as a Cooperative Agreement, FRA will have substantial programmatic involvement. Substantial involvement means that, after award, technical, administrative, or programmatic staff will assist, guide, coordinate, or otherwise participate with the Recipient in Project activities.

(c) If this award is made as a Grant, FRA will not have substantial programmatic involvement.

2.2 FRA Professional Staff

FRA may provide professional staff to review work in progress, completed products, and to provide or facilitate access to technical assistance when it is available, feasible, and appropriate. FRA professional staff may include the following:

(a) Financial Analyst. The Financial Analyst will serve as the Recipient's point of contact for systems (e.g., GrantSolutions and the Delphi eInvoicing System) access and troubleshooting as well as for financial monitoring.

(b) Grant Manager. The Grant Manager will serve as the Recipient's point of contact for grant administration and will oversee compliance with the terms and conditions in this Agreement. The Grant Manager reviews financial reports, performance reports, and works with the Project Manager to facilitate effective Project delivery.

(c) Project Manager. The Project Manager will serve as the Recipient's point of contact for the technical aspects of Project delivery. The Project Manager coordinates Project deliverable review, provides technical assistance to the Recipient, and generally assesses Project progress and performance.

ARTICLE 3: RECIPIENT ROLE

3.1 Representations and Acknowledgments on the Project

(a) The Recipient represents that:

- (1) all material statements of fact in the Application were accurate when the Application was submitted and now; and
- (2) the Recipient read and understands the terms and conditions in Attachment 1 and Attachment 2 of this Agreement, the applicable program-specific clauses in Article 26 of this Attachment 1, and the information and conditions in the Exhibits.

(b) The Recipient acknowledges that:

- (1) the terms and conditions impose obligations on the Recipient and that the Recipient's non-compliance with the terms and conditions may result in remedial action, including terminating the Agreement, disallowing costs incurred for the Project, requiring the Recipient to refund Federal contributions to FRA, and reporting the non-compliance in the Federal-government-wide integrity and performance system. Recipient acknowledges that the terms and conditions impose such obligations on the Recipient whether the award is made as a Cooperative Agreement, Grant Agreement, or Phased Funding Agreement.
- (2) The Recipient acknowledges that the requirements of this Agreement apply to the entire Project, including Project costs satisfied from sources other than Agreement Federal Funds.

(c) By entering into this Agreement with FRA, the Recipient agrees to comply with the terms and conditions in Attachment 1 and Attachment 2, including applicable program-specific clauses in Article 26 of this Attachment 1, Exhibits A–C, and all applicable Federal laws and regulations, including those identified in this Agreement. The Recipient will ensure compliance with all terms of this Agreement and all of its parts for all tiers of subawards and contracts under this Agreement, as appropriate. The Recipient understands that the terms and conditions of this Agreement apply regardless of whether the award is made as a Cooperative Agreement, Grant Agreement, or Phased Funding Agreement.

3.2 Representations on Authority and Capacity

The Recipient represents that:

- (a) it has the legal authority to receive Federal financial assistance under this Agreement;
- (b) it has the legal authority to complete the Project;
- (c) all representations and warranties made in the Federal System for Awards Management (SAM.gov) and in the Application are true and correct;

- (d) it has the capacity, including legal, technical, institutional, managerial, and financial capacity, to comply with its obligations under this Agreement and complete the Project;
- (e) the Non-Federal Funds listed in Article 6 of Attachment 2 of this Agreement are committed to fund the Project;
- (f) it has sufficient funds available to ensure that equipment and infrastructure funded under this Agreement will be operated and maintained in compliance with this Agreement and applicable Federal law;
- (g) it has sufficient funds available to ensure that operations funded under this agreement are conducted in compliance with this Agreement and applicable Federal law; and
- (h) the individual executing this agreement on behalf of the Recipient has the legal authority to enter this Agreement and make the statements and certifications in this Agreement on behalf of the Recipient.

3.3 FRA Reliance

The Recipient acknowledges that:

- (a) FRA relied on statements of fact in the Application and SAM.gov to select the Project to receive this award;
- (b) FRA relied on statements of fact in the Application, SAM.gov, and this Agreement to determine that the Recipient and the Project are eligible to receive financial assistance under this Agreement;
- (c) FRA relied on statements of fact in the Application, SAM.gov, and this Agreement to determine that the Recipient has the legal authority to implement the Project; and
- (d) FRA relied on statements of fact in both the Application and this Agreement to establish the terms of this Agreement; and
- (e) FRA's selection of the Project to receive this award may have prevented awards to other eligible applicants.

3.4 Project Delivery

- (a) The Recipient will implement and complete the Project to FRA's satisfaction under the terms of this Agreement.
- (b) The Recipient will ensure that the Project is financed, constructed, operated, and maintained in accordance with all applicable Federal laws, regulations, and policies.

3.5 Rights and Powers Affecting the Project

- (a) The Recipient will not take or permit any action that deprives it of any rights or powers necessary to the Recipient's performance under this Agreement without written approval of FRA.

(b) The Recipient will act promptly, in a manner acceptable to FRA, to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with the Recipient's performance under this Agreement.

3.6 Notification of Changes to Key Personnel

The Recipient will notify the FRA Grant Manager in writing within 30 days of any change in key personnel who are identified in the Application, which may require an amendment to this Agreement.

ARTICLE 4: AWARD AMOUNT, OBLIGATION, AND TIME PERIODS

4.1 Federal Award Amount

Under this Agreement, FRA awards a Grant to the Recipient in the amount that is the Agreement Federal Funds in Article 6.1 of Attachment 2 of this Agreement.

4.2 Federal Obligations

This Agreement obligates for the budget period the amount that is the Agreement Federal Funds in Article 6.1 of Attachment 2 of this Agreement.

4.3 Maximum Funding Amount

This Agreement funds the Project at the lesser amount of the Agreement Federal Funds in Article 6.1 of Attachment 2 of this Agreement, or the FRA maximum contribution percentage of the total Project cost identified in Article 6.5 of Attachment 2 of this Agreement.

4.4 Budget Period

The budget period for this award begins on the date of this Agreement and ends on the end date that is listed in Section 5 on the Agreement cover sheet. In this Agreement, "budget period" is used as defined at 2 C.F.R. § 200.1.

4.5 Period of Performance

The Period of Performance for this award is listed in Section 4 on the Agreement cover sheet. In this Agreement, "Period of Performance" is used as defined at 2 C.F.R. § 200.1.

ARTICLE 5: STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

5.1 Notification Requirement

The Recipient will notify the FRA Grant Manager and Project Manager by electronic correspondence within 30 days of any change in circumstances or commitments that adversely affect the Recipient's plan to complete the Project, including change in authority. In that notification, the Recipient will describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this Section 5.1 is separate from any requirements under this Article 5 that the Recipient request an amendment to this Agreement.

5.2 Scope and Statement of Work Changes

If the Project's activities differ from the activities described in Article 4 of Attachment 2 of this Agreement, then the Recipient will notify FRA in writing of the change, which may require an amendment to this Agreement.

5.3 Schedule Changes

If one or more of the following conditions are satisfied, then the Recipient will request an amendment to this Agreement to update the Estimated Project Schedule in Section 5.2 of Attachment 2 of this Agreement:

- (a) a completion date for the Project or a component of the Project is listed in the Estimated Project Schedule in Section 5.2 of Attachment 2 of this Agreement and the Recipient's estimate for that milestone changes to a date that is more than six months after the date listed;
- (b) a schedule change would require the budget period to continue after the end of the budget period defined in Section 4.4; or
- (c) a schedule change would require the Period of Performance to continue after the end of the Period of Performance defined in Section 4.5. The Recipient must submit requests to extend the Period of Performance not later than 90 days before the end of the Period of Performance.

For other schedule changes, the Recipient will notify the Grant Manager in writing.

5.4 Budget Changes

- (a) The Recipient acknowledges that if the cost of completing the Project increases:
 - (1) that increase does not affect the Recipient's obligation under this Agreement to complete the Project;
 - (2) any additional funds the Recipient contributes to complete the Project are subject to the requirements of this Agreement in the same manner as the Non-Federal Funds identified in Article 6.5 of Attachment 2 of this Agreement; and
 - (3) FRA will not increase the amount of this award to address any funding shortfall.
- (b) The Recipient will notify FRA in writing if the total Project cost, as described in Table 6-A of Attachment 2 of this Agreement, amount increases, which may result in an amendment to this Agreement.
- (c) The Recipient will notify FRA in writing if the Non-Federal Funds amount decreases, which may result in an amendment to this Agreement.
- (d) For all other budget changes, the Recipient will follow the applicable procedures and document the changes in writing.

5.5 Project Cost Savings

(a) If there are Project Cost Savings, then the Recipient may notify FRA in writing of its intent to include in the Project and complete with the Project Cost Savings the additional activities within the scope of this award that are specified in the Additional Task(s) in Article 4 of Attachment 2 of this Agreement. The Recipient will complete the Additional Task(s) after FRA provides a written approval. An amendment to this Agreement is not required to proceed with the Additional Task(s).

(b) If there are Project Cost Savings, and there are not Additional Task(s) identified in Article 4 of Attachment 2 of this Agreement, then the Recipient may propose a new task that is within the scope of this award and request an amendment to add the new task to this Agreement and complete it with Project Cost Savings.

(c) In this Agreement, “**Project Cost Savings**” means the difference between the actual costs to complete the Project and the estimated total Project cost listed in Section 6.5 of Attachment 2 of this Agreement, if after the Recipient completes the tasks identified in Article 4 of Attachment 2 of this Agreement to FRA’s satisfaction, the actual Project costs are less than the estimated total Project costs. There are no Project Cost Savings prior to completion of the Project or if the actual costs to complete the Project are equal to or greater than the total Project cost listed in Section 6.5 of Attachment 2 of this Agreement.

(d) If there are Project Cost Savings and either the Recipient does not make a proposal or FRA does not accept the Recipient’s proposal under (a) of this Section 5.5, then:

(1) The Recipient will provide written notice to FRA and reduce the Federal Share by the Project Cost Savings, which may result in an amendment to this Agreement; and

(2) If the reduced Federal Share reduces this award and the Recipient received reimbursed costs exceeding the appropriate amount under the reduced award, the Recipient will refund the difference between the reimbursed costs and the reduced award.

(e) In this Agreement, “Federal Share” means the sum of the Agreement Federal Funds and Other Federal Funds amounts that are identified in the Approved Project Budget in Section 6.5 of Attachment 2 of this Agreement.

(f) The Recipient acknowledges that amounts that are required to be refunded under this Section constitute a debt to the Federal Government that FRA may collect under 2 C.F.R. § 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

5.6 FRA Acceptance of Changes

FRA may accept or reject changes requested under this Article 5, and in doing so may elect to consider only the interests of the grant program and FRA. The Recipient acknowledges that any request under this Article 5 does not amend, modify, or supplement this Agreement unless FRA

accepts the request and the parties amend this Agreement under Section 15.1 of this Attachment 1.

ARTICLE 6: GENERAL REPORTING TERMS

6.1 Alternative Reporting Methods

FRA may establish processes for the Recipient to submit reports required by this Agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient will use the processes required by FRA.

6.2 Paperwork Reduction Act Notice

Under 5 C.F.R. § 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (OMB). Notwithstanding any other term of this Agreement, the due date for any information collections required under this Agreement, including the reporting requirements in Articles 7 and 8, is the later of (1) the due date stated with the requirement and (2) the 30th day after OMB approves that information collection.

ARTICLE 7: PROGRESS AND FINANCIAL REPORTING

7.1 Quarterly Project Progress Reports and Recertifications

(a) On or before the 30th day of the first month of each quarter and until the end of the Period of Performance, the Recipient will submit to FRA through GrantSolutions a complete FRA Form 34¹ Quarterly Project Progress Report and Recertification that contains, for the previous quarter:

- (1) a certification that the Recipient is in compliance with 2 C.F.R. § 200.303 (Internal Controls) and 2 C.F.R. part 200, Subpart F (Audit Requirements);
- (2) the certification required under 2 C.F.R. § 200.415(a); and
- (3) a certification that the Recipient is complying with any environmental mitigation commitments and Section 106 compliance obligations.

If the date of this Agreement is in the final month of a quarter, then the Recipient will submit the first Quarterly Project Progress Report and Recertification in the quarter that begins after the date of this Agreement.

(b) On or before the 30th day of the first month of each quarter and until the end of the Period of Performance, the Recipient will submit to FRA through GrantSolutions a Federal Financial Report (SF-425) covering the previous quarter.

¹ FRA Form 34 is available at <https://railroads.dot.gov/grant-administration/reporting-requirements/fra-reports>

7.2 Final Progress Reports and Financial Information

No later than 120 days after the end of the Period of Performance, the Recipient will submit:

- (a) a final Quarterly Project Progress Report and Recertification in the format and with the content described in Section 7.1(a) of this Attachment 1 for each Quarterly Project Progress Report and Recertification;
- (b) a final SF-425 through GrantSolutions;
- (c) a Final Performance Report FRA Form 33 as provided by FRA²; and
- (d) any other information required under FRA's award closeout procedures.

7.3 Real Property Reporting

The Recipient will comply with the reporting obligations in 2 C.F.R. § 200.330, as directed by FRA.

ARTICLE 8: PERFORMANCE MEASUREMENT AND REPORTING

8.1 Baseline Performance Measurement

Within one year before the start of work on the Project, the Recipient will collect baseline data for each performance measure that is identified in Article 7 of Attachment 2 of this Agreement. Within six months of the start of the Period of Performance, the Recipient will submit to FRA a Baseline Performance Measurement Report that describes the data collected, the dates when the data were collected, the data sources, assumptions, variability, and estimated levels of precision for each performance measure. The Recipient will also provide FRA access to the data collected in machine-readable format.

8.2 Post-Project Performance Measurement

For each performance measure that is listed in Article 7 of Attachment 2 of this Agreement, the Recipient will collect data and submit to FRA a Post-Project Performance Measurement Report that describes the data collected, the dates when the data were collected, the data sources, assumptions, variability, and estimated levels of precision for each performance measure, at the frequency and for the duration identified in Article 7 of Attachment 2 of this Agreement. The Recipient will also provide FRA access to the data collected in machine-readable format. If an external factor affects a performance measure, the Recipient will identify that external factor in the Post-Project Performance Measurement Report and discuss the external factor's influence on the performance measure. In the Post-Project Performance Report, the Recipient will compare the actual project performance against the pre-project (baseline) performance and expected post-project performance as described in Table 7-A of Attachment 2 of this Agreement.

²FRA Form 33 is available at <https://railroads.dot.gov/grant-administration/reporting-requirements/fra-reports>

8.3 Project Outcomes Report

Where indicated in Article 7 of Attachment 2 of this Agreement, the Recipient will submit to FRA, not later than January 31st of the year that follows the final year during which data were collected, a Project Outcomes Report that contains:

- (a) an analysis of the impacts of the Project, including a comparison of the baseline performance measurement data collected under Section 8.1 of this Attachment 1 with the post-project performance measurement data that the Recipient reported in the final Post-Project Performance Measurement Report required under Section 8.2 of this Attachment 1;
- (b) for each performance measure that is identified in Article 7 of Attachment 2 of this Agreement, an analysis of the accuracy of the projected outcome; and
- (c) all data collected under Sections 8.1 and 8.2 of this Attachment 1;
- (d) additional information as directed.

8.4 General Performance Measurement Requirements

The Recipient will ensure that all data collection for each performance measure identified in Article 7 of Attachment 2 of this Agreement is completed in a manner consistent with the description, location, and other attributes associated with that performance measure.

8.5 Outcome Measurement and Reporting Survival

The data collection and reporting requirements in Article 8 of this Attachment 1 survive the termination of this Agreement. FRA may consider the Recipient's compliance with this requirement after closeout of the grant in its evaluation of future applications for Federal financial assistance.

ARTICLE 9: NONCOMPLIANCE AND REMEDIES

9.1 Noncompliance Determinations

(a) Notice of Proposed Determination. If FRA determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of this Agreement, FRA will notify the Recipient of a proposed determination of noncompliance through a written notice that:

- (1) explains the noncompliance;
- (2) describes a proposed remedy that is consistent with Section 9.2 of this Attachment 1;
- (3) describes the process and form in which the Recipient may respond to the notice that is consistent with Section 9.1(b) of this Attachment 1; and

(4) if applicable, provides the Recipient an opportunity to cure the noncompliance or take corrective action.

(b) Response to Notice of Proposed Determination. The Recipient may, not later than 7 days after receiving the notice of proposed determination of noncompliance, respond to that notice in the form and through the process described in that notice. In its response, the Recipient may:

- (1) accept the proposed remedy;
- (2) acknowledge the noncompliance, but propose an alternative remedy;
- (3) acknowledge the noncompliance and agree to cure or take corrective action;
or
- (4) dispute the noncompliance.

To dispute the noncompliance, the Recipient must include in its response sufficient documentation or other information supporting the Recipient's compliance.

(c) Notice of Final Determination. After considering the Recipient's response or failure to timely respond under Section 9.1(b) of this Attachment 1, FRA will make a final determination. To make a final determination, FRA must provide a written notice to the Recipient that:

- (1) states what the final determination is (e.g., noncompliance or compliance);
- (2) states the basis for the final determination; and
- (3) describes the remedy that FRA is imposing, if applicable, or if FRA is not imposing a remedy, describes the resolution to the proposed determination of noncompliance, including whether the Recipient has cured or corrected the noncompliance.

(d) If FRA determines the noncompliance is one that cannot be addressed while work on the Project is ongoing, in the notice of proposed determination or in the notice of final determination, FRA will direct the Recipient to stop work. The Recipient will stop work and will direct any Subrecipients or contractors to stop work immediately upon receipt of a notice to stop work from FRA.

(e) FRA may consider the public interest in making a determination of noncompliance and imposing a remedy.

9.2 Remedies

(a) If FRA makes a final determination of noncompliance under Section 9.1(c) of this Attachment 1, FRA may impose a remedy, including:

- (1) additional conditions on the award;
- (2) requiring the Recipient to prepare and implement a corrective action plan;

- (3) directing the Recipient to stop work;
- (4) any remedy permitted under 2 C.F.R. §§ 200.339–200.340, including withholding of payments ; disallowance of previously reimbursed costs, requiring refunds from the Recipient to FRA; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or
- (5) any other remedy legally available.

(b) The Recipient acknowledges that any amounts FRA requires the Recipient to refund to FRA under this Section 9.2 constitute a debt to the Federal Government that FRA may collect under 2 C.F.R. § 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

(c) Other Remedies. The termination authority under Article 10 of this Attachment 1 supplements and does not limit FRA’s remedial authority under this Article 9 or 2 C.F.R. part 200, including 2 C.F.R. §§ 200.339-200.240. FRA reserves the right to seek any appropriate remedy or otherwise enforce the terms and conditions of this Agreement as authorized by law.

9.3 Other Oversight Entities

Nothing in Article 9 of this Attachment 1 limits any party’s authority to report activity under this agreement to the United States Department of Transportation Inspector General or other appropriate oversight entities.

ARTICLE 10: AGREEMENT SUSPENSION AND TERMINATION

10.1 Suspension of Award Activities

(a) If FRA determines that the remedy for noncompliance imposed under Article 9 of this Agreement does not achieve the desired result or is unlikely to improve compliance or performance, FRA may suspend activities under this Agreement pending corrective action by the Recipient or termination.

(b) If FRA suspends activities under this Agreement, FRA will notify the Recipient in writing of the following, which may be included in the determinations of non-compliance under Section 9.1 of this Attachment 1:

- (1) what project activities, if any, will take place during the period of suspension;
- (2) what costs FRA will reimburse if the suspension is lifted and the award resumed;
- (3) what corrective actions must occur during the suspension; and
- (4) FRA’s intent to terminate the award under this Article 10 if the Recipient does not meet the conditions of the remedial action.

(c) The duration of the temporary suspension of activities under the Agreement should be commensurate with the corrective action needed, but should not exceed 120 days at the outset. If the Recipient is not making sufficient progress in correcting the noncompliance, FRA must consider both financial and programmatic requirements in determining the appropriate extension to avoid the need for termination.

10.2 FRA Termination

(a) FRA may terminate this Agreement and all its obligations under this Agreement if any of the following occurs:

- (1) the Recipient fails to obtain or contribute the required Non-Federal Funds, or alternatives approved by FRA, as provided in this agreement and consistent with Article 6 of Attachment 2 of this Agreement;
- (2) the Recipient fails to meet a milestone by six months after the completion date listed in Article 5 of Attachment 2 of this Agreement and the Recipient fails to request an amendment to this Agreement pursuant to Section 5.3 of this Attachment 1;
- (3) the Recipient fails to comply with the terms and conditions of this Agreement;
- (4) there are changes to the Project that FRA determines are inconsistent with FRA's basis for selecting the Project to receive the award; or
- (5) FRA determines that termination of this Agreement is in the public interest.

(b) The Recipient may request that FRA terminate the Agreement, which may result in FRA determining noncompliance and imposing remedies pursuant to Article 9 of this Attachment 1.

10.3 Closeout Termination

- (a) This Agreement terminates on Project Closeout.
- (b) In this Agreement, "Project Closeout" means the date that FRA notifies the Recipient that the award is closed out. Under 2 C.F.R. § 200.344, Project Closeout should occur no later than one year after the end of the Period of Performance.

10.4 Post-Termination Adjustments

The Recipient acknowledges that under 2 C.F.R. §§ 200.345–200.346, termination of this Agreement does not extinguish FRA's authority to disallow costs, including costs that FRA reimbursed before termination, and recover funds from the Recipient.

10.5 Non-Terminating Events

- (a) The end of the budget period described under Section 4.4 of this Attachment 1 does not terminate this Agreement or the Recipient's obligations under this Agreement.

(b) The end of the Period of Performance described under Section 4.5 of this Attachment 1 does not terminate this Agreement or the Recipient's obligations under this Agreement.

ARTICLE 11: MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS

11.1 Recipient Monitoring and Record Retention

(a) The Recipient will monitor activities under this award, including activities under subawards and contracts, to ensure:

- (1) that those activities comply with this agreement; and
- (2) that funds provided under this award are not expended on costs that are not allowable under this award or not allocable to this award.

(b) If the Recipient makes a subaward under this award, the Recipient will monitor the activities of the Subrecipient in compliance with 2 C.F.R. §200.332(e).

(c) The Recipient will retain and provide access to records relevant to the award during the course of the Project and for three years after closeout or longer, as required under 2 C.F.R. § 200.334.

(d) The Recipient will adhere to the recording and recordkeeping requirements set forth in 2 C.F.R. §§ 200.334–200.338. Project Closeout does not alter these requirements.

11.2 Financial Records and Audits

(a) The Recipient will keep all Project accounts and records that fully disclose the amount and disposition by the Recipient of the award funds, the total cost of the Project, and the amount or nature of that portion of the cost of the Project supplied by other sources, and any other financial records related to the Project.

(b) The Recipient will keep accounts and records described under Section 11.2(a) of this Attachment 1 in accordance with a financial management system that meets the requirements of 2 C.F.R. §§ 200.302–200.307 and 2 C.F.R. part 200, subpart F and will facilitate an effective audit in accordance with 31 U.S.C. §§ 7501–7506.

(c) The Recipient will separately identify expenditures under the award in financial records required for audits under 31 U.S.C. §§ 7501–7506. Specifically, the Recipient will:

- (1) list expenditures separately on the schedule of expenditures of Federal awards required under 2 C.F.R. part 200, subpart F, including the fiscal year in the format "FY 202X" in the program name; and
- (2) list expenditures on a separate row under Part II, Item 1 (Federal Awards Expended During Fiscal Period) of Form SF-SAC, including "FY 202X" in Column C (Additional Award Identification).

(d) If the Recipient expends \$1,000,000 or more in Federal awards during the Recipient's fiscal year, a single or program audit will be conducted for that year, consistent with 2 C.F.R. §§ 200.501(a) and 200.512(c).

11.3 Internal Controls

The Recipient will establish and maintain internal controls as required under 2 C.F.R. § 200.303.

11.4 FRA Record Access

FRA may access Recipient records related to this award under 2 C.F.R. § 200.337.

11.5 Site Visits

FRA may conduct site visits to review Project activities, accomplishments, and management control systems and to provide technical assistance to the Recipient. The Recipient will provide or ensure reasonable, safe, and convenient access to FRA for any such site visit. FRA will conduct all site visits in such a manner as will not unduly delay work conducted by the Recipient, Subrecipient, or contractor.

ARTICLE 12: CONTRACTING AND SUBAWARDING

12.1 Buy America

(a) For infrastructure projects, steel, iron, manufactured goods, and construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act (Buy American Act), Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT, and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(b) For all other projects, the Recipient's acquisition of steel, iron, and manufactured goods with funding provided through this Agreement is subject to the requirements set forth in the Buy American Act, 41 U.S.C. §§ 8301-8305. The Recipient also represents that it has never been convicted of violating the Buy American Act nor will it make funding received under this Agreement available to any person or entity who has been convicted of violating the Buy American Act.

(c) Under this Section, "infrastructure project" has the definition provided in 2 C.F.R. § 184.3.

(d) Under 2 C.F.R. § 200.322, the Recipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. § 200.322 in all subawards, contracts, and purchase orders f under this award.

12.2 Small and Disadvantaged Business Requirements

The Recipient will expend all funds under this award in compliance with the requirements at 2 C.F.R. § 200.321 (Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms).

12.3 Engineering and Design Services [Reserved]

12.4 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

The Recipient acknowledges that Section 889 of Pub. L. No. 115-232 and 2 C.F.R. § 200.216 prohibit the Recipient and all Subrecipients from procuring or obtaining certain telecommunications and video surveillance equipment or services under this award.

12.5 Pass-Through Entity Responsibilities

(a) If the Recipient makes a subaward under this award, the Recipient will comply with the requirements for pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. §§ 200.331–200.333, regardless of whether the Recipient is also a Pass-Through Entity as defined in 2 C.F.R. § 200.1.

(b) The Recipient will report any subaward obligation of \$30,000 or more in Federal funds in USASpending.gov consistent with the Federal Funding Accountability and Transparency Act, Pub. L. 109-282.

(c) The Recipient is accountable for performance under this award, the appropriate expenditure of funds, and other requirements under this Agreement. The Recipient is responsible for any non-compliance under the award and for compliance with any remedies imposed.

12.6 Local Hiring Preference for Construction Jobs

Under Section 25019 of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, div. B, tit. V (2021), a Recipient or Subrecipient may implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project funded by this grant if funded under title 49 or 23 United States Code, including prehire agreements, subject to any applicable State and local laws, policies, and procedures. The use of such a local or other geographical or economic hiring preference in any bid for a contract for the construction of a project funded by this grant shall not be considered to unduly limit competition. Project labor agreements should be consistent with the definition and standards outlined in Executive Order 13502. For additional information, see <https://www.transportation.gov/sites/dot.gov/files/2023-05/Creating-Local-Construction-Workforce.pdf>.

12.7 Procurement

The Recipient may acquire property, goods, or services in connection with the Project. If the Recipient is a State or Indian Tribe, then it will follow the same policies and procedures it uses for procurements with non-Federal funds in compliance with 2 C.F.R. § 200.317. A Subrecipient of a State will follow the policies and procedures allowed by that State when procuring property

and services under this award consistent with 2 C.F.R. § 1201.317, notwithstanding 2 C.F.R. § 200.317. An entity that is not a State or Indian Tribe, or Subrecipient of a State or Indian Tribe, will comply with 2 C.F.R. §§ 200.318–200.327, and applicable supplementary USDOT or FRA directives and regulations. The Recipient will provide technical specifications and requirements to FRA for review upon request.

ARTICLE 13: COSTS, PAYMENTS, AND UNEXPENDED FUNDS

13.1 Limitation of Federal Award Amount

Under this award, FRA will not provide funding in an amount greater than the Agreement Federal Funds. The Recipient acknowledges that FRA is not liable for payments exceeding that amount, and the Recipient will not request reimbursement of costs exceeding that amount.

13.2 Project Costs

This award is subject to the cost principles at 2 C.F.R. part 200, subpart E, including provisions on determining allocable costs and determining allowable costs.

13.3 Timing of Project Costs

(a) The Recipient will not charge to this award costs that are incurred after the budget period.

(b) The Recipient will not charge to this award costs that were incurred before the date of this Agreement unless those costs are identified as approved pre-award costs in Section 6.6 of Attachment 2 of this Agreement and would have been allowable if incurred during the budget period. This limitation applies to pre-award costs under 2 C.F.R. § 200.458. This agreement hereby terminates and supersedes any previous FRA approval for the Recipient to incur costs under this award for the Project. Section 6.6 of Attachment 2 of this Agreement is the exclusive FRA approval of costs incurred before the date of this Agreement.

(c) The Recipient may request approval of pre-award costs in a written request that demonstrates the purpose and amount of the costs, compliance with 2 C.F.R. § 200.458, and whether such costs would otherwise serve as Non-Federal Funds.

13.4 Recipient Recovery of Federal Funds

The Recipient will make all reasonable efforts, including initiating litigation, if necessary, to recover Federal funds if FRA determines, after consultation with the Recipient, that those funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner. The Recipient will not enter a settlement or other final position, in court or otherwise, involving the recovery of funds under the award unless approved in advance in writing by FRA.

13.5 Unexpended Agreement Federal Funds

Any Agreement Federal Funds that are obligated but not expended on allocable, allowable costs remain the property of the United States.

13.6 Interest Earned

Interest earned on advances of Agreement Federal Funds is not program income.

13.7 Timing of Payments to the Recipient

- (a) Reimbursement is the payment method, unless otherwise approved by FRA.
- (b) The Recipient will not request reimbursement of a cost before the Recipient has entered into an obligation for that cost.

13.8 Payment Method

- (a) The Recipient will use the DELPHI e-Invoicing System (<https://www.dot.gov/cfo/delphi-einvoicing-system.html>) to request reimbursement under this award. FRA will provide access to that system upon request by the Recipient.
- (b) FRA may deny a payment request that is not submitted using the method identified in this Section.

13.9 Information Supporting Expenditures

- (a) When requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient will electronically submit the SF 270 (Request for Advance or Reimbursement) and will submit supporting cost detail to document clearly all costs incurred. As supporting cost detail, the Recipient will include a detailed breakout of all costs incurred and classify all costs by task and by Agreement Federal Funds and Agreement Non-Federal Funds.
- (b) Unless FRA and the Recipient agree otherwise in writing, the Recipient will ensure that the proportion of expenditure of Agreement Federal Funds to Agreement Non-Federal Funds is not more than the maximum percent of total Project cost FRA will contribute identified in Section 6.5 of Attachment 2 of this Agreement. The Recipient will ensure the proportional expenditure of funds is reflected in the detailed breakout of costs supporting the SF 270.
- (c) If the Recipient submits a request for reimbursement that FRA determines does not include or is not supported by sufficient detail, FRA may deny the request or withhold processing the request until the Recipient provides sufficient detail.

13.10 Reimbursement Request Timing Frequency

The Recipient will request reimbursement as needed to maintain cash flow sufficient to timely complete the Project. The Recipient will not submit any single payment request exceeding \$99,999,999.99. The Recipient will not submit a payment request exceeding \$50,000,000.00 unless the Recipient notifies FRA six days before submitting the request.

13.11 Program Income

The Recipient is encouraged to earn income to defray Project costs, where appropriate, and will work with FRA to determine how income may be applied to the grant, in accordance with 2

C.F.R. § 200.307 and 2 C.F.R. § 1201.80. Program income not deducted from total allowable costs may be used only for the purposes and under the terms and conditions established in this Agreement. The Recipient will maintain records of all program income.

ARTICLE 14: PROPERTY AND EQUIPMENT

14.1 General Requirements

The Recipient will comply with the property standards of 2 C.F.R. §§ 200.310–200.316 and will ensure compliance with these standards for all tiers of subawards and contracts under this award.

14.2 Relocation and Real Property Acquisition

The Recipient will comply with the land acquisition policies and relocation requirements in 42 U.S.C. § 4601 et seq. and 49 C.F.R. part 24, subparts A–F, as applicable. At a minimum, under this section, the Recipient will:

- (a) comply with the land acquisition policies in 49 C.F.R. part 24, subpart B and will pay or reimburse property owners for necessary expenses as specified in that subpart;
- (b) provide a relocation assistance program offering the services described in 49 C.F.R. part 24, subpart C and provide reasonable relocation payments and assistance to displaced persons as required in 49 C.F.R. part 24, subparts D–E; and
- (c) make available to displaced persons comparable replacement dwellings in accordance with 49 C.F.R. part 24.
- (d) provide to FRA a real estate acquisition and management plan prior to beginning real property acquisition if the Project is designated a Major Project in Article 1 of Attachment 2 of this Agreement, or if the total Project cost in Section 6.5 of Attachment 2 of this Agreement is greater than \$300 million and the Project is also receiving financial assistance from the Federal Transit Administration (FTA).

14.3 Use for Originally Authorized Purpose

The Recipient will ensure that property and equipment funded under this Agreement is used for the originally authorized purpose. If necessary to satisfy this obligation, the Recipient will enter into appropriate arrangements with the entity or entities using, or with the owner of right-of-way used by, the property and/or equipment funded under this Agreement.

14.4 Maintenance

The Recipient will ensure that any property, improvements to property, and any equipment funded under this Agreement are maintained in good working order and in accordance with FRA regulations, guidelines, and directives.

14.5 Real Property Disposition

In accordance with 2 C.F.R. § 200.311, when real property acquired or improved under this award is no longer used for its originally intended purpose, the Recipient will request disposition instructions from FRA.

14.6 Equipment Disposition

(a) In accordance with 2 C.F.R. §§ 200.313 and 1201.313, when equipment acquired under this award is no longer needed for the Project:

(1) if the entity that acquired the equipment is a State or a Subrecipient of a State, that entity will dispose of that equipment in accordance with State laws and procedures;

(2) if the entity that acquired the equipment is an Indian Tribe, the Indian Tribe shall dispose of that equipment in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in 2 C.F.R. 200.313; and

(3) if the entity that acquired the equipment is neither a State nor an Indian Tribe, that entity will request disposition instructions from FRA. In accordance with 2 C.F.R. § 200.313(f), FRA may permit the Recipient or Subrecipient to retain equipment.

(b) In accordance with 2 C.F.R. §200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. §§ 200.313–200.316 and 2 C.F.R. § 1201.313.

14.7 Recordkeeping

The Recipient will keep records regarding the operation and maintenance of property, improvements to property, equipment, and supplies funded under this Agreement and will provide them to FRA upon request.

14.8 Encumbrance

The Recipient will not create an obligation, such as a transfer of title, lease, lien, mortgage, or encumbrance, that would dispose of or encumber the Recipient's title or other interest in property, improvements to property, equipment or supplies funded under this Agreement without prior written approval from FRA.

The Recipient will not take any action that would adversely affect FRA's interest or impair the Recipient's continuing control over the use of the property, improvements to property, equipment, or supplies funded under the Agreement without prior written approval from FRA.

ARTICLE 15: AMENDMENTS

15.1 Bilateral Amendments

The parties may amend, modify, or supplement this Agreement by mutual agreement in writing signed by FRA and the Recipient. Either party may request to amend, modify, or supplement this Agreement by written notice to the other party.

15.2 FRA Unilateral Amendments

(a) FRA may unilaterally amend this Agreement for the following reasons:

- (1) to comply with Federal law;
- (2) at closeout or in anticipation of closeout; and
- (3) other non-substantive changes, such as to correct typographical errors, as deemed appropriate by FRA.

(b) To unilaterally amend this Agreement under Section 15.3 of this Attachment 1, FRA will provide a written notice to the Recipient that includes the amendment and the date that the amendment is effective.

(c) Except at closeout or in anticipation of closeout, FRA may not unilaterally amend the Statement of Work, this Agreement's monetary amount, the delivery schedule, the Period of Performance, or other terms or conditions of this Agreement.

15.3 Other Amendments

The parties will not amend, modify, or supplement this Agreement except as permitted under Sections 15.1, 15.2, or 15.3 of this Attachment 1. If an amendment, modification, or supplement is not permitted under Section 15.1, 15.2, or 15.3 of this Attachment 1, it is void.

ARTICLE 16: [RESERVED]

ARTICLE 17: [RESERVED]

ARTICLE 18: LABOR AND WORK

18.1 Labor and Work

The Recipient will document its consideration of job quality and labor standards related to the Project in Article 9 of Attachment 2 of this Agreement.

ARTICLE 19: CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

19.1 Critical Infrastructure Security and Resilience

(a) Consistent with the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems (July 28, 2021) and the National Security Memorandum on Critical Infrastructure Security and Resilience (April 30, 2024), the Recipient will consider physical and cyber security and resilience in planning, design, and oversight of the Project.

(b) If the Security Risk Designation in Section 1.3 of Attachment 2 of this Agreement is “Elevated,” then not later than two years after the date of this Agreement the Recipient will submit to FRA a report that:

- (1) identifies a cybersecurity point of contact for the transportation infrastructure being improved in the Project;
- (2) summarizes or contains a cybersecurity incident reporting plan for the transportation infrastructure being improved in the Project;
- (3) summarizes or contains a cybersecurity incident response plan for the transportation infrastructure being improved in the Project;
- (4) documents the results of a self-assessment of the Recipient’s cybersecurity posture and capabilities; and
- (5) describes any additional actions that the Recipient has taken to consider or address cybersecurity risk of the transportation infrastructure being improved in the Project.

ARTICLE 20: FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS

20.1 Uniform Administrative Requirements for Federal Awards

The Recipient will comply, and will ensure that other entities receiving funding under this agreement will comply, with the obligations on non-Federal entities under 2 C.F.R. parts 200 and 1201, regardless of whether the Recipient or other entity receiving funding under this agreement is a Non-Federal entity as defined in 2 C.F.R. § 200.1, except that subpart F of part 200 does not apply if the Recipient or Subrecipient is a for-profit entity.

20.2 Federal Law and Public Policy Requirements

(a) The Recipient will ensure that Federal funding is expended in full accordance with the United States Constitution, Federal law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination and the Recipient will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not

impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in and the enforcement of Federal immigration law.

(b) Pursuant to Section 3(b)(iv)(A) of Executive Order 14173, Ending Illegal Discrimination And Restoring Merit-Based Opportunity, the Recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code.

(c) Pursuant to Section 3(b)(iv)(B) of Executive Order 14173, Ending Illegal Discrimination And Restoring Merit-Based Opportunity, by entering into this agreement, the Recipient certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws.

(d) The failure of this Agreement to expressly identify Federal law applicable to the Recipient or activities under this Agreement does not make that law inapplicable.

20.3 Federal Freedom of Information Act

(a) FRA is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

(b) The Recipient acknowledges that the Application and materials submitted to FRA by the Recipient related to this Agreement will become FRA records that may be subject to public release under 5 U.S.C. § 552. If the Recipient submits any materials to FRA related to this Agreement that the Recipient considers to include trade secret or confidential commercial or financial information, the Recipient should note that the submission contains confidential business information, mark each affected page, and highlight or otherwise denote the portions of the submission that contain confidential business information.

20.4 History of Performance

Under 2 C.F.R. § 200.206, any Federal awarding agency may consider the Recipient's performance under this Agreement, when assessing the risks of making a future Federal financial assistance award to the Recipient.

20.5 Whistleblower Protection

(a) The Recipient acknowledges that it is a "Recipient" within the scope of 41 U.S.C. § 4712, which prohibits the Recipient from taking certain actions against an employee for certain disclosures of information that the employee reasonably believes are evidence of gross mismanagement of this award, gross waste of Federal funds, or a violation of Federal law related this this award.

(b) The Recipient will inform its employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

20.6 External Award Terms and Obligations

(a) In addition to this document and the contents described in Article 25 of this Attachment 1, this Agreement includes the following additional terms as integral parts:

- (1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;
- (2) Appendix A to 2 C.F.R. part 170: Reporting Subawards and Executive Compensation;
- (3) 2 C.F.R. part 175: Award Term for Trafficking in Persons; and
- (4) Appendix XII to 2 C.F.R. part 200: Award Term and Condition for Recipient Integrity and Performance Matters.

(b) The Recipient will comply with:

- (1) 49 C.F.R. part 20: New Restrictions on Lobbying;
- (2) 49 C.F.R. part 21: Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964;
- (3) 49 C.F.R. part 27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; and
- (4) Subpart B of 49 C.F.R. part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

20.7 Incorporated Certifications

The Recipient makes the representations in the following certifications, which are incorporated by reference:

- (a) Appendix A to 49 C.F.R. part 20 (Certification Regarding Lobbying).

ARTICLE 21: ASSIGNMENT

21.1 Assignment Prohibited

The Recipient will not transfer to any other entity any discretion granted under this Agreement, any right to satisfy a condition under this Agreement, any remedy under this Agreement, or any obligation imposed under this Agreement.

ARTICLE 22: WAIVER

22.1 Waivers

- (a) A waiver of a term of this Agreement authorized by law and granted by FRA will not be effective unless it is in writing and signed by an authorized representative of FRA.

(b) A waiver of a term of this Agreement granted by FRA on one occasion will not operate as a waiver on other occasions.

(c) If FRA fails to require strict performance of a term of this Agreement, fails to exercise a remedy for a breach of this Agreement, or fails to reject a payment during a breach of this Agreement, that failure does not constitute a waiver of that term or breach.

ARTICLE 23: ADDITIONAL TERMS AND CONDITIONS

23.1 Disclaimer of Federal Liability

FRA will not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this Agreement.

23.2 Environmental Review

(a) Except as authorized by law or under 23 C.F.R. § 771.113(d)(4), the Recipient will not begin final design activities; acquire real property, construction materials, or equipment, including rolling stock; begin construction; or take other actions that would have an adverse environmental impact or limit the choice of reasonable alternatives for the Project unless and until FRA complies with the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (NEPA), and any other applicable environmental laws and regulations. In addition, the Recipient will not begin project development that involves ground disturbing activity prior to FRA compliance with NEPA and any other applicable environmental laws and regulations.

(b) The Recipient acknowledges that:

(1) FRA's actions under Section 23.2(a) of this Attachment 1 may depend on the Recipient conducting necessary environmental analyses and submitting necessary documents to FRA; and

(2) applicable environmental statutes and regulations may require the Recipient to prepare and submit documents to other Federal, State, and local agencies.

(c) Consistent with 23 C.F.R. § 771.105(a), to the maximum extent practicable and consistent with Federal law, the Recipient will coordinate all environmental investigations, reviews, and consultations as a single process.

(f) The activities described in Article 4 of Attachment 2 of this Agreement and other information described in this Agreement may inform environmental decision-making processes, but the parties do not intend this Agreement to document the alternatives under consideration under those processes. If a build alternative is selected that does not align with Article 4 of Attachment 2 of this Agreement or other information in this Agreement, then FRA will either:

(1) amend this Agreement under Section 15.1 of this Attachment 1 for consistency with the selected build alternative; or

(2) if FRA determines that the condition at Section 10.1(a)(5) of this Attachment 1 is satisfied, terminate this Agreement under Section 10.1(a)(5) of this Attachment 1; or

(3) take other action as deemed appropriate by FRA.

(g) The Recipient will complete any mitigation activities described in the environmental document or documents for the Project, including the terms and conditions contained in the required permits and authorizations for the Project. Article 4 of Attachment 2 of this Agreement identifies documents describing mitigation activities, but the absence of a document from that section does not relieve the Recipient of any compliance obligations.

23.3 Project Maintenance Requirement

The Recipient will ensure that any property and equipment funded within this Agreement is operated and maintained in good operating order and in accordance with 2 C.F.R. §§ 200.310–200.316, 1201.313 and any guidelines, directives, or regulations that FRA may issue.

23.4 Appropriations Act Requirements

The Recipient will comply with applicable requirements of the appropriations act identified in Section 6.3 of Attachment 2 of this Agreement.

23.5 Standards of Conduct

The Recipient will comply with the following standards of conduct:

(a) Standards of Conduct. The Recipient will maintain a written code or standards of conduct governing the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts or agreements supported by the Federal contribution provided through this Agreement. The code or standards will provide that the Recipient's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential Subrecipients or contractors. The Recipient may set minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. As permitted by state or local law or regulations, such code or standards will provide for penalties, sanctions, or other disciplinary actions for violations by the Recipient's officers, employees, board members, or agents, or by Subrecipients or their agents.

(b) Personal Conflict of Interest. The Recipient's code or standards must provide that no employee, officer, board member, or agent of the Recipient may participate in the selection, award, or administration of a contract supported by the Federal contribution if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

(c) Organizational Conflicts of Interest. The Recipient's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

(d) Existing Codes or Standards. This Section does not require the Recipient to implement a new code or standards of conduct where a state statute, or written code or standards of conduct, already effectively covers all of the required elements.

(e) Disclosure of Conflicts. The Recipient will disclose in writing any potential conflict of interest to FRA or pass-through entity.

23.6 Changed Conditions of Performance

The Recipient will notify FRA of any event that may affect its ability to perform the Project in accordance with the terms of this Agreement.

23.7 Litigation

The Recipient will notify FRA in writing of any decision pertaining to the Recipient's conduct of litigation that may affect FRA's interests in the Project or FRA's administration or enforcement of applicable Federal laws or regulations. The Recipient will inform FRA in writing before naming FRA as a party to any type of litigation for any reason in any forum.

23.8 [Reserved]

23.9 Equipment and Supplies

The Recipient will maintain written policies and procedures that address acquisition, classification, and management of all equipment and supplies acquired or used under this award.

23.10 Safety and Technology Data

The Recipient will ensure that FRA has access to safety and technology relevant data generated by the Recipient under the award, in a machine-readable format, where specified in Article 4 of Attachment 2 of this Agreement.

23.11 Intellectual Property

The Recipient agrees to the standard patent rights clauses issued by the Department of Commerce at 37 C.F.R. Part 401, as applicable.

23.12 Liquidation of Recipient Obligations

(a) The Recipient will liquidate all obligations of award funds under this Agreement not later than 120 days after the end of the Period of Performance.

(b) Liquidation of obligations and adjustment of costs under this Agreement follow the requirements of 2 C.F.R. §§ 200.344–200.346.

ARTICLE 24: CONSTRUCTION AND DEFINITIONS

24.1 Agreement

This Agreement consists of the following:

- (a) Agreement Cover Sheet
- (b) Attachment 1: General Terms and Conditions
- (c) Attachment 2: Project-Specific Terms and Conditions
- (d) Exhibit A: Applicable Federal Laws and Regulations
- (e) Exhibit B: Additional Standard Terms
- (f) Exhibit C: Quarterly Project Progress Reports and Recertifications

24.2 Construction

- (a) In these General Terms and Conditions, there are no references to articles or sections in project-specific portions of this Agreement that are not contained in Attachments or Exhibits listed in Section 24.1.
- (b) If a provision in these General Terms and Conditions or the Exhibits conflicts with a provision in the Project-Specific Terms and Conditions in Attachment 2 of this Agreement, then the relevant portion in Attachment 2 prevails. If a provision in the Exhibits conflicts with a provision in these General Terms and Conditions, then the provision in these General Terms and Conditions prevails.

24.3 Integration

This Agreement constitutes the entire agreement of the parties relating to the Project and supersedes any previous agreements, oral or written, relating to the Project.

24.4 Definitions

This Section defines terms used in this Agreement. Additional definitions found in 2 C.F.R. § 200.1 are incorporated by reference into this Agreement.

“Agreement Federal Funds” means the total amount of Federal funds obligated under this Agreement. This is the amount shown in Section 6.1 of Attachment 2 of this Agreement.

“Application” means the application identified in Article 3 of Attachment 2 of this Agreement, including Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

“Construction Substantial Completion” means the stage of the Project when all construction tasks are complete such that the Recipient can use the Project for its intended use and only closeout activities remain. Activity to address or complete closeout activities will not prevent or disrupt use of the Project.



“Contingent Commitment” means the unobligated amounts of future available budget authority specified in law that FRA commits to obligate under the terms of this Agreement.

“Federal Share” means the sum of Agreement Federal Funds and Other Federal Funds. If there are no Other Federal Funds, the Federal Share is the same as the Agreement Federal Funds.

“General Terms and Conditions” means this Attachment 1.

“Other Federal Funds” means Federal funds that are part of the Approved Project Budget in Section 6.5 of Attachment 2 of this Agreement for the Project but are not obligated under this Agreement.

“Project” means the project proposed in the Application, as modified by the negotiated provisions of this Agreement, including Attachment 2 of this Agreement.

“Project Closeout” means the date that FRA notifies the Recipient that the award is closed out. Under 2 C.F.R. § 200.344, Project Closeout should occur no later than one year after the end of the Period of Performance.

“Project Cost Savings” means the difference between the actual costs to complete the Project and the estimated total Project cost listed in Section 6.5 of Attachment 2 of this Agreement, if after the Recipient completes the tasks identified in Article 4 of Attachment 2 of this Agreement to FRA’s satisfaction, the actual Project costs are less than the estimated total Project costs.

“Rural Area” means any area that is not within an area designated as an urbanized area by the Bureau of the Census.

24.5 Calendar Dates

Unless otherwise specified, all dates and durations are in calendar days, calendar quarters, or calendar years, as appropriate.

24.6 Communication in Writing

Unless otherwise specified, all written communication may be provided by electronic mail.

24.7 Severability

If any provision of this Agreement is found to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions of this Agreement is not affected or impaired by such finding. A provision held to be unenforceable as applied to any party or circumstance remains applicable to other parties and circumstances.

ARTICLE 25: AGREEMENT EXECUTION AND EFFECTIVE DATE

25.1 Counterparts

This agreement may be executed in counterparts, which constitute one document. The parties intend each countersigned original to have identical legal effect.

25.2 Effective Date

The agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it.

ARTICLE 26: PROGRAM-SPECIFIC CLAUSES

26.1 Interstate Rail Compacts Grant Program

The Recipient agrees to comply with the clauses in Section 26.1 of this Attachment 1.

Consistent with 49 U.S.C. § 22905(e), clauses (b) through (g) of Section 26.1 of this Attachment 1 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right of way and facilities under current law.

(a) Non-Federal Match. The Recipient will provide a Non-Federal match of not less than 50 percent of the eligible expenses under the grant.

(b) Buy America. In lieu of Section 12.1 of this Attachment 1, the Recipient will comply with the following clauses, as applicable:

(1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

(3) under Section 26.1 of this Attachment 1, "infrastructure project" has the definition provided in 2 C.F.R. § 184.3.

(4) for all projects, the Recipient should under 2 C.F.R. § 200.322, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. § 200.322 in all subawards, contracts, and purchase orders under this award.

(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a “rail carrier” as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with railroad’s employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.1(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA’s website at: <https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1>.

(e) Labor Protective Arrangements. In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404. Such protective arrangements are included herein as Exhibit B.5.

(f) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(g) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

(h) Operator Limitation. Recipient's eligible expenses must be related to intercity passenger rail service to be operated by Amtrak.

(i) Reporting. As requested by FRA, the Recipient will report on:

- (1) the status of the planning efforts and coordination funded by the grant award;
- (2) plans for continued implementation of the interstate rail compact;
- (3) the status of, and data regarding, any new, restored, or enhanced rail services initiated under the interstate rail compact; and
- (4) other data and information as requested by FRA.

26.2 Railroad Crossing Elimination Program Clauses

The Recipient agrees to comply with the clauses in Section 26.2 of this Attachment 1.

Consistent with 49 U.S.C. §§ 22905(e) & 22909(j), clauses (b), (c), (d), and (g) of Section 26.2 of this Agreement 1 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right of way and facilities under current law. In addition, clause (f) does not apply to: 1) the Alaska Railroad or its contractors; or 2) Amtrak's access rights to railroad right of way and facilities under current law.

(a) Federal Share. The Federal Share of total Project costs shall not exceed 80 percent.

(b) Buy America. In lieu of Section 12.1 of this Agreement 1:

- (1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

(3) under this Section, “infrastructure project” has the definition provided in 2 C.F.R. § 184.3.

(4) for all projects, the Recipient should under 2 C.F.R. § 200.322, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. § 200.322 in all subawards, contracts, and purchase orders under this award.

(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a “rail carrier” as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with railroad’s employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.2(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA’s website at: <https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1>.

(e) Impacted Rail Carrier or Real Property Owner Approvals. In accordance with 49 U.S.C. § 22909(e)(2)(A), prior to proceeding with the construction of the Project funded by this Agreement, if applicable, Recipient will obtain necessary approvals to commence construction from any impacted rail carriers or real property owners. If the Project is a planning project, as described in 49 U.S.C. § 22909(d)(6), the Recipient agrees to work collaboratively with rail carriers and right-of-way owners.

(f) Labor Protective Arrangements

(1) Notwithstanding 49 U.S.C. § 22905(e)(1), and in accordance with 49 U.S.C. § 22909(j)(3), any employee covered by the Railway Labor Act (45 U.S.C. § 151 et seq.) and the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.) who is adversely affected by actions taken in connection with the project financed in whole or in part by such grant shall be covered by employee protective arrangements required to be established under 49 U.S.C. § 22905(c)(2)(B). In accordance with 49 U.S.C. § 22905(c)(2)(B), the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404, as such protective arrangements are described in the final FRA guidance titled Equivalent Protections for Railroad Employees and effective December 28, 2022, included herein in Exhibit B.

(2) In accordance with 49 U.S.C. § 22909(j)(3), Recipient, and any successors, assigns, and contractors of Recipient:

- i. shall be bound by the employee protective arrangements required under subparagraph (1); and
- ii. shall be responsible for the implementation of such arrangements and for the obligations under such arrangements, but may arrange for another entity to take initial responsibility for compliance with the conditions of such arrangement.

(3) Labor protections required pursuant to Subsection (f) of Section 26.2 of this Attachment 1 shall be documented consistent with Article 18 of this Attachment 1.

(g) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(h) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

26.3 Consolidated Rail Infrastructure and Safety Improvements Grants Clauses

The Recipient agrees to comply with the clauses in Section 26.3 of this Attachment 1.

Consistent with 49 U.S.C. § 22905(e), clauses (b) and (c) through (g) of Section 26.3 of this Attachment 1 do not apply to: 1) commuter rail passenger transportation (as defined in 49

U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right of way and facilities under current law.

(a) Federal Share. The Federal Share of total Project costs shall not exceed 80 percent.

(b) Buy America. In lieu of Section 12.1 of this Attachment 1:

(1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

(3) under this Section, "infrastructure project" has the definition provided in 2 C.F.R. § 184.3.

(4) for all projects, the Recipient should under 2 C.F.R. § 200.322, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. § 200.322 in all subawards, contracts, and purchase orders under this award.

(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a "rail carrier" as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes:

compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.3(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA's website at: <https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1>.

(e) Labor Protective Arrangements. In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404. Such protective arrangements are included herein as Exhibit B.5.

(f) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(g) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

26.4 Restoration and Enhancement Grants Clauses

The Recipient agrees to comply with the clauses in Section 26.4 of this Attachment 1.

Consistent with 49 U.S.C. § 22905(e), clauses (b) and (c) through (g) of Section 26.4 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right-of-way and facilities under current law.

(a) Maximum Funding Limitation. A grant authorized by 49 U.S.C. § 22908 may not exceed:

- (1) 90 percent of the projected net operating costs for the first year of service;
- (2) 80 percent of the projected net operating costs for the second year of service;
- (3) 70 percent of the projected net operating costs for the third year of service;
- (4) 60 percent of the projected net operating costs for the fourth year of service;
- (5) 50 percent of the projected net operating costs for the fifth year of service;
- and
- (6) 30 percent of the projected net operating costs for the sixth year of service.

(b) Buy America. In lieu of Section 12.1 of this Agreement 1:

- (1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT, and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).
- (3) under Section 26.4 of this Attachment 1, “infrastructure project” has the definition provided in 2 C.F.R. § 184.3.
- (4) for all projects, the Recipient should under 2 C.F.R. § 200.322, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. § 200.322 in all subawards, contracts, and purchase orders under this award.

(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a “rail carrier” as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the

Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.4(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA's website at: <https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1>.

(e) Labor Protective Arrangements. In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404. Such protective arrangements are included herein as Exhibit B.5.

(f) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(g) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

(h) Route Reporting. The Recipient will provide similar information regarding the route performance, financial, and ridership projections, and capital and business plans that Amtrak is required to provide, and such other data and information as is required by Article 4 of Attachment 2 of this Agreement.

- (i) Termination. In addition to the terms of this Attachment 1, FRA may terminate this Agreement upon the cessation of service, or the violation of any other term of this Agreement.

26.5 Federal-State Partnership for Intercity Passenger Rail and Federal-State Partnership for State of Good Repair Clauses

The Recipient agrees to comply with the clauses in Section 26.5 of this Attachment 1.

Consistent with 49 U.S.C. § 22905(e), clauses (b) through (g) of Section 26.5 of this Attachment 1 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right of way and facilities under current law.

- (a) Federal Share. The Federal Share of total Project costs shall not exceed 80 percent.

- (b) Buy America. In lieu of Section 12.1 of this Attachment 1:

- (1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

- (2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

- (3) under this Section, "infrastructure project" has the definition provided in 2 C.F.R. § 184.3.

- (4) for all projects, the Recipient should under 2 C.F.R. § 200.322, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. § 200.322 in all subawards, contracts, and purchase orders under this award.

- (c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a "rail carrier" as defined by 49 U.S.C. §

10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.5(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA's website at: <https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1>.

(e) Labor Protective Arrangements. In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404. Such protective arrangements are included herein as Exhibit B.5.

(f) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(g) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

(h) Northeast Corridor Cost Allocation. For projects located on the Northeast Corridor, as that term is defined in 49 U.S.C. § 24911(a)(4), Amtrak and the public authorities providing commuter rail passenger transportation at the Project location on the Northeast Corridor must remain in compliance with 49 U.S.C. § 24905(c)(2).

(i) Interest and Financing Costs. Pursuant to 49 U.S.C. § 24911(g)(2), interest and other financing costs of efficiently carrying out a part of the Project within a reasonable time are a cost of carrying out the Project under a Phased Funding Agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the Project at the time of borrowing. The Recipient will certify to FRA's satisfaction that the Recipient has shown reasonable diligence in seeking the most favorable financing terms.

###

Attachment 2

PROJECT-SPECIFIC TERMS AND CONDITIONS

Project-Specific Terms and Conditions

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ARTICLE 1: PROJECT-SPECIFIC DESIGNATIONS

1.1 Recipient

This Agreement (Agreement) is between the Federal Railroad Administration (FRA) and the City of Aberdeen, Washington (the Recipient).

1.2 Project and Purpose

The purpose of this award is to fund a Fiscal Year (FY) 2023-2024 Railroad Crossing Elimination Program grant for the Aberdeen Railroad Corridor Crossing Elimination and Safety Improvement Study (the Project), as described in Article 4 of this Attachment 2, to help achieve the goals identified in the Notice of Funding Opportunity for Railroad Crossing Elimination Program, 89 Fed. Reg. 56788, July 10, 2024, that solicited applications for Federal financial assistance. FRA and the Recipient will accomplish that purpose by timely completing the Project and ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Application.

1.3 Program Designations

- (a) Research and Development. This award is not for research and development.
- (b) Project Size. This award is for a non-Major Project as that term is defined in FRA Guidance on Development and Implementation of Railroad Capital Projects, July 18, 2025 (Railroad Capital Projects Guidance).
- (c) Phased Funding. This award is not a phased funding agreement as further discussed in Section 6.7 of this Attachment 2.
- (d) Grant or Cooperative Agreement. This award is made as a Grant Agreement.
- (e) Security Risk. This award is for a Project that has a low security risk.
- (f) Rural Area. This award is for a Project in a Rural Area.

ARTICLE 2: SPECIAL TERMS AND CONDITIONS

There are no special terms for this award.

ARTICLE 3: ADMINISTRATIVE INFORMATION

3.1 Application

Application Title: Aberdeen Railroad Corridor Crossing Elimination and Safety Improvement Study

Application Date: September 23, 2024

3.2 FRA Awarding Official

FRA Office of Railroad Development
Federal Railroad Administration
1200 New Jersey Ave, SE
Washington, DC 20590
FRA-Grants@dot.gov

3.3 Federal Award Date

The “Federal Award Date” is the effective date of this Agreement, as defined under Section 25.2 of Attachment 1 of this Agreement.

3.4 Program Name and Assistance Listings Number

For the Railroad Crossing Elimination program, the Assistance Listings Number is 20.327 and the Assistance Listings Title is Railroad Crossing Elimination.

3.5 Recipient’s Unique Entity Identifier

The Recipient’s Unique Entity Identifier, as defined at 2 C.F.R. § 25.415, is listed in Section 1B on the Agreement cover sheet.

3.6 Federal Award Identification Number

The Federal Award Identification Number is listed in Section 2 on the Agreement cover sheet as the “Agreement Number.”

ARTICLE 4: STATEMENT OF WORK

4.1 General Project Description

The objective of the Project is to conduct a planning study that will include activities to identify existing conditions, alternatives, best practices, and opportunities to define and implement a multi-year, multi-phase program of projects, policies, and procedures across the Project corridor. The Project will analyze seven crossings across 1.25 miles of track to recommend improvements that will result in measurable benefits in safety outcomes for motorists, active modes users, and local residents. The Project will recommend a funding strategy to implement the recommendations from the study.

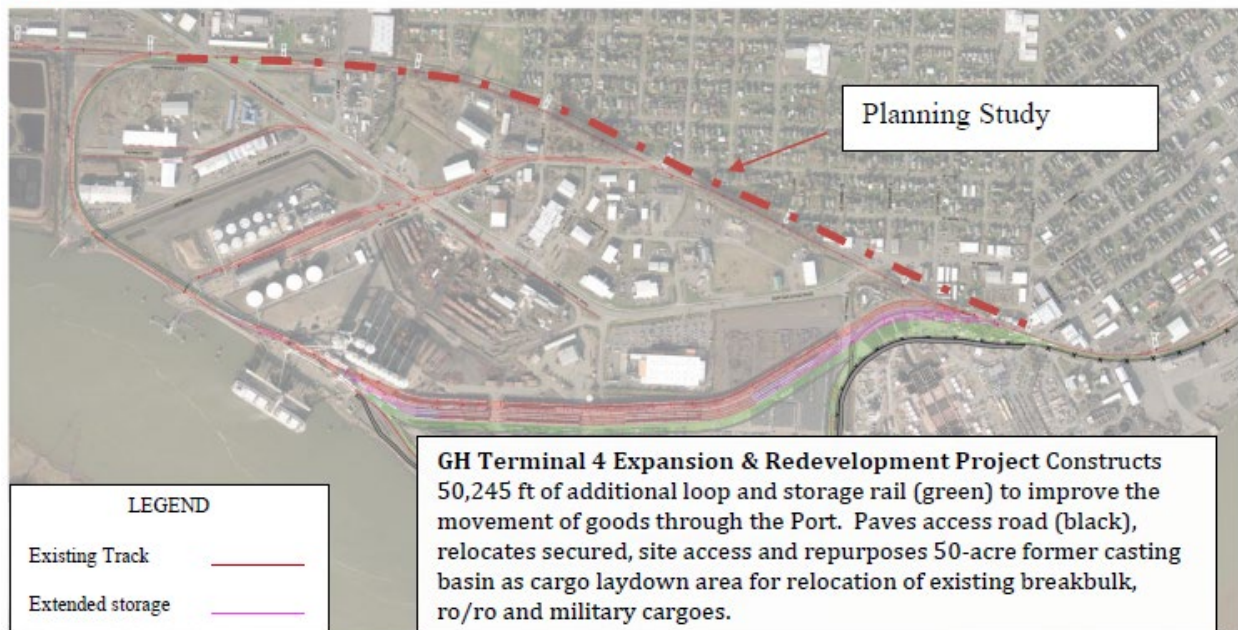
4.2 Project Location

The Project is located at along the Puget Sound & Pacific rail line PSAP in western Aberdeen, Washington. The geographic scope of the Project includes the study area of 1.25 miles consisting of seven (7) at-grade crossings, from milepost 71.07 on the west to milepost 69.79 on the east. The Project includes the following PSAP Crossing’s:

Exhibit 8: PSAP Crossings to be Studied

CrossingID	Street	Highway	TtstnNam	Latitude	Longitude	Operating-Railroad-Code	Operating-Railroad-Type	RrDiv	RrSubDiv	Branch	MilePost
096709J	Heron St	NA	ABERDEEN	46.96640	-123.83086	PSAP	Primary	WESTERJ	ELMA	#N/A	69.79
967010D	N Division	NA	ABERDEEN	46.96640	-123.83086	PSAP	Primary	WESTERJ	ELMA	#N/A	69.8
096711K	W Wishkah Ave	CITY ST	ABERDEEN	46.96772	-123.83603	PSAP	Primary	WESTERJ	ELMA	#N/A	70.15
808713U	W First St	CITY	ABERDEEN	46.96966	-123.84280	PSAP	Primary	WESTERJ	ELMA	#N/A	70.40
808712M	Maple St	CITY	ABERDEEN	46.97059	-123.84603	PSAP	Primary	central	ABERDEE N-HOQUI	GRAYS HARBOR LN	70.65
808711F	Myrtle St	CITY	HOQUIAM	46.97135	-123.85227	PSAP	Primary	central	ELMA	#N/A	70.95
808714B	30th ST / Industrial Dr	CITY ST	HOQUIAM	46.97153	-123.85596	PSAP	Primary	central	ELMA	#N/A	71.07

Exhibit 9: Port of Grays Harbor Rail Expansion at Terminal 4 scheduled to be completed and open for operation in 2026



4.3 Project Scope

The Recipient will notify FRA in writing of any requested changes in Project Scope and will not proceed with the changed scope unless approved by FRA in writing. If approved, changes to Project Scope may require additional environmental review or an amendment to this Agreement.

Task 1: Project Administration and Management

Subtask 1.1: Project Administration

The Recipient will perform all tasks required for the Project through a coordinated process, which will involve affected railroad owners, operators, and funding partners, including:

- The Cities of Aberdeen and Hoquiam, and Grays Harbor County, Washington where the project will be located.

- Puget Sound & Pacific Railroad Company (PSAP), a subsidiary of Genesee Wyoming Inc. (GWRR), owners of the Right of Way.
- FRA

The Recipient will facilitate the coordination of all activities necessary for implementation of the Project. The Recipient will:

- Participate in a Project kickoff meeting with FRA following award;
- complete necessary steps to hire a qualified consultant/contractor to perform required Project work, as necessary;
- hold regularly scheduled Project meetings with FRA;
- inspect and approve work as it is completed; and
- participate in other coordination, as needed.

The Recipient shall demonstrate to FRA that the Project is carried out in the most cost-efficient manner.

Subtask 1.2: Project Management Plan

The Recipient will prepare a Project Management Plan (PMP), that describes how the Project will be implemented and monitored to ensure effective, efficient, and safe delivery of the Project on time and within budget. The PMP will describe, in detail, the activities and steps necessary to complete the tasks outlined in this Statement of Work.

The PMP will include a Project Schedule and Project Budget for the work to be performed under this Agreement. The Project Schedule will be consistent with the Estimated Project Schedule in Section 5.2 of this Attachment 2, but provide a greater level of detail. Similarly, the Project Budget should be consistent with the Approved Project Budget in Section 6.5 of this Attachment 2, but provide a greater level of detail.

The Recipient will submit the PMP to FRA for review and approval. The Recipient will implement the Project as described in the approved PMP. The Recipient will not begin work on subsequent tasks until FRA has provided written approval of the PMP, unless FRA has provided pre-award authority for such work under Section 6.6 of this Attachment 2. FRA will not reimburse the Recipient for costs incurred in contravention of this requirement.

FRA may require the Recipient to update the PMP. The Recipient will submit any such updates to FRA for review and approval, and FRA will determine if updates to the PMP require an amendment to this Agreement. The Project Budget and Project Schedule may be revised consistent with Article 5 of Attachment 1 of this Agreement without amending this Agreement.

Subtask 1.3: Project Closeout

The Recipient will submit a Final Performance Report as required by Section 7.2 of Attachment 1 of this Agreement, which should describe the cumulative activities of the Project, including a complete description of the Recipient's achievements with respect to the Project objectives and milestones.

Task 1 Deliverables:

Deliverable ID	Subtask	Deliverable Name
1.1	1.2	Project Management Plan
1.2	1.3	Final Performance Report

Task 2: Project Planning

The Recipient will not commence work on Task 2: Project Planning until FRA has approved the PMP deliverable described in Task 1: Project Administration and Management and provided written notification to proceed with Project Planning.

The Recipient will conduct technical analysis, stakeholder outreach, and other project planning activities, and prepare a Project Planning Package as detailed in the PMP. The Project Planning Package will be consistent with the objectives of the Project Planning Lifecycle Stage identified in the FRA Guidance on Development and Implementation of Railroad Capital Projects. The Project Planning Package will include all information described in the PMP. FRA will review the Planning Package for acceptance. Information and activities necessary to perform and complete the required Project Planning Package will be included in the approved PMP.

Task 2 Deliverables:

Deliverable ID	Deliverable Name
2	Project Planning Package

4.4 Implement Required Environmental Commitments

None.

ARTICLE 5: AWARD DATES AND ESTIMATED PROJECT SCHEDULE

5.1 Award Dates

Budget Period End Date: October 31, 2028

Period of Performance End Date: October 31, 2028

5.2 Estimated Project Schedule

Milestones associated with this Agreement are identified in Table 5-A: Estimated Project Schedule. The Recipient will complete these milestones to FRA's satisfaction by the Schedule Date, subject to Article 5 of Attachment 1 of this Agreement. The Recipient will notify FRA in writing when it believes it has achieved the milestone.

Table 5-A: Estimated Project Schedule

Milestone	Schedule Date
Project Planning Package	June 30, 2028

ARTICLE 6: AWARD AND PROJECT FINANCIAL INFORMATION

6.1 Award Amount

Agreement Federal Funds: \$240,000.00

6.2 Federal Obligation Information

Federal Obligation Type: Single

6.3 Federal Authorization and Funding Source.

Authorizing Statute: Sections 22104 and 22305 of the Infrastructure Investment and Jobs Act, Public Law 117-58 (November 15, 2021); 49 U.S.C. 22909

Appropriation: Infrastructure Investment and Jobs Act, Division J, Title VIII (Public Law 117-58 (2021))

6.4 Funding Availability

Program funding that is obligated under this Agreement remains available until expended.

6.5 Approved Project Budget

The estimated total Project cost under this Agreement is \$300,000.

FRA will contribute a maximum of 80% percent of the total Project cost, not to exceed the Agreement Federal Funds in Section 6.1 of this Attachment 2. FRA will fund the Project at the lesser amount of the Agreement Federal Funds or the FRA maximum contribution percentage of total Project costs.

The Recipient will contribute \$60,000.00 in Agreement Non-Federal Funds. Recipient's Agreement Non-Federal Funds are comprised of cash.

The Recipient will complete the Project to FRA's satisfaction within the Approved Project Budget, subject to Article 5 of Attachment 1 of this Agreement.

Table 6-A: Approved Project Budget by Task

Task #	Task Title	Agreement Federal Funds	Agreement Non-Federal Funds	Total
1	Project Administration and Management	\$12,000	\$3,000	\$15,000
2	Project Planning	\$228,000	\$57,000	\$285,000
Total		\$240,000.00	\$60,000.00	Total Project Cost: \$300,000.00

Table 6-B: Approved Project Budget by Source

Funding Source	Total Amount	Percentage of Total Project Cost
Federal Share	\$240,000.00	80%
Agreement Federal Funds	\$240,000.00	80%
FRA RCE	\$240,000.00	80%
Agreement Non-Federal Funds	\$60,000.00	20%
City of Aberdeen	\$60,000.00	20%

6.6 Pre-Award Costs

None. Consistent with 2 C.F.R. part 200, costs incurred before the date of this Agreement are not allowable costs under this award. FRA will neither reimburse those costs under this award nor consider them as a non-Federal cost-sharing contribution to this award.

6.7 Phased Funding Agreement

Not applicable.

ARTICLE 7: PERFORMANCE MEASUREMENT INFORMATION

Table 7-A: Performance Measurement Table identifies the performance measures that this Project is expected to achieve. These performance measures will enable FRA to assess the Recipient's progress in achieving grant program goals and objectives. The Recipient will report on these performance measures in accordance with the frequency and duration specified in Table 7-A.

Upon Project completion, the Recipient will submit reports comparing the actual Project performance of the new and or improved asset(s) against the pre-Project (baseline) performance and expected post-Project performance as described in Table 7-A. The Recipient will submit the performance measures report to the Project Manager in accordance with Table 7-A.

Table 7-A: Performance Measurement Table

Goal	Objective	Performance Measure	Description of Measure	Measurement	Reporting
<i>Eliminating Crossing(s) and/or making corridor-wide improvements</i>	To create a feasible plan to allow for safety improvements at one or multiple at grade crossings, which will reduce rail incidents.	Establish crossing safety improvement alternatives	Prioritization or Preferred Option for crossing safety improvement(s).	Pre-Project (Baseline) Performance as of January 1, 2022: No existing plan for the Corridor	Frequency: One-Time
				Expected Post-Project Performance: Preferred Option for each crossing.	Duration: At Project Completion
				Expected Post-Project Performance:	Duration: One time

				Yes; document/ deliverables completed	
--	--	--	--	--	--

ARTICLE 8: ENVIRONMENTAL COMPLIANCE

In accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. § 4321 et seq.), other environmental statutes, and related regulatory requirements, on April 16, 2025, FRA determined that the actions funded under this Agreement as described in this Attachment 2, Section 4.3 are categorically excluded from detailed environmental review pursuant to 23 C.F.R. § 771.116(c)(3). In accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108; 36 C.F.R. part 800), FRA has also determined that the actions funded under this Agreement have no potential to cause effects to historic properties. The actions do not require the use of property protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. § 303; 23 C.F.R. part 774).

Categorical exclusion (CE) means a category of actions that a Federal agency has determined normally do not have a significant impact on the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). 42 U.S.C. § 4336e(1). In analyzing the applicability of a CE, FRA also considered whether unusual circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. In accordance with 23 C.F.R. § 771.116 (a) and (b), FRA further concluded that no unusual circumstances exist with respect to development of the activities funded under this grant that might trigger the need for a more detailed environmental review.

Should conditions or the scope of the action change, the Recipient must notify FRA and receive written response and notice to proceed before proceeding. FRA will evaluate whether this determination remains applicable or if additional environmental review is necessary.

ARTICLE 9: LABOR AND WORK

9.1 Efforts to Support Good-Paying Jobs and Strong Labor Standards

This Section identifies the Recipient's efforts to support good-paying jobs and strong labor standards related to the Project. The Recipient certifies that rows marked with "X" in the following table are accurate:

	The Recipient or a project partner promotes robust job creation by supporting good-paying jobs directly related to the project with free and fair choice to join a union.
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	The Recipient or a project partner will invest in high-quality workforce training programs such as registered apprenticeship programs to recruit, train, and retain skilled workers, and implement policies such as targeted hiring preferences.
	The Recipient or a project partner will partner with high-quality workforce development programs with supportive services to help train, place, and retain workers in good-paying jobs or registered apprenticeships including through the use of local and economic hiring preferences, linkage agreements with workforce programs, and proactive plans to prevent harassment.
	The Recipient or a project partner will partner with communities or community groups to develop workforce strategies.
	The Recipient or a project partner has taken other actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards.
	The Recipient or a project partner has not yet taken actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards but, before beginning construction of the Project, will take relevant actions described below.
X	The Recipient or a project partner has not taken actions related to the Project to improve good-paying jobs and strong labor standards and will not take those actions under this award.

9.2 Supporting Narrative

None.

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Exhibits

Revision Date: April 16, 2025

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EXHIBIT A: APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into this Agreement, the Recipient assures and certifies, with respect to this award, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this Agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to this Agreement include, but are not limited to, the following:

GENERAL FEDERAL LEGISLATION

- a. Davis-Bacon Act – 40 U.S.C. § 3141 et seq.
- b. Federal Fair Labor Standards Act – 29 U.S.C. § 201 et seq.
- c. Hatch Act – 5 U.S.C. § 1501 et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – 42 U.S.C. § 4601 et seq.
- e. National Historic Preservation Act of 1966 (Section 106) – 54 U.S.C. § 306108
- f. Archeological and Historic Preservation Act of 1974 – 54 U.S.C. §§ 312501-312508
- g. Native American Graves Protection and Repatriation Act – 25 U.S.C. § 3001 et seq.
- h. Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. § 7401 et seq.
- i. Clean Water Act, as amended – 33 U.S.C. § 1251 et seq.
- j. Endangered Species Act, P.L. 93-205, as amended – 16 U.S.C. § 1536 et seq.
- k. Coastal Zone Management Act, P.L. 92-583, as amended – 16 U.S.C. § 1451 et seq.
- l. Flood Disaster Protection Act of 1973, Section 102(a) – 42 U.S.C. § 4012a
- m. Age Discrimination Act of 1975 – 42 U.S.C. § 6101 et seq.
- n. American Indian Religious Freedom Act, as amended – P.L. 95-341
- o. Sections 523 and 527 of the Public Health Service Act of 1912, as amended – 42 U.S.C. §§ 290dd–290dd-2
- p. Architectural Barriers Act of 1968 – 42 U.S.C. § 4151 et seq.
- q. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42, Section 403 – 42 U.S.C. § 8373
- r. Contract Work Hours and Safety Standards Act – 40 U.S.C. § 3701 et seq.
- s. Copeland Anti-kickback Act, as amended – 18 U.S.C. § 874 and 40 U.S.C. § 3145
- t. National Environmental Policy Act of 1969 – 42 U.S.C. § 4321 et seq.
- u. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271 et seq.
- v. Single Audit Act of 1984 – 31 U.S.C. § 7501 et seq.
- w. Americans with Disabilities Act of 1990 – 42 U.S.C. § 12101 et seq.
- x. Title IX of the Education Amendments of 1972, as amended – 20 U.S.C. §§ 1681–1683 and §§ 1685–1687
- y. Section 504 of the Rehabilitation Act of 1973, as amended – 29 U.S.C. § 794
- z. Title VI of the Civil Rights Act of 1964 – 42 U.S.C. § 2000d et seq.
- aa. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- bb. Freedom of Information Act, as amended – 5 U.S.C. § 552
- cc. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. § 1801 et seq.
- dd. Farmland Protection Policy Act of 1981 – 7 U.S.C. § 4201 et seq.
- ee. Noise Control Act of 1972 – 42 U.S.C. § 4901 et seq.
- ff. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. § 661 et seq.
- gg. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 – 33 U.S.C. §§ 401 and

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- hh. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 303
- ii. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended – 42 U.S.C. §§ 9601–9657
- jj. Safe Drinking Water Act – 42 U.S.C. §§ 300f–300j-26
- kk. The Wilderness Act – 16 U.S.C. §§ 1131-1136
- ll. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. § 6901 et seq.
- mm. Migratory Bird Treaty Act – 16 U.S.C. § 703 et seq.
- nn. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109-282, as amended by Section 6202 of Public Law 110-252)
- oo. Cargo Preference Act of 1954 – 46 U.S.C. § 55305
- pp. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232
- qq. Efficient Environmental Reviews – 23 U.S.C. § 139
- rr. Grant Conditions – 49 U.S.C. § 22905
- ss. Build America, Buy America Act – Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298

EXECUTIVE ORDERS

- a. Executive Order 11990 – Protection of Wetlands
- b. Executive Order 11988 – Floodplain Management
- c. Executive Order 12372 – Intergovernmental Review of Federal Programs
- d. Executive Order 12549 – Debarment and Suspension
- e. Executive Order 14005 – Ensuring the Future is Made in All of America by All of America’s Workers
- f. Executive Order 14025 – Worker Organizing and Empowerment
- g. Executive Order 14149 – Restoring Freedom of Speech and Ending Federal Censorship
- h. Executive Order 14154 – Unleashing American Energy
- i. Executive Order 14168 – Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
- j. Executive Order 14173 – Ending Illegal Discrimination and Restoring Merit-Based Opportunity

GENERAL FEDERAL REGULATIONS

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- c. Investigative and Enforcement Procedures – 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates – 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3
- f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R. Part 5
- g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 C.F.R. Parts 60 et seq.
- h. New Restrictions on Lobbying – 49 C.F.R. Part 20
- i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation –

Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21

- j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24
- k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25
- l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27
- m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30
- p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- q. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 C.F.R. Parts 37 and 38
- r. Environmental Impact and Related Procedures – 23 C.F.R. Part 771
- s. Procedures Implementing Section 4(f) of the Department of Transportation Act – 23 C.F.R. Part 774

Specific assurances required to be included in the Agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this Agreement.



EXHIBIT B: ADDITIONAL STANDARD TERMS

EXHIBIT B.1: TITLE VI ASSURANCES**TITLE VI ASSURANCE**

Implementing Title VI of the Civil Rights Act of 1964, as amended

**ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES
RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE**

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act, as amended)

49 C.F.R. Parts 21, 25, 27, 37 and 38

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

By signing and submitting the Application and by entering into this Agreement, the Recipient **HEREBY AGREES THAT**, as a condition to receiving Federal financial assistance from the Federal Railroad Administration (FRA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 Stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. Section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including FRA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

“The Recipient, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing FRA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by FRA. You must keep records, reports, and submit the material for review upon request to FRA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the FRA under this Agreement. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the program or project funded under this Agreement.

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, Federal Railroad Administration (FRA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or FRA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or FRA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or FRA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or



FRA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Specific Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), 23 U.S.C. § 117 and the policies and procedures prescribed by the Federal Railroad Administration (FRA) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto Recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the Recipient, its successors and assigns.

The Recipient, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the Recipient will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Recipient pursuant to the provisions of Specific Assurance 7(a):

- A. The (Recipient, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (Recipient, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Recipient pursuant to the provisions of Specific Assurance 7(b):

- A. The (Recipient, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (Recipient, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, Recipient will there upon revert to and vest in and become the absolute property of Recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 Stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex) (as applicable);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (P.L. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131–12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq.).

EXHIBIT B.2: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS**2 C.F.R. Parts 180 and 1200**

These assurances and certifications are applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FRA approval or that is estimated to cost \$25,000 or more—as defined in 2 C.F.R. Parts 180 and 1200.

By signing and submitting the Application and by entering into this Agreement, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants, as set out below.

1. Instructions for Certification – First Tier Participants:

a. The prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "civil judgment," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment, including a civil settlement, rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust

statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification – Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FRA approval or estimated to cost \$25,000 or more – 2 C.F.R. Parts 180 and 1200)

a. The prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms “covered transaction,” “civil settlement,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

EXHIBIT B.3: REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW

As required by Sections 744 and 745 of Title VII, Division E of the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103 (Mar. 15, 2022), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

- (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or
- (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

The Recipient therefore agrees:

1. **Definitions.** For the purposes of this exhibit, the following definitions apply:

“Covered Transaction” means a transaction that uses any funds under this award and that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

“Felony Conviction” means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.

“Participant” means the Recipient, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

“Tax Delinquency” means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. **Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (the **“SAM”**) at <http://www.sam.gov/> for an entry describing that entity.
3. **Mandatory Certifications.** Before entering a Covered Transaction with another entity, a Participant shall require that entity to:

- (1) Certify whether the entity has a Tax Delinquency; and
- (2) Certify whether the entity has a Felony Conviction.

4 Prohibition. If

- (1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
- (2) an entity provides an affirmative response to either certification in section 3; or
- (3) an entity's certification under section 3 was inaccurate when made or became inaccurate after being made

then a Participant shall not enter or continue a Covered Transaction with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.

5. Mandatory Notice to the USDOT.

- (a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify the USDOT in writing of that entry.
- (b) If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify the USDOT in writing of that affirmative response.
- (c) If the Recipient knows that a Participant's certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify the USDOT in writing of that inaccuracy.

6. Flow Down. For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:

- (1) require the SAM check in section 2;
- (2) require the certifications in section 3;
- (3) include the prohibition in section 4; and
- (4) require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify the USDOT under section 5.

EXHIBIT B.4: RECIPIENT POLICY TO BAN TEXT MESSAGING WHILE DRIVING

(a) *Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009) and Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009). For clarification purposes, they may expand upon the definitions in the executive order.

For the purpose of this Term B.4, “**Motor Vehicles**” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this Term B.4, “**Driving**” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, “**Text messaging**” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, the “**Government**” includes the United States Government and State, local, and tribal governments at all levels.

(b) *Workplace Safety.* In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to:

(1) adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(c) *Subawards and Contracts.* To the extent permitted by law, the Recipient shall insert the substance of this exhibit, including this paragraph (c), in all subawards, contracts, and subcontracts under this award that exceed the micro-purchase threshold, other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

EXHIBIT B.5: EQUIVALENT LABOR PROTECTIONS UNDER 49 U.S.C. 22905(c)(2)(B)

This Exhibit provides guidance on the protective arrangements equivalent to the protective arrangements established under Section 504 of the Railroad Revitalization Reform Act of 1976, with respect to employees affected by actions taken in connection with a Project financed in whole or in part with financial assistance subject to 49 U.S.C. § 22905(c)(2)(B). Fluctuations and changes in volume or character of employment brought about solely by other causes are not within the scope of this Exhibit.

1. Definitions. Whenever used in this Exhibit, capitalized terms shall have the meanings below:

(a) “Average Monthly Compensation” means the total compensation received by a Displaced Employee or a Dismissed Employee during the last twelve (12) months in which they were employed immediately preceding the date of their displacement or dismissal, divided by twelve (12). The Average Monthly Compensation shall be adjusted to reflect subsequent general wage increases.

(b) “Average Monthly Time” means the total number of hours worked by a Displaced Employee during the last twelve (12) months in which they were employed immediately preceding the date of their displacement, divided by twelve (12).

(c) “Day” means one 24-hour calendar day (including holidays and weekends) for purposes of calculating deadlines and other timeframes in this Exhibit.

(d) “Displaced Employee” means a Protected Employee who remains employed by a Railroad but, as a result of a Project, is placed in a worse position with respect to compensation and rules governing working conditions. A Protected Employee’s status as a Displaced Employee begins on the date said employee is harmed.

(e) “Dismissed Employee” means a Protected Employee who: (1) as a result of a Project, is deprived of employment with the Railroad because (i) the Railroad eliminates the Protected Employee’s position, or (ii) the Railroad eliminates another employee’s position (and that employee’s exercise of seniority rights results in the Protected Employee’s inability to secure another position by the exercise of the Protected Employee’s seniority rights); and (2) is unable to secure another position by exercise of their seniority rights. A Protected Employee’s status as a Dismissed Employee begins on the date said employee is deprived of employment.

(f) “Project” means any action financed in whole or in part with financial assistance subject to 49 U.S.C. § 22905(c)(2)(B).

(g) “Protected Employee” means an employee of a Railroad who is affected by actions taken pursuant to a Project, whether the Project is initiated by a Railroad or a Recipient. If a Railroad rearranges or adjusts its forces in anticipation of a Project with the purpose or effect of depriving an employee of benefits to which they otherwise would have become entitled under this Exhibit, then that employee is a Protected Employee under this Exhibit. An employee’s status as a Protected Employee shall continue for the duration of the applicable Protective Period. An employee who solely benefitted as a result of a Project shall not be a Protected Employee under this Exhibit.

(h) “Protective Period” means that period during which a Displaced Employee or a Dismissed Employee is provided the protections described in this Exhibit. The Protective Period begins

on the date an employee of a Railroad is displaced or dismissed and ends after six (6) years. However, the Protective Period for any particular employee shall not continue longer than the period of time the Railroad employed the employee prior to the date of their displacement or dismissal. For purposes of this Exhibit, an employee's length of service shall be determined in accordance with the provisions of Section 7(b) of the Washington Job Protection Agreement of May 1936, as amended.

(i) "Recipient" means any person or entity receiving financial assistance subject to the requirements of 49 U.S.C. § 22905(c), including grantees, subrecipients, contractors, and subcontractors.

(j) "Railroad" means (1) a railroad carrier as defined in 49 U.S.C. § 20102(3), or (2) any person deemed a rail carrier pursuant to 49 U.S.C. § 22905(b).

2. Flow Down.

(a) In accepting financial assistance for a Project, the Recipient is responsible for ensuring the compliance with the protections provided in this Exhibit. The Recipient shall make the acceptance of this Exhibit a condition of any new contract (or incorporate its terms into any existing contract by amendment) that uses funds subject to the requirements of 49 U.S.C. § 22905(c). These conditions shall apply to a Recipient, any Railroad and any contractor of any tier with which the Recipient contracts using funds subject to the requirements of 49 U.S.C. § 22905(c).

(b) The Recipient shall require in an agreement (either in a new agreement or as an amendment to an existing agreement) with a Railroad owning the right-of-way to be improved by a Project that the Railroad notify its employees (or their representatives) of the Project being funded with financial assistance subject to 49 U.S.C. § 22905(c) and the applicability of these protections.

(c) Any Railroad employee (or their representatives) may notify a Recipient of a dispute or controversy relating to the requirements of this Exhibit to ensure compliance with 49 U.S.C. § 22905(c)(2)(B).

3. Collective Bargaining Agreements.

(a) **Existing Agreements.** The rates of pay, rules, working conditions, and all collective bargaining and other rights, privileges, and benefits (including continuation of pension rights and benefits) of a Railroad's employees under applicable laws, regulations, and/or existing collective bargaining agreements shall be preserved and remain applicable unless changed by future collective bargaining agreements or applicable statutes or regulations. As applied to the regulation of subcontracting by the Railroads of a Project, the provisions of this section shall mean that a determination of whether or not such work validly may be subcontracted by a Railroad shall not be affected by the fact that the work is being financed by funds subject to the requirements of 49 U.S.C. § 22905(c)(2)(B). Nothing in this Exhibit shall be construed as depriving any Railroad employee of any rights or benefits or eliminating any obligations that such employee may have under any existing contractual or statutory arrangement, including job security agreements, protective conditions, or arrangements.

(b) **Election by Protected Employee.** Where a Protected Employee is eligible for protections under both this Exhibit and another contractual or statutory arrangement, the Protected Employee shall elect between the protection under this Exhibit and protection under such other arrangement. After

such an election, the Protected Employee shall be protected only by the arrangement that they elect. The Protected Employee shall not be entitled to any protection or benefit (regardless of whether such benefit is duplicative) under the arrangement that they do not elect. However, if the elected protection expires pursuant to the terms of the arrangement that governs the elected protection, the Protected Employee is entitled to protection under the arrangement not originally elected for the remainder, if any, of the Protective Period.

4. Change in Operations, Services, Facilities, or Equipment.

(a) **Notice.** When a Railroad contemplates a change or changes in its operations, services, facilities, or equipment as a result of a Project, which may cause the dismissal or displacement of Protected Employees or rearrangement of forces involving such employees, it shall give at least sixty (60) days' written notice of such intended changes to both Protected Employees and their duly authorized representatives (if applicable). Such notice shall contain a full and adequate description of the proposed changes, including an estimate of the number of Protected Employees of each class affected by the intended changes.

(b) **Negotiations.**

(i) **Initiation of Negotiation.** Within sixty (60) days after the Railroad issues a notice under Section 4(a) of this Exhibit, the Railroad or the Protected Employees (or their representatives) may, by written notice to the other party, request a meeting and opportunity to negotiate an agreement with respect to the application of the terms and conditions of this Exhibit. These negotiations shall commence within fourteen (14) days from the receipt of such request.

(ii) **Subject of Negotiations.** Each change to rail operations, services, facilities, infrastructure, or equipment (including rights-of-way, track, and signal and crossing systems) that may result in dismissal or displacement of Protected Employees or rearrangement of forces involving such employees shall be subject to review and negotiation by the parties, but only to the extent necessary to ensure compliance with this Exhibit. For any contemplated rearrangement of rail forces, the Railroad and the representative(s) of the Protected Employees shall agree on the method of selection of employees to be moved, and the assignment of those employees to new roles.

(c) **Arbitration.** If the Railroad and the representative(s) of the Protected Employees fail to agree within forty-five (45) days from the initial meeting and opportunity to negotiate, either party may submit the dispute for arbitration in accordance with the following procedures:

(i) **Notice & Selection of Arbitrator.** Within ten (10) days after either party has notified the other in writing of their desire to submit the dispute for arbitration, the parties shall select a neutral arbitrator. If the parties cannot agree upon the selection of said arbitrator, then the parties shall submit a request to the National Mediation Board to appoint an arbitrator. In either case, a hearing shall be scheduled no later than thirty (30) days after an arbitrator has been appointed.



(ii) **Binding Decision.** The decision of the arbitrator shall be final, binding, and conclusive and shall be rendered within thirty (30) days from the date of the commencement of the hearing of the dispute.

(iii) **Expenses.** The salary and expenses of the arbitrator shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(d) **Implementation.** If a notice is issued under Section 4(a), the Railroad shall not implement such a change or changes until: (i) sixty (60) days after the notice in accordance with Section 4(a), if no party requests a meeting and opportunity to negotiate; (ii) the parties reach agreement pursuant to Section 4(b), if a party requests a meeting and opportunity to negotiate; or (iii) a referee has rendered a decision pursuant to Section 4(c).

5. Protections for Displaced Employees

(a) Displacement Allowances.

(i) **In General.** If a Displaced Employee is unable, in the normal exercise of such employee's seniority rights under existing agreements, rules and practices, to obtain a position that is compensated equal to or exceeding the compensation the Displaced Employee received in the position from which such employee was displaced, then the Displaced Employee shall, during the Protective Period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by the Displaced Employee in the position in which such employee is retained and the Average Monthly Compensation received by the Displaced Employee in the position from which such employee was displaced (the "Displacement Allowance").

(ii) **Application of Displacement Allowance.** If a Displaced Employee's compensation in that employee's retained position is less in any month in which such employee performs work than the Average Monthly Compensation, then the Displaced Employee shall be paid the difference between the current compensation and the Average Monthly Compensation. However, the Displacement Allowance shall be reduced by the Displaced Employee's time lost as a result of voluntary absences, to the extent that the Displaced Employee is not available for service equivalent to the Displaced Employee's Average Monthly Time. If, on the other hand, the Displaced Employee, in such employee's retained position, works in excess of the Average Monthly Time in any given month, then the Displaced Employee shall be additionally compensated for such excess time at the rate of pay of the employee's retained position. If a Displaced Employee fails to exercise their seniority rights to secure another position available to the employee which does not require a change in such employee's place of residence, to which the employee is entitled under the working agreement, and which carries a rate of pay and compensation exceeding those of the position that the employee elects to retain, then the Displaced Employee shall thereafter be treated for the purposes of this section as occupying the position such employee elects to decline.

(iii) **Early Expiration.** The Displacement Allowance shall cease prior to the expiration of the Protective Period in the event of the Displaced Employee's resignation, death, retirement, or dismissal for justifiable cause.

(b) **Moving Expenses.** Any Protected Employee retained in the service of a Railroad, or who is later restored to service after being entitled to receive a Dismissal Allowance, and is required to change the point of such employee's employment as a result of the Project, and within the employee's Protective Period is required to move the employee's place of residence, shall be reimbursed for all expenses of moving the employee's household and other personal effects, including travel expenses, temporary living expenses, and any actual wage loss during the time necessary to make the move, and for a reasonable time thereafter, not to exceed five (5) days.

(i) **Prior Agreement.** The exact extent of the responsibility of a Railroad under this Section and the ways and means of transportation shall be agreed upon in advance by the Railroad and the Protected Employee or their representatives.

(ii) **Exception.** Changes in residence that are not a result of a Project, which are made after the initial change and that grow out of the normal exercise of seniority rights, are not within the purview of this Section.

(iii) **Furloughed Employees.** The Railroad shall, to the same extent provided above, assume the moving expenses outlined in Section 5(b) for an employee furloughed within three (3) years after changing such employee's point of employment as a result of a Project, who elects to move their place of residence back to their original point of employment.

(iv) **Reimbursement.** A claim for reimbursement shall be paid under the provisions of this Section within sixty (60) days after it is submitted, unless disputed by the Railroad, but no claim shall be paid if presented to the Railroad more than ninety (90) days after the date on which the expenses were incurred.

(c) **Losses from Home Sale or Contract Termination.** Any Displaced Employee who is retained in the service of a Railroad (or who is later restored to service after being entitled to receive a dismissal allowance), and who is required to change the point of such employee's employment during the Protective Period as a result of a Project, is entitled to the following:

(i) **Home Sale for Less Than Fair Market Value.** If the Displaced Employee owns their place of residence in the locality from which such employee is required to move, then at the Displaced Employee's option, the Railroad shall reimburse the Displaced Employee for the difference between the actual sale price and the fair market value of the employee's place of residence. The Railroad shall pay such difference within sixty (60) days after the Displaced Employee has filed a claim for such loss in accordance with Section 5(c)(vi), unless a controversy arises as to which Section 5(c)(vii) applies. In each case, the fair market value of the home in question shall be determined without consideration of the Project. The Railroad shall in each instance be afforded an opportunity to purchase the home at such fair market value before it is sold by the Displaced Employee to any other person.

(ii) **Election to Receive Closing Costs.** The Displaced Employee may elect to waive the provisions of Section 5(c)(i) and to receive, in lieu thereof, an amount equal to the closing costs that are customarily paid for and assumed by a seller of real estate in the jurisdiction in which the employee's residence is located. Such costs shall include customary fees paid to a licensed realtor (not to exceed six percent (6%) of the final sale price) and any prepayment penalty required by any mortgagor or beneficiary of a deed of trust. Such costs shall not include

the payment of any mortgage discount points or similar interest discount fees by the Displaced Employee.

(iii) Pending Contract to Purchase. If a Displaced Employee has entered into a contract to purchase a place of residence, but due to a Project must cancel that contract, the Railroad shall indemnify the Displaced Employee against any losses due to such cancellation, and shall relieve the Displaced Employee from any further obligation under the contract.

(iv) Unexpired Lease. If the Displaced Employee holds an unexpired lease of a dwelling as the employee's primary place of residence, and the Displaced Employee must cancel the lease due to a Project, the Railroad shall indemnify the Displaced Employee from all costs and liability arising from said cancellation.

(v) Exclusions. Any change in residence that is not due to or caused by a Project, or that resulted from the normal exercise of a Protected Employee's seniority rights, shall not be within the purview of this Section.

(vi) Notification of Claims. A Displaced Employee shall notify, in writing, the Railroad of such employee's claim arising from this Section 5(c) within one (1) year of the date the Displaced Employee's claim accrues.

(vii) Home Value Disagreements. In the event of disagreement between a Railroad and a Displaced Employee as to the value of a Displaced Employee's claim, either party (or their representatives) may request, in writing, a joint conference to resolve the disagreement.

A. Real Estate Appraisers. If the parties are unable to resolve the disagreement, either party may refer the disagreement to two licensed real estate appraisers, one of whom shall be selected by the Displaced Employee (or such employee's representatives), and one of whom shall be selected by the Railroad. If the two selected real estate appraisers are unable to agree on a valuation within thirty (30) days, the selected real estate appraisers shall designate (or agree to a method by which to select) a third licensed real estate appraiser within ten (10) days. If unable to agree on a selection, either party may request the National Mediation Board to designate within twenty (20) days a third licensed real estate appraiser. A decision by two of the three licensed real estate appraisers shall be required to determine the value in dispute. Said decision shall be final and conclusive.

B. Payment of Expenses. The salary and expenses of the third or neutral appraiser shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(d) Failure to Exercise Seniority Rights. If a Displaced Employee is able but does not exercise such employee's seniority rights to secure another position that does not require a change in the employee's primary place of residence, the Displaced Employee shall not be entitled to moving expenses or protections due to the sale of a home outlined in Sections 5(b)&(c).

6. Protections for Dismissed Employees.

(a) **Dismissal Allowance.** A Dismissed Employee shall be paid a monthly dismissal allowance from the date they are deprived of employment through the Protective Period.

(i) **Monthly Dismissal Allowance Calculation.** The monthly dismissal allowance shall be equivalent to the Average Monthly Compensation received by the Dismissed Employee in the last twelve (12) months of employment prior to the employee's dismissal.

(ii) **Submission of Claim.** A claim for the initial month of a dismissal allowance shall be paid within ninety (90) days and a claim for a subsequent month shall be paid within sixty (60) days after the claim is filed by the Dismissed Employee, unless the claim is disputed by the Railroad pursuant to Section 8 of this Exhibit.

(iii) **Reduction or Suspension of Dismissal Allowance.** If a Dismissed Employee accepts new employment (or reemployment by the dismissing Railroad) during the Protective Period, the dismissal allowance shall be reduced such that the accepted monthly compensation at the then-current position (including any unemployment insurance compensation received) plus the dismissal allowance is equivalent to the Dismissed Employee's Average Monthly Compensation. If the compensation of the Dismissed Employee's then-current employment is greater than the dismissal allowance, the dismissal allowance shall be suspended. Such reduction or suspension shall continue for the duration of the Protective Period, unless and until the Dismissed Employee's then-current compensation is reduced or eliminated. Prior to dismissal, such Dismissed Employee (or their representative) and the dismissing Railroad shall agree upon a procedure by which such Railroad shall be informed of the earnings and benefits of such Dismissed Employee in their new position of employment.

(iv) **Early Termination.** The dismissal allowance shall cease prior to the expiration of the Protective Period in the event of the Dismissed Employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure without good cause to return to service after being notified in accordance with an applicable working agreement, or failure without good cause to accept a comparable position that does not require a change of residence, for which the Dismissed Employee is qualified and eligible with the Railroad from which such employee was dismissed after being notified, if the employee's return does not infringe upon employment rights of other employees under a working agreement.

(b) **Separation Allowance.** A Dismissed Employee may, at such employee's option, within seven (7) days of dismissal or an arbitration award establishing the employee's status as a Dismissed Employee, resign and (in lieu of all other benefits and protections provided in this Exhibit) accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936, as amended.

(c) **Priority of Employment or Re-Employment.** Any Protected Employee whose employment is terminated or who is furloughed as a result of a Project shall, if they so request, be granted priority of employment or re-employment to fill a position comparable to that which they held on the Railroad (even if in a different craft or class), so long as they are qualified, or by training or retraining can become physically and mentally qualified, for the position. However, such priority of

employment or re-employment must not be in contravention of any relevant collective bargaining agreements.

(i) **Training or Re-Training.** In the event such training or retraining is requested by a Protected Employee pursuant to Section 6(c), the Railroad shall provide such training or retraining at no cost to the Protected Employee.

(ii) **Waiver of Protections.** If a Protected Employee who has made a request under Section 6(c) fails without good cause within ten (10) days to accept an offer of a comparable position for which such employee has satisfactorily completed such training, the Protected Employee shall, upon the expiration of such ten (10) day period, forfeit all rights and benefits under this Exhibit.

7. Fringe Benefits. No Protected Employee shall be deprived during the Protective Period of any (non-salary) rights, privileges, or benefits attached to such employee's previous employment under the terms and conditions of an existing employment agreement (including, but not limited to, free transportation, hospitalization, pensions, insurance, or vacation benefits), so long as such rights, privileges, or benefits continue to be accorded to other employees of the Railroad, in active service or on furlough as the case may be, to the extent that such rights, privileges, or benefits can be so maintained under present authority of law, corporate action, or through future authorization.

8. Arbitration of Disputes.

(a) **Scope.** Any dispute under these conditions not settled by the relevant parties will be resolved in arbitration as provided herein. In the event a Railroad and the Protected Employee(s) (or their representatives) cannot settle a dispute or controversy with respect to the interpretation, application, or enforcement of any provision of this Exhibit (other than those Sections of this Exhibit that provide for another means of dispute resolution) within thirty (30) days after the dispute arises, either party may refer the dispute to an arbitration committee. The affected Protected Employee(s) (or their representatives) may notify a Recipient of a dispute or controversy under this Section 8 to ensure compliance with 49 U.S.C. § 22905(c)(2)(B).

(b) **Notice.** The party referring the dispute to an arbitration committee shall notify the other party in writing of its intent to refer a dispute or controversy to an arbitration committee.

(c) **Selection of Members.** Within ten (10) days of receipt of the written notice, each party to the arbitration shall select one (1) member of the committee, and the members thus chosen shall select an additional, neutral member to serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or a senior officer designated by the Railroad or the Recipient, as the case may be, shall be deemed the selected member. Should the members be unable to agree upon the appointment of the neutral member within ten (10) days, the parties shall then within an additional ten (10) days agree to a method by which a neutral member shall be appointed; failing such agreement, either party may request the National Mediation Board to designate within twenty (20) days the neutral member whose designation will be binding upon the parties.

(d) **Multiple Representatives.** In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the Railroad or Recipient may appoint additional representatives equivalent to the number of labor

organization representatives; provided, however, that the decision in such case shall be made by the neutral member.

(e) **Decisions Binding.** The decision, by majority vote except as provided otherwise in paragraph (d) of this Section, of the arbitration committee shall be final, binding, conclusive, and rendered within forty-five (45) days after the hearing of the dispute or controversy has been concluded and the record closed.

(f) **Expenses.** The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding, and all other expenses shall be paid by the party incurring them.

9. Classification of a Protected Employee. In the event an employee (or their representatives) cannot settle a dispute or controversy with the Railroad or the Recipient as to whether or not a particular employee would be affected by a Project, either party may refer the dispute to an arbitration committee within thirty (30) days after the dispute arises pursuant to the arbitration procedures in Section 8. For any such dispute, the employee of a Railroad shall have the burden to identify, with reasonable specificity, the Project that allegedly affected them, and to specify the pertinent facts of that Project, including the change or changes resulting from the Project that allegedly affected them. The burden shall then shift to the Railroad or Recipient to show that factors other than a change resulting from the Project affected the employee. The employee shall prevail on this issue if it is established that the Project had an effect upon the employee, even if other factors also may have affected the employee.

10. Resolution of Disputes for Non-Bargaining Unit Protected Employees. Any Protected Employee who is not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under this Exhibit. In the event any dispute arises between a Railroad and an employee not represented by a labor organization with respect to the interpretation, application, or enforcement of any provision of this Exhibit that cannot be settled by the parties within thirty (30) days after the dispute arises, either party may, as an alternative to the dispute resolution procedures outlined in this Exhibit, refer the dispute within ninety (90) days after the dispute arises to the Secretary of Labor for determination. The determination of the Secretary of Labor, or their designated representative, shall be final and binding on the parties.

11. Severability. In the event any provision of this Exhibit is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this Exhibit shall not be affected.

EXHIBIT C: QUARTERLY PROJECT PROGRESS REPORTS AND RECERTIFICATIONS



CITY OF ABERDEEN
Washington
Since 1884

Request for Council Action

Date Action is Requested: 6/24/2026

Subject: **Funding Agreement for FEMA Disaster Declaration, 4906-DR-WA**

COMMITTEE:

☐ Finance

☐ Public Safety

☒ Public Works

☐ Special Agenda Item

TYPE OF ACTION REQUESTED:

☐ Ordinance No.

☐ Motion

☐ No Action - Information Only

☒ Resolution No.

☐ Discussion

☐ Other:

SUMMARY OF REQUEST:

Disaster number 4906-DR-WA occurred in December 2022. Public Works staff are seeking to recover disaster-related costs through the Washington State Emergency Management Division's Public Assistance Program and must designate authorized representatives for executing contracts, certifying completion of projects, requesting payments, and preparing all required documentation for funding requirements related to the disaster.

POLICY IMPLICATIONS:

☒ This Action is in Accordance with Current Policies and Procedures.

☐ This Action would Require a New ☐ Policy ☐ Ordinance ☐ Resolution ☐ Other Action from the City Council.

☐ This Action Requires a Revision to ☐ Policy ☐ Ordinance ☐ Resolution ☐ Other.

☐ This Action Does Not Affect Current Policies and Procedures.

FISCAL IMPACT:

Project Number: Street-2026-0003

Amount FEMA Funded: \$85,000 Federal, \$15,000 State

Amount Requested: \$15,000 City Share

Source of Funding: Arterial Streets Remaining Funding from 3rd Ave Slide FEMA DR 4650 (\$69,000)

City Fund/Department: 305/Arterial Streets

In Budget? ☐ Yes ☒ No

Supplemental Budget? ☒ Yes ☐ No ☐ Uncertain

BARS Numbers: Project BARS not assigned yet



CITY OF ABERDEEN

Washington
Since 1884

BUDGETARY STATUS:

- ☐ Funds Have Already been Authorized in this Year's Budget.
- ☒ This is an Extra-Budget Expenditure.
- ☐ Funds will be Requested for this Action, if Approved, in Next Year's Budget.
- ☒ This Action Will Bring in Additional Revenue.
- ☐ This Action Will Require City Staff Time and/or Labor.
- ☐ This Action has no Budgetary Implications.
- ☐ This Action Will Reduce Expenditures.
- ☐ Other:

BACKGROUND/RATIONALE:

Disaster recovery funds for emergency response to remove debris and monitor Sewer Plant, repair pump at Lift Station 5, and Culvert repairs needed at 1342-1398 Summit St.

RECOMMENDATION(S):

The City Council shall authorize the Public Works Director to sign FEMA Agreement 4906-DR-WA for obtaining federal and state emergency and disaster assistance funds.

ATTACHMENTS:

- FEMA DR 4906 Declaration
- FEMA DR 4906 Agreement
- Supplemental Contract Documents

Rick Sangder

Director Name

Director Signature

Joshua Francy

Committee Chair Name

Committee Chair Signature

This request aligns with the following City Council Values:

- | | |
|---|---|
| ☐ Workforce Engagement & Development | ☐ Vibrant, Safe & Healthy Community |
| ☒ Economic Development | ☒ Infrastructure Investment |
| ☒ Fiscal Responsibility | ☐ Communications & Outreach |

DECLARED APRIL 7, 2026

SUMMARY

STATE: **Washington**

NUMBER: **FEMA-4906-DR**

INCIDENT: **Severe Storms, Straight-line Winds, Flooding, Landslides, and Mudslides**

INCIDENT PERIOD: **December 5-19, 2025**

DATE REQUESTED BY GOVERNOR: **January 21, 2026 and February 17, 2026**

FEDERAL COORDINATING OFFICER: **John F. Harrison
National FCO Program**

DESIGNATIONS AND TYPES OF ASSISTANCE:

INDIVIDUAL ASSISTANCE (Assistance to individuals and households):

Chelan, Grays Harbor, King, Lewis, Pacific, Pierce, Skagit, Snohomish, Thurston, and Whatcom Counties, including the Confederated Tribes of the Chehalis Reservation, Lummi Nation, Muckleshoot Indian Tribe, Nisqually Indian Tribe, Nooksack Indian Tribe, Puyallup Tribe, Quinault Indian Nation, Samish Indian Nation, Sauk-Suiattle Indian Tribe, Shoalwater Bay Indian Tribe, Snoqualmie Indian Tribe, Squaxin Island Tribe, Stillaguamish Tribe of Indians, Swinomish Indian Tribal Community, Tulalip Tribes, and the Upper Skagit Indian Tribe.

PUBLIC ASSISTANCE (Assistance for emergency work and the repair or replacement of disaster-damaged facilities):

Asotin, Chelan, Clallam, Clark, Cowlitz, Garfield, Grays Harbor, Island, Jefferson, King, Kittitas, Klickitat, Lewis, Mason, Pacific, Pend Oreille, Pierce, Skagit, Skamania, Snohomish, Wahkiakum, Whatcom, and Yakima Counties,

including the Confederated Tribes and Bands of the Yakama Nation, Confederated Tribes of the Chehalis Reservation, Cowlitz Indian Tribe, Hoh Indian Tribe, Jamestown S’Klallam Tribe, Kalispel Tribe of Indians, Lower Elwha Klallam Tribe, Lummi Nation, Makah Tribe, Muckleshoot Indian Tribe, Nooksack Indian Tribe, Puyallup Tribe, Quileute Tribe, Quinault Indian Nation, Samish Indian Nation, Sauk-Suiattle Indian Tribe, Shoalwater Bay Indian Tribe, Skokomish Indian Tribe, Snoqualmie Indian Tribe, Squaxin Island Tribe, Stillaguamish Tribe of Indians, Swinomish Indian Tribal Community, Tulalip Tribes, and the Upper Skagit Indian Tribe.

HAZARD MITIGATION GRANT PROGRAM (Assistance for actions taken to prevent or reduce long term risk to life and property from natural hazards):

Under Review.

OTHER: Additional designations may be made at a later date if requested by the state and warranted by the results of further damage assessments.

**Washington State Military Department
PUBLIC ASSISTANCE GRANT AGREEMENT FACE SHEET**

1. SUBRECIPIENT Name and Address: City of Aberdeen 200 E Market Street Aberdeen, WA 98520		2. Grant Agreement Amount: To be determined, based upon approved project worksheets		3. Grant Number: D26-176	
4. SUBRECIPIENT, phone/email: Rick Sangder 360-537-3228 rsangder@aberndeenwa.gov		5. Grant Agreement Start Date: December 5, 2025		6. Grant Agreement End Date: April 7, 2030	
7. DEPARTMENT Program Manager, phone/email: Jonathan L. Holmes, (253) 512-7429 Jonathan.Holmes@mil.wa.gov		8. Unique Entity Identifier (UEI): QCGUMVCBSKZ1		9. UBI # (state revenue): 141 000 009	
10. Funding Authority: Washington State Military Department (the "DEPARTMENT"), and Federal Emergency Management Agency (FEMA)					
11. Funding Source Agreement #: FEMA-4906-DR-WA		12. Program Index # 764FC (Federal) / 762FE (State) / 764FD (Admin)		13. Catalog of Federal Domestic Asst. (CFDA) # & Title: 97.036, Public Assistance	
				14. Federal EIN #: 91-6001226	
15. Total Federal Award Amount: N/A		16. Federal Award Date: N/A			
17. Service Districts: (BY LEGISLATIVE DISTRICT): <u>19</u> th (BY CONGRESSIONAL DISTRICT): <u>6</u> th		18. Service Area by County(ies): Grays Harbor		19. Women/Minority-Owned, State Certified?: ☒ N/A ☐ NO ☐ YES, OMWBE # _____	
20. Contract Classification: ☐ Personal Services ☐ Client Services ☒ Public/Local Gov't ☐ Research/Development ☐ A/E ☐ Other _____			21. Contract Type (check all that apply): ☐ Contract ☒ Grant ☒ Agreement ☐ Intergovernmental (RCW 39.34) ☐ Interagency		
22. Contractor Selection Process: ☒ "To all who apply & qualify" ☐ Competitive Bidding ☐ Sole Source ☐ A/E RCW ☐ N/A ☐ Filed w/OFM? ☐ Advertised? ☐ YES ☐ NO _____			23. Contractor Type (check all that apply) ☐ Private Organization/Individual ☐ For-Profit ☒ Public Organization/Jurisdiction ☒ Non-Profit ☐ VENDOR ☒ SUBRECIPIENT ☐ OTHER		
24. BRIEF DESCRIPTION: Presidential Disaster Declaration # FEMA-4906-DR-WA Severe Winter Storms, Straight-Line Winds, Flooding, Landslides, and Mudslides. To provide funds to the SUBRECIPIENT for emergency work and the repair or replacement of disaster-damaged facilities. as approved by FEMA in project worksheets describing eligible scopes of work and associated funding. The DEPARTMENT is the Recipient and Pass-through Entity of the Presidential Disaster Declaration # FEMA-4906-DR-WA Severe Winter Storms, Straight-Line Winds, Flooding, Landslides, and Mudslides, and FEMA State Agreement, which are incorporated by reference, and makes a subaward of Federal award funds to the SUBRECIPIENT pursuant to this Agreement. The SUBRECIPIENT is accountable to the DEPARTMENT for use of Federal award funds provided under this Agreement and the associated matching funds.					
IN WITNESS WHEREOF, the DEPARTMENT and SUBRECIPIENT acknowledge and accept the terms of this Agreement, references and attachments hereto and have executed this Agreement as of the date and year written below. This Agreement Face Sheet, Special Terms and Conditions (Attachment 1), General Terms and Conditions (Attachment 2), Project Worksheet Sample (Attachment 3), Washington State Public Assistance Applicant Manual dated April 7, 2026 (Attachment 4), and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.					
In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:					
1. Applicable Federal and State Statutes and Regulations 5. Special Terms and Conditions 2. DHS Standard Terms and Conditions 6. General Terms and Conditions, and, 3. Presidential Declaration, FEMA State Agreement, and other Documents 7. Other provisions of the contract incorporated by reference. 4. Statement of Work and/or Project Description as outlined in FEMA approved Project Worksheet(s)					
WHEREAS, the parties hereto have executed this Agreement on the day and year last specified below.					
FOR THE DEPARTMENT:			FOR THE SUBRECIPIENT:		
Signature _____ Date _____ Stacey McClain, Governor's Authorized Representative Washington State Military Department			Signature _____ Date _____ print or type name: <u>Rick Sangder</u>		
APPROVED AS TO FORM: David B, Merchant 5/28/2026 Assistant Attorney General			APPROVED AS TO FORM:		
			SUBRECIPIENT's Attorney _____ Date _____		

**Washington State Military Department
SPECIAL TERMS AND CONDITIONS**

ARTICLE I – KEY PERSONNEL

The individuals listed below shall be considered key personnel and point of contact. Any substitution by either party must be submitted in writing.

SUBRECIPIENT		MILITARY DEPARTMENT	
Name	Rick Sangder	Name	Jonathan L. Holmes
Title	Public Works Director	Title	Deputy State Coordinating Officer Public Assistance
E-Mail	rsangder@aberdeenwa.gov	E-Mail	Jonathan.Holmes@mil.wa.gov
Phone	360-537-3228	Phone	(253) 512-7429

ARTICLE II - ADMINISTRATIVE REQUIREMENTS

The SUBRECIPIENT shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by FEMA applicable to the Presidential Declaration including, but not limited to, all criteria, restrictions, and requirements of the “FEMA State Agreement” published by FEMA and the federal regulations commonly applicable to FEMA grants, all of which are incorporated herein by reference. The Presidential Declaration and the FEMA State Agreement are incorporated in this Agreement by reference.

The SUBRECIPIENT shall comply with the Washington State Public Assistance Applicant Manual dated April 7, 2026 incorporated in this Agreement as **Attachment 4**. The DHS Standard Terms and Conditions are incorporated by reference in this Agreement in Appendix F of the Washington State Public Assistance Applicant Manual dated April 7, 2026.

The SUBRECIPIENT acknowledges that since this Agreement involves federal award funding, the period of performance described herein may begin prior to the availability of appropriated federal funds. The SUBRECIPIENT agrees that it will not hold the DEPARTMENT, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

Federal funding is provided by FEMA and is administered by the DEPARTMENT. Under the authority of Presidential Disaster Declaration number FEMA-4906-DR-WA, the DEPARTMENT is reimbursing the SUBRECIPIENT for those approved eligible costs and activities necessary under the Public Assistance Grant Program during the incident period beginning December 5 to December 19, 2025. Eligible costs and activities will be identified in Project Worksheets approved by FEMA and a Project Worksheet Sample is incorporated as **Attachment 3**. The DEPARTMENT is also providing Advance Payments to the SUBRECIPIENT where provided by FEMA and required and allowed by law. Any interest earned on advance payments (except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450)) shall be promptly, but at least quarterly, remitted to the DEPARTMENT to be paid to FEMA. The subrecipient may keep interest amounts up to \$100 per year for administrative expenses.

STATE AND FEDERAL REQUIREMENTS FOR PUBLIC ASSISTANCE GRANTS:

The following requirements apply to all DHS/FEMA Presidential Disasters administered by the DEPARTMENT:

1. FUNDING

The DEPARTMENT will administer the Public Assistance (PA) Grant Program, provide Advance payments, and reimburse approved eligible Public Assistance costs to the SUBRECIPIENT that are identified under the auspices of Presidential Disaster Declaration Number FEMA-4906-DR-WA and authorized by and consistent with the Stafford Act (P.L. 93-288, as amended) and applicable regulations.

It is understood that no final dollar figure is committed to at the time that this Agreement is executed, but that financial commitments will be made by amendments to the project application as Project Worksheets are completed in the field and projects are authorized by state and federal officials.

Pursuant to the FEMA-STATE AGREEMENT, FEMA will contribute not less than **75** percent of the eligible costs for any eligible project and 100 percent of the federal PA Management Costs, up to 5 percent of the total award amount for each Subrecipient, as provided for in subsection 3.E. of Article II of this Public Assistance Agreement. The SUBRECIPIENT commits to providing the remaining up to **25** percent non-federal match to any eligible project that has been identified under the Presidential Disaster Declaration number FEMA-4906-DR-WA, subject to the following exceptions:

DEPARTMENT Match: During the 2026 Session of the State Legislature, funding of the non-federal share of 4906-DR-WA costs was addressed. The State Legislature approved partial funding for the non-federal share which will be equally split for eligible costs covered under the Project Worksheets for the 4906-DR-WA Severe Storms, Straight-line Winds, Flooding, Landslides, and Mudslides event. For local jurisdictions, Public Assistance grant funding will be 75 percent federal funds, 12.5 percent state funds and 12.5 percent local funds.

Donated Resources: FEMA will credit the SUBRECIPIENT for the value of donated resources (non-cash contributions of property or services) related to eligible Emergency Work to offset the non-Federal cost share of its eligible Emergency Work project worksheets – categories A and B, and for the value of donated resources related to eligible work on a Permanent Work project to offset the non-Federal cost share of that specific Permanent Work project worksheet for which the resources were donated – categories C through G. The Donated Resources are recognized by FEMA in a Project Worksheet. Donated Resources offset the non-federal share of the eligible emergency work approved in Project Worksheets or specific permanent work approved in Project Worksheets. For non-state agency SUBRECIPIENTS, the donated resource value will first be applied to the SUBRECIPIENT's non-federal share, and, if a DEPARTMENT match is authorized, any remaining donated resource value will be applied to the DEPARTMENT's share. The value of the Donated Resources is calculated as described in Public Assistance Program and Policy Guide V.5 (PAPPG), and is capped at the non-Federal share of approved eligible emergency work costs or capped at the non-Federal share of the specific approved eligible permanent work costs, as applicable. The Federal share of the Donated Resources will not exceed the non-federal share of eligible emergency work costs or of specific permanent work costs approved in Project Worksheets. Any excess credit for eligible emergency work costs can be credited only to other eligible emergency work costs, for the same SUBRECIPIENT in the same disaster. The value of excess donated resources cannot be credited toward or transferred to another eligible SUBRECIPIENT, or toward other State obligations. The DEPARTMENT does not match a FEMA donated resource credit.

The Project Worksheet, sample provided in Attachment 3, is required to be completed by FEMA or State Project Specialists.

2. GRANT AGREEMENT PERIOD

- a. Activities payable under this Agreement and to be performed by the SUBRECIPIENT under this Agreement shall be those activities which occurred during or subsequent to the incident period defined in the FEMA State Agreement and shall terminate upon completion of the project(s) approved by federal and state officials, including completion of close-out and audit. This period shall be referred to as the "Grant Agreement Period."
- b. The Grant Agreement Period shall only be extended by (1) written notification of FEMA approval of the Grant Agreement Period followed up with a mutually agreed written amendment, or (2) written notification from the DEPARTMENT to the SUBRECIPIENT issued by the DEPARTMENT to address extensions of its underlying federal grant performance period or to provide additional time for completion of the SUBRECIPIENT's project(s).

3. PAYMENTS

The DEPARTMENT, using funds granted for the purposes of the Presidential Disaster Declaration from FEMA, shall issue payments to the SUBRECIPIENT in compliance with the Washington State Public Assistance Applicant Manual dated April 7, 2026 (**Attachment 4**) procedures as follows:

- a. Small Project Payments: Payments are made for all small projects to the SUBRECIPIENT upon submission and approval of an A19-1A State of Washington Invoice Voucher to the DEPARTMENT, after FEMA has approved funding through approval of Project Worksheets.
- b. Progress Payments: Progress payment of funds for costs already incurred on large projects minus 10 percent retainage may be made to the SUBRECIPIENT upon submission by the SUBRECIPIENT of an A19-1A State of Washington Invoice Voucher, a letter of request, and a spreadsheet identifying the claimed costs supporting the payment request and approval by the DEPARTMENT.
- c. Progress Payments: Progress payment of funds for costs already incurred on Architectural & Engineering (A&E) small/large projects minus 10 percent retainage may be made to the SUBRECIPIENT upon submission by the SUBRECIPIENT of an A19-1A State of Washington Invoice Voucher, a letter of request, and a spreadsheet identifying the claimed costs supporting the payment request and approval by the DEPARTMENT.
- d. Improved Projects: Payments on improved projects (capped project) will be pro-rated based upon the percentage of the project that is funded under this disaster grant to the overall project cost. This percentage will be identified when the first payment on the improved project is made. Progress payments will be made as outlined above in Section B.
- e. Final Payment: Final Payment on a large project will be made following submission by the SUBRECIPIENT of a certification of completion on the STATEMENT OF DOCUMENTATION / FINAL INSPECTION REPORT form upon completion of project(s), completion of all final inspections by the DEPARTMENT, and final approval by FEMA. Final payment on a large project will include any retainage withheld during progress payments. Final payments may also be conditional upon financial review, if determined necessary by the DEPARTMENT or FEMA. Adjustments to the final payment may be made following any audits conducted by the Washington State Auditor's Office, the United States Inspector General or other federal or state agency.
- f. The SUBRECIPIENT is eligible to receive federal PA Management Costs up to 5 percent of the total award amount obligated for each Subrecipient at the time of its request. PA Management Costs includes any of the following when associated with the PA portion of a major disaster or emergency: Indirect costs, direct administrative costs, and other administrative expenses associated with a specific project. Documentation is required to substantiate the eligibility of management activities and associated costs in accordance with PA Management Costs Interim Policy – Standard Operating Procedures.
- g. All payment requests shall be made on an A19-1A form, State of Washington, Invoice Voucher. Payments will be made by electronic fund transfer to the SUBRECIPIENT's account.
- h. Federal funding shall not exceed the total federal contribution eligible for Public Assistance costs under Presidential Disaster Declaration number FEMA-4906-DR-WA.
- i. For state agencies, the DEPARTMENT will, through interagency reimbursement procedures, transfer payment to the SUBRECIPIENT. Payment will be transferred by journal voucher to Agency No. _____, Accounting Fund No. _____.
- j. Within the total Grant Agreement Amount, travel, sub-contracts, salaries, benefits, printing, equipment, and other goods and services will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.
- k. For travel costs, SUBRECIPIENTS shall comply with 2 CFR 200.474 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive.
- l. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without written approval by DEPARTMENT Key Personnel.
- m. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the SUBRECIPIENT consistent with record retention requirements of this Agreement, and be made available upon request by the DEPARTMENT, and local, state, or federal auditors.

- n. All work under this Agreement must end on or before the Grant Agreement End Date, and the final reimbursement request must be submitted to the DEPARTMENT within 45 days after the Grant Agreement End Date, except as otherwise authorized by written amendment of this Agreement and issued by the DEPARTMENT.
- o. No costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the SUBRECIPIENT, its subrecipient or contractor, or any non-federal entity to which the SUBRECIPIENT makes a subaward, and is invoiced by the vendor.
- p. SUBRECIPIENTS shall only use federal award funds under this Agreement to supplement existing funds, and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The SUBRECIPIENT may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

The DEPARTMENT shall provide Advance Payments as provided by FEMA and as required and authorized by law.

4. CLOSEOUT

To initiate close-out, the SUBRECIPIENT is required to certify in writing, by Project Worksheet Number, date completed and total amount expended on the project, completion of the small projects. To initiate close-out of the large projects, the SUBRECIPIENT shall submit certification of completion on a STATEMENT OF DOCUMENTATION/FINAL INSPECTION REPORT form to the DEPARTMENT.

The DEPARTMENT will then complete a site inspection and a financial review of documentation to support the claimed costs. Certifications on small and large projects are due within sixty days following the completion of the project or receipt of the approved Project Worksheet, whichever date is later.

If SUBRECIPIENT is claiming federal PA Management Costs: Indirect costs, direct administrative costs, and other administrative expenses associated with disaster-specific projects must be supported by documentation to substantiate the eligibility of management activities and associated costs that has been prepared and assembled in accordance with FEMA Recovery 2000 Policy FP 104-11-2, Public Assistance Management Costs (Interim) and PA Management Costs Standard Operating Procedures prior to close-out.

After all of the projects have been certified as complete and approved for closure by FEMA, the DEPARTMENT will forward a final A19-1A State of Washington Invoice Voucher to the SUBRECIPIENT for release of the remaining funds due to the subrecipient for eligible costs, including any retainage previously withheld, and the allowance for federal indirect costs.

5. DOCUMENTATION / REPORTING REQUIREMENTS

For all Advance Payment, the SUBRECIPIENT shall provide documentation and receipts for all costs related to the Advance Payment and provide such to the DEPARTMENT quarterly.

The SUBRECIPIENT is required to retain all documentation which adequately identifies the source and application of Public Assistance funds, including the federal Management Costs reimbursement, for six years following the closure of this disaster grant. For all funds received, source documentation includes adequate accounting of actual costs and recoveries incurred.

The SUBRECIPIENT shall also comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete the FFATA Form located at <https://mil.wa.gov/emergency-management-division/grants/requiredgrantforms> and return to the DEPARTMENT; which is incorporated by reference and made a part of this Agreement.

Quarterly Reports: The SUBRECIPIENT is required to submit to the DEPARTMENT a quarterly report indicating the status of all their large and A&E projects. The status shall identify the costs incurred to date, the percentage of work completed, the anticipated completion date of the project and whether cost under runs or over runs are expected. A&E project reporting will require specific information which will outline project milestones. In addition, the SUBRECIPIENT should note in the comment field any challenges or issues associated with the project. Failure to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments to the SUBRECIPIENT until a complete quarterly report is

received by the DEPARTMENT. The quarterly report will serve as the basis for any FEMA Office of Chief Financial Officer (OCFO) funds reduction.

6. TIME EXTENSIONS

A time extension request is required to be forwarded to the DEPARTMENT by the SUBRECIPIENT for a project prior to the expiration of the approved completion date. If the project is approved and funded after the statutory approval time period for completion, then a time extension request must be submitted to the DEPARTMENT within fifteen days of receipt of the funding package.

In accordance with 44 CFR 206.204, the DEPARTMENT reserves the right, in its sole discretion, to consider and approve a time extension request after expiration of the approved completion date and within the DEPARTMENT's statutory extension authority. Requests for time extensions beyond the DEPARTMENT's authority will be considered and approved by FEMA, at their sole discretion.

All determinations made regarding time extension requests will be based on a case by case evaluation of specific factual circumstances.

A time extension request must be in writing and identify the Project Worksheet number, the reason the project has not been completed within the prior approved completion period, the reason the time extension request was not submitted prior to the statutory approval time period (if applicable), a current status of the completion of the work, a detailed timeline for completion of the remaining elements, and an anticipated completion date for the completion of the remaining work. Failure to submit a time extension request in a timely manner may result in denial of the time extension request, and loss of funding for the related project.

7. PROCUREMENT

The SUBRECIPIENT shall comply with all procurement requirements of 2 CFR Part 200.317 through 200.327 and as specified in the General Terms and Conditions, Exhibit A.11.

8. SUBRECIPIENT MONITORING:

- a. The DEPARTMENT will monitor the activities of the SUBRECIPIENT from award to closeout. The goal of the DEPARTMENT's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the SUBRECIPIENT shall complete and return to the DEPARTMENT 2 CFR Part 200 Subpart F Audit Certification Form located at <https://mil.wa.gov/emergency-management-division/grants/requiredgrantforms> with the signed Agreement and each fiscal year thereafter until the Agreement is closed, which is incorporated by reference and made a part of this Agreement.
- c. Monitoring activities may include, but are not limited to:
 - i. review of financial and performance reports;
 - ii. monitoring and documenting the completion of Agreement deliverables;
 - iii. documentation of phone calls, meetings, e-mails, and correspondence;
 - iv. review of reimbursement requests and supporting documentation to ensure eligibility and consistency with Agreement work plan, budget, and federal requirements;
 - v. observation and documentation of Agreement related activities;
 - vi. on-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The SUBRECIPIENT is required to meet or exceed the monitoring activities, as outlined above and in 2 CFR Part 200 Subpart F, for any non-federal entity to which the SUBRECIPIENT makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a Corrective Action Plan. If the SUBRECIPIENT fails to comply with federal or state statutes or regulations, or the terms and conditions of this Agreement, the DEPARTMENT may impose any additional subaward conditions as described in 2 CFR 200.208. If the DEPARTMENT determines

that noncompliance cannot be remedied by imposing additional conditions, it may take one or more of the following actions:

- i. Temporarily withhold cash payments pending correction of the deficiency by the SUBRECIPIENT.
- ii. Wholly or partially suspend or terminate the subaward to the SUBRECIPIENT.
- iii. Initiate suspension or debarment proceedings under 2 CFR 180 or recommend such a proceeding be initiated by the federal awarding agency.
- iv. Withhold further federal awards for the project or program.
- v. Take any other remedies that may be legally available.

f. The DEPARTMENT agrees to:

- i. Provide technical assistance during all monitoring or evaluation activities. The DEPARTMENT will coordinate and schedule the meetings necessary to conduct and complete all monitoring and evaluation activities.
- ii. Develop the SUBRECIPIENT's project worksheet(s) (PW) and supporting attachments with FEMA and the SUBRECIPIENT's assistance based upon the costs determined to be eligible.
- iii. Submit the SUBRECIPIENT's funding package to FEMA.
- iv. Notify the SUBRECIPIENT when funding approval is received, issue payment per the process described above see Article II, A.4 – Payments, and provide the SUBRECIPIENT with a copy of the approved project worksheet.
- v. Work with the SUBRECIPIENT to resolve any issues identified during the monitoring process.
- vi. Review and respond appropriately to the SUBRECIPIENT's requests for time extensions and changes.

9. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

All subrecipients must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

A. FEMA STATE AGREEMENT TERMS AND CONDITIONS

As a subrecipient of FEMA funding, the SUBRECIPIENT shall comply with all applicable DHS/FEMA terms and conditions of the Presidential Declaration and the FEMA State Agreement, which are incorporated in and made a part of this Agreement in Appendix F of the Washington State Public Assistance Applicant Manual dated April 7, 2026 (**Attachment 4**).

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants**

A.1 DEFINITIONS

As used throughout this Agreement, the following terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. **"Agreement"** means this Grant Agreement.
- b. **"Department"** means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department. The Department is a recipient of a federal award directly from a federal awarding agency and is the pass-through entity making a subaward to a Subrecipient under this Agreement.
- c. **"Monitoring Activities"** means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities, and policies.
- d. **"Subrecipient"** when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the Department. However, the definition of "Subrecipient" is the same as in 2 CFR 200.1 for all other purposes.
- e. **"Project"** means those actions funded through the Public Assistance Program and described in approved Project Worksheets. Projects may include one or more of the following: reimbursement of costs for emergency response, debris removal and/or repair or restoration of damaged public facilities. A project may be a small, large, improved, or alternate project.

A.2 ADVANCE PAYMENTS

The DEPARTMENT shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement, except as required under 2 CFR 200.305 for federal grants. SUBRECIPIENT shall not invoice the DEPARTMENT in advance of delivery and invoicing of such goods or services, except as authorized under 2 CFR 200.305.

Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C §5121-5207), Advance Payment process, FEMA may process a SUBRECIPIENT project worksheet which is provided to the state of Washington for direct disbursement to SUBRECIPIENT.

Pursuant to these provisions and RCW 43.88.160(5), these grant funds are not subject to the advance payments prohibition and will be disbursed immediately to SUBRECIPIENT as grants authorized by law with subsequent authentication and certification of expenditures.

A.3 AMENDMENTS AND MODIFICATIONS

The SUBRECIPIENT or the DEPARTMENT may request, in writing, an amendment or modification of this Agreement. Modifications may be requested for Grant Agreement end date, budget or scope change. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the DEPARTMENT and the SUBRECIPIENT. No other understandings or agreements, written or oral, shall be binding on the parties.

The Agreement performance period shall only be extended by (1) written notification of DHS/FEMA approval of the Award performance period, followed up with a mutually agreed written amendment, or (2) written notification from the Department to the Subrecipient to provide additional time for completion of the Subrecipient's project(s).

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990 , PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

Except as provided herein, the Subrecipient 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 telecommunication. If the ADA does not apply to the Subrecipient because the Subrecipient is a federal recognized Indian Tribe, then the acceptance by the Tribe of, or acquiescence to, these General Terms and Conditions does not change or alter its inapplicability to the Indian Tribe. The

execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

A.5 APPLICATION REPRESENTATION-MISREPRESENTATION, INACCURACY AND BREACH

The DEPARTMENT relies upon the SUBRECIPIENT's application in making its determinations as to eligibility for, selection for, and scope of funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

A.6 ASSURANCES

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations. In addition, as a SUBRECIPIENT of FEMA funding, the SUBRECIPIENT shall comply with all applicable DHS terms and conditions as specified in Appendix F of the Washington State Public Assistance Applicant Manual dated April 28, 2024 incorporated in this Agreement as **Attachment 4**.

A.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the SUBRECIPIENT certifies that the SUBRECIPIENT is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The SUBRECIPIENT shall complete, sign, and return a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form located at <https://mil.wa.gov/emergency-management-division/grants/requiredgrantforms>. Any such form completed by the SUBRECIPIENT for this Agreement shall be incorporated into this Agreement by reference.

Further, the SUBRECIPIENT agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The SUBRECIPIENT certifies that it will ensure that potential sub-contractors or sub-recipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and sub-awards to sub-recipients for any amount. With respect to covered transactions, the SUBRECIPIENT may comply with this provision by obtaining a certification statement from the potential sub-contractor or sub-recipient or by checking the System for Award Management (<https://www.sam.gov>) maintained by the federal government. The SUBRECIPIENT also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx>). The Subrecipient also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' *Debarred Vendor List* (<https://www.des.wa.gov/services/contracting-purchasing/doing-business-state/vendor-debarment>).

A.8 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the SUBRECIPIENT hereby certifies that to the best of their knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the SUBRECIPIENT to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the SUBRECIPIENT will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the SUBRECIPIENT will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

A.9 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The SUBRECIPIENT and all its contractors shall comply with, and the DEPARTMENT is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or applicable policies, Energy Policy and Conservation Act (PL 94-163, 89 Stat. 871, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Title 44 of the Federal Regulations, 2 CFR Part 3002, Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations.

In the event of the SUBRECIPIENT's or its contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, the DEPARTMENT may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion.

The SUBRECIPIENT is responsible for all costs or liability arising from its failure to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.10 CONFLICT OF INTEREST

No officer or employee of the DEPARTMENT; no member, officer, or employee of the SUBRECIPIENT or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such the SUBRECIPIENT who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The SUBRECIPIENT shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

A.11 CONTRACTING & PROCUREMENT

a. The SUBRECIPIENT shall use a competitive procurement process in the procurement and award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 2 CFR 200.317 Procurements by States and Indian Tribes and 2 CFR Part 200.318 General Procurement Standards through 200.327 Contract Provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the SUBRECIPIENT under this Agreement must include the following provisions, as applicable:

1. Contracts for more than the simplified acquisition, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
3. Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of "federally assisted construction contract" in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, "Equal Employment Opportunity" ([30 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment

Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

4. Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
5. Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
7. Clean Air Act ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
8. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
9. Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not

used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

10. Procurement of recovered materials -- As required by 2 CFR 200.322, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

11. Notice of Federal awarding agency requirements and regulations pertaining to reporting.
12. Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.
13. Access by the DEPARTMENT, the SUBRECIPIENT, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
14. Retention of all required records for six (6) years after the SUBRECIPIENT has made final payments and all other pending matters are closed.
15. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
16. Pursuant to Executive Order 13858 "*Strengthening Buy-American Preferences for Infrastructure Projects*," the DEPARTMENT encourages SUBRECIPIENTS to use, to the greatest extent practicable and consistent with the law, iron and aluminum as well as steel, cement and other manufactured products produced in the United States, in Public Assistance and Hazard Mitigation Grant Program eligible public infrastructure repair and construction projects affecting surface transportation, ports, water resources including sewer and drinking water and power. Such preference must be consistent with the law, including cost and contracting requirements of 2 CFR Part 200.
17. Per 2 C.F.R. § 200.216, prohibitions regarding certain telecommunications and video surveillance services or equipment are mandated by section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018).
 - b. The DEPARTMENT reserves the right to review the SUBRECIPIENT procurement plans and documents, and require the SUBRECIPIENT to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.317 through 2 CFR 200.327. The SUBRECIPIENT must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the SUBRECIPIENT and DEPARTMENT to make a determination on eligibility of project costs.
 - c. All contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.12 DISCLOSURE

The use or disclosure by any party of any information concerning the DEPARTMENT for any purpose not directly connected with the administration of the DEPARTMENT's or the SUBRECIPIENT's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the DEPARTMENT or as required to comply with the state Public Records Act, other law, or court order.

A.13 DISPUTES

Except as otherwise provided in this contract, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution board to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The board shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the SUBRECIPIENT and a third party mutually agreed upon by both parties. The board shall, by majority vote, resolve the dispute. Each party shall bear the cost for its board member and its attorney fees and costs, and share equally the cost of the third board member.

A.14 DUPLICATION OF BENEFITS

The SUBRECIPIENT agrees that the funds for which federal or state assistance is requested does not, or will not, duplicate benefits or funds received for the same loss from any other source. The SUBRECIPIENT will pursue, and require sub-recipients to pursue, full payment of eligible insurance benefits for properties or any other losses covered in a project under this Agreement. The SUBRECIPIENT will repay the DEPARTMENT any funds provided under this grant agreement that are duplicated by other benefits, funds, or insurance proceeds. The SUBRECIPIENT will also seek recovery against any party or parties whose negligence or other intentional or tortious conduct may have caused or contributed to the expenditures for which these grants funds are provided. The SUBRECIPIENT will repay the DEPARTMENT any funds recovered by settlement, judgment or other court order in an action to recover funds provided by this grant. The SUBRECIPIENT shall notify the DEPARTMENT as early as possible and work in conjunction with the DEPARTMENT and FEMA to ensure appropriate apportionment of any duplicated or recovered payment.

A.15 HAZARDOUS SUBSTANCES

The SUBRECIPIENT shall inspect and investigate the proposed development/construction site for the presence of hazardous substances. The SUBRECIPIENT shall fully disclose to the DEPARTMENT the results of its inspection and investigation and all other knowledge the SUBRECIPIENT has as to the presence of any hazardous substances at the proposed development/construction project site. The SUBRECIPIENT will be responsible for any associated clean-up costs. "Hazardous Substance" is defined in RCW 70A.305.020.

A.16 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the SUBRECIPIENT, its successors or assigns, will protect, save and hold harmless the DEPARTMENT, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the SUBRECIPIENT, its sub-contractors, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the SUBRECIPIENT further agrees to defend the DEPARTMENT and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the DEPARTMENT; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the DEPARTMENT, and (2) the SUBRECIPIENT, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the SUBRECIPIENT, or SUBRECIPIENT's agents or employees.

Insofar as the funding source, the DEPARTMENT of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), is an agency of the federal government, the following shall apply:

44 CFR 206.9 Non-liability. The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act.

A.17 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the DEPARTMENT's Authorized Signature and the Authorized Signature of the assigned SUBRECIPIENT Agent or Alternate for the SUBRECIPIENT Agent, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties Authorized Signature representatives. Further, only the Authorized Signature representative or Alternate for the SUBRECIPIENT shall have authority to sign reimbursement requests, certification of project completion, time extension requests, amendment and modification requests, requests for changes to project status, and other requests, certifications and documents authorized by or required under this Agreement.

A.18 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the DEPARTMENT may unilaterally reduce the scope of work and budget or unilaterally terminate or suspend all or part of the Agreement as a "Termination for Cause" without providing the SUBRECIPIENT an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the DEPARTMENT has no obligation to do so.

A.19 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the SUBRECIPIENT.

A.20 NONDISCRIMINATION

The SUBRECIPIENT shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. These requirements include, but are not limited to:

- a. Nondiscrimination in Employment: The Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual orientation, religion, national origin, creed, marital status, age, Vietnam era or disabled veteran status, or the presence of any sensory, mental, or physical handicap. This requirement does not apply, however, to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.
- b. The Subrecipient shall take action to ensure that employees are employed and treated during employment without discrimination because of their race, color, sex, sexual orientation religion, national origin, creed, marital status, age, Vietnam era or disabled veteran status, or the presence of any sensory, mental, or physical handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment selection for training, including apprenticeships and volunteers.

A.21 NOTICES

The SUBRECIPIENT shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and shall maintain a record of this compliance.

**A.22 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/ HEALTH ACT
(OSHA/WISHA)**

The SUBRECIPIENT represents and warrants that its workplace does now or will meet all applicable federal and state safety and health regulations that are in effect during the SUBRECIPIENT's performance under this Agreement. To the extent allowed by law, the SUBRECIPIENT further agrees to indemnify and hold harmless the DEPARTMENT and its employees and agents from all liability, damages and costs of any nature, including

but not limited to, costs of suits and attorneys' fees assessed against the DEPARTMENT, as a result of the failure of the SUBRECIPIENT to so comply.

A.23 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The DEPARTMENT makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this grant of funds does not and will not acquire any ownership interest or title to such property of the SUBRECIPIENT. To the extent allowed by law, the SUBRECIPIENT shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the DEPARTMENT and the State of Washington and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.24 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.25 PRIVACY

Personal information collected, used or acquired in connection with this agreement shall be used solely for the purposes of this agreement. SUBRECIPIENT and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the DEPARTMENT or as provided by law or court order. SUBRECIPIENT agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The DEPARTMENT reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the SUBRECIPIENT through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the DEPARTMENT. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. To the extent allowed by law, the SUBRECIPIENT agrees to indemnify and hold harmless the DEPARTMENT for any damages related to the SUBRECIPIENT's unauthorized use, loss or disclosure of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

A.26 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement 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.

A.27 PUBLICITY

The SUBRECIPIENT agrees to submit to the DEPARTMENT prior to issuance all advertising and publicity matters relating to this Agreement wherein the DEPARTMENT's name is mentioned or language used from which the connection of the DEPARTMENT's name may, in the DEPARTMENT's judgment, be inferred or implied. The SUBRECIPIENT agrees not to publish or use such advertising and publicity matters without the prior written consent of the DEPARTMENT. The SUBRECIPIENT may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Agreement shall include an acknowledgement of the DEPARTMENT and FEMA's financial support, by the Assistance Listings Number (formerly CFDA Number), and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.28 RECAPTURE PROVISION

In the event the SUBRECIPIENT fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the DEPARTMENT reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the SUBRECIPIENT of funds under this recapture provision shall occur within 30 days of demand. In the event the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs and expenses thereof, including attorney fees.

A.29 RECORDS AND REPORTS

- a. The SUBRECIPIENT agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the SUBRECIPIENT's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The SUBRECIPIENT's records related to this Agreement and the projects funded may be inspected and audited by the DEPARTMENT or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the SUBRECIPIENT with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the SUBRECIPIENT for such inspection and audit, together with suitable space for such purpose, at any and all times during the SUBRECIPIENT's normal working day.
- d. The SUBRECIPIENT shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) year must be followed.

A.30 RECOVERY OF FUNDS

Any person who intentionally causes a condition for which funds are provided under this Agreement shall be liable for the costs incurred by the state and federal governments in responding to such disaster. In addition to its own duty to recover duplicated funds or funds expended due to the intentional or negligent actions of others. SUBRECIPIENT will cooperate in a reasonable manner with the DEPARTMENT and the United States in efforts to recover expenditures under this Grant Agreement.

A.31 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the DEPARTMENT undertakes to assist the SUBRECIPIENT with the project/statement of work/work plan (project) by providing grant funds pursuant to this Agreement, the project itself remains the sole responsibility of the SUBRECIPIENT. The DEPARTMENT undertakes no responsibility to the SUBRECIPIENT, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the SUBRECIPIENT, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the SUBRECIPIENT shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including but not limited to FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders.

The SUBRECIPIENT shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the SUBRECIPIENT in connection with the project. The SUBRECIPIENT shall not look to the DEPARTMENT, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.32 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the

Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.33 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

Non-federal entities as subrecipients that expend **\$1,000,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$1,000,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "subrecipient" means an entity that receives a subaward from a pass-through entity to carry out part of a federal award.

SUBRECIPIENTS that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The SUBRECIPIENT has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200.425.

The SUBRECIPIENT shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subrecipients or contractors also maintain auditable records.

The SUBRECIPIENT is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report.

The SUBRECIPIENT must respond to DEPARTMENT requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The DEPARTMENT reserves the right to recover from the SUBRECIPIENT all disallowed costs resulting from the audit.

After the single audit has been completed, and if it includes any audit findings, the Subrecipient must send a full copy of the audit and its Corrective Action Plan to the Department at the following address no later than nine (9) months after the end of the Subrecipient's fiscal year(s):

Contracts Office

Washington Military Department

Finance Division, Building #1 TA-20

Camp Murray, WA 98430-5032

OR

Contracts.Office@mil.wa.gov

If Contractor claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT must send a letter identifying this Agreement and explaining the criteria for exemption no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to the address listed above.

The DEPARTMENT retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

The SUBRECIPIENT shall include the above audit requirements in any subawards.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT's failure to comply with said audit requirements may result in one or more of the following actions in the DEPARTMENT's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.34 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The SUBRECIPIENT, and/or employees or agents performing under this Agreement are not employees or agents

of the DEPARTMENT in any manner whatsoever. The SUBRECIPIENT will not be presented as nor claim to be an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Agreement, nor will the SUBRECIPIENT make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW; OFM Reg. 4.3.1.1.8.

It is understood that if the SUBRECIPIENT is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the State of Washington in their own right and not by reason of this Agreement.

A.35 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the SUBRECIPIENT shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the SUBRECIPIENT or its staff required by statute or regulation that are applicable to Agreement performance.

A.36 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the SUBRECIPIENT may terminate this Agreement by providing written notice of such termination to the DEPARTMENT's Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the DEPARTMENT, in its sole discretion and in the best interests of the State of Washington, may terminate this Agreement in whole or in part by providing ten (10) business days after emailing notice. Upon notice of termination for convenience, the DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds. In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.37 TERMINATION OR SUSPENSION FOR LOSS OF FUNDING

The DEPARTMENT may unilaterally terminate or suspend all or part of this Grant Agreement, or may reduce its scope of work and budget, if there is a reduction in funds by the source of those funds, and if such funds are the basis for this Grant Agreement. The Department will email the SUBRECIPIENT ten (10) business days prior to termination.

A.38 TERMINATION OR SUSPENSION FOR CAUSE

In the event the DEPARTMENT, in its sole discretion, determines the SUBRECIPIENT has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the SUBRECIPIENT unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the DEPARTMENT has the right to immediately suspend or terminate this Agreement in whole or in part.

The DEPARTMENT may notify the SUBRECIPIENT in writing of the need to take corrective action and provide a period of time in which to cure. The DEPARTMENT is not required to allow the SUBRECIPIENT an opportunity to cure if it is not feasible as determined solely within the DEPARTMENT's discretion. Any time allowed for cure shall not diminish or eliminate the SUBRECIPIENT's liability for damages or otherwise affect any other remedies available to the DEPARTMENT. If the DEPARTMENT allows the SUBRECIPIENT an opportunity to cure, the DEPARTMENT shall notify the SUBRECIPIENT in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the DEPARTMENT, or if such corrective action is deemed by the DEPARTMENT to be insufficient, the Agreement may be terminated in whole or in part.

The DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the SUBRECIPIENT, if allowed, or pending a decision by the DEPARTMENT to terminate the Agreement in whole or in part.

In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the SUBRECIPIENT: (1) was not in default or material breach, or (2) failure to perform was outside of the SUBRECIPIENT's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.39 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the DEPARTMENT terminates this Agreement, the SUBRECIPIENT shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the DEPARTMENT may require the SUBRECIPIENT to deliver to the DEPARTMENT any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the DEPARTMENT shall pay to the SUBRECIPIENT the agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the DEPARTMENT prior to the effective date of Agreement termination, and the amount agreed upon by the SUBRECIPIENT and the DEPARTMENT for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the DEPARTMENT, (iii) other work, services and/or equipment or supplies which are accepted by the DEPARTMENT, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the DEPARTMENT shall determine the extent of the liability of the DEPARTMENT. The DEPARTMENT shall have no other obligation to the SUBRECIPIENT for termination. The DEPARTMENT may withhold from any amounts due the SUBRECIPIENT such sum as the DEPARTMENT determines to be necessary to protect the DEPARTMENT against potential loss or liability.

The rights and remedies of the DEPARTMENT provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the DEPARTMENT in writing, the SUBRECIPIENT shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or sub-contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the DEPARTMENT, in the manner, at the times, and to the extent directed by the DEPARTMENT, all of the rights, title, and interest of the SUBRECIPIENT under the orders and sub-contracts so terminated, in which case the DEPARTMENT has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the DEPARTMENT to the extent the DEPARTMENT may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the DEPARTMENT and deliver in the manner, at the times, and to the extent directed by the DEPARTMENT any property which, if the Agreement had been completed, would have been required to be furnished to the DEPARTMENT;
- f. Complete performance of such part of the work as shall not have been terminated by the DEPARTMENT in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the DEPARTMENT may require, for the protection and preservation of the property related to this Agreement which is in the possession of the SUBRECIPIENT and in which the DEPARTMENT has or may acquire an interest.

A.40 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

(a) When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.

(b) Such consideration means:

- (1) These business types are included on solicitation lists;
- (2) These business types are solicited whenever they are deemed eligible as potential sources;
- (3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
- (4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
- (5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring a contractor under a Federal award to apply this section to subcontracts

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the state of Washington encourages participation in all its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). To the extent possible, the SUBRECIPIENT will solicit and encourage minority-owned and women-owned business enterprises who are certified by the OMWBE under the state of Washington certification program to apply and compete for work under this contract. Voluntary numerical MWBE participation goals have been established and are indicated herein: Minority Business Enterprises (MBEs): 10% and Woman's Business Enterprises (WBEs): 6%..

A.41 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by, the laws of the state of Washington. Except for as provided herein, venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington, and the Subrecipient, by execution of this Agreement, acknowledges the jurisdiction of the courts of the state of Washington. Provides, that if the Subrecipient is a federally recognized Indian Tribe, the parties agree that, in the event either party to this Agreement commences any suit relating to or arising from the Agreement, the United States District Court for the Western District of the State of Washington shall have the sole and exclusive jurisdiction over such proceeding. If the court lacks federal subject matter jurisdiction, then the Tribe agrees to waive its sovereign immunity from suit for the limited purpose of permitting the State to enforce the terms of this Agreement in the Superior Court of Washington under Washington law, and venue for such suit shall be the Superior Court of Thurston County, Washington. This limited waiver of sovereign immunity is solely for the benefit of the State. This limited waiver of sovereign immunity shall not be for, nor shall it be construed as for, the benefit of any other person or entity, and the Tribe does not waive its immunity with respect to any action brought by, or on behalf of, any other entity or person.

A.42 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the DEPARTMENT in writing. The DEPARTMENT's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

**Department of Homeland Security
Federal Emergency Management Agency**

General Info

Project #	P/W #	Project Type
Project Category		Applicant
Project Title		Event
Project Size		Declaration Date
Activity		Incident Start Date
Completion Date		Incident End Date
Process Step		

Damage Description and Dimensions**Final Scope**

Project Notes:

Cost

Code	Quantity	Unit	Total Cost	Section

CRC Gross Cost

CRC Net Cost

Federal Share

Non-Federal Share

Award Information

Version Information

Version #	Eligibility Status	Current Version	Bundle Number	Project Amount	Cost Share	Federal Share Obligated	Date Obligated

Drawdown History

EMMIE Drawdown Status As of Date	IFMIS Obligation #	Expenditure Number	Expended Date	Expended Amount

Obligation History

Version #	Date Obligated	Obligated Cost	Cost Share	IFMIS Status	IFMIS Obligation #

Subgrant Conditions

- As described in Title 2 Code of Federal Regulations (C.F.R.) § 200.333, financial records, supporting documents, statistical records and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. Exceptions are stated in 2 C.F.R. § 200.333(a) – (f)(1) and (2). All records relative to this project are subject to examination and audit by the State, FEMA and the Comptroller General of the United States and must reflect work related to disaster-specific costs.
- When any individual item of equipment purchased with PA funding is no longer needed, or a residual inventory of unused supplies exceeding \$5,000 remains, the subrecipient must follow the disposition requirements in Title 2 Code of Federal Regulations (C.F.R.) § 200.313-314.
- The terms of the FEMA-State Agreement are incorporated by reference into this project under the Public Assistance award and the applicant must comply with all applicable laws, regulations, policy, and guidance. This includes, among others, the Robert T. Stafford Disaster Relief and Emergency Assistance Act; Title 44 of the Code of Federal Regulations; FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide; and other applicable FEMA policy and guidance.
- The DHS Standard Terms and Conditions in effect as of the declaration date of this emergency declarations or major disaster, as applicable, are incorporated by reference into this project under the Public Assistance grant, which flow down from the Recipient to subrecipients unless a particular term or condition indicates otherwise.
- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth at Title 2 Code of Federal Regulations (C.F.R.) Part 200 apply to this project award under the Public Assistance grant, which flow down from the Recipient to all subrecipients unless a particular section of 2 C.F.R. Part 200, the FEMA-State Agreement, or the terms and conditions of this project award indicate otherwise. See 2 C.F.R. §§ 200.101 and 110.
- The subrecipient must submit a written request through the Recipient to FEMA before it makes a change to the approved scope of work in this project. If the subrecipient commences work associated with a change before FEMA approves the change, it will jeopardize financial assistance for this project. See FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide.
- Pursuant to section 312 of the Stafford Act, 42 U.S.C. 5155, FEMA is prohibited from providing financial assistance to any entity that receives assistance from another program, insurance, or any other source for the same work. The subrecipient agrees to repay all duplicated assistance to FEMA if they receive assistance for the same work from another Federal agency, insurance, or any other source. If an subrecipient receives funding from another federal program for the same purpose, it must notify FEMA through the Recipient and return any duplicated funding.

Final Reviews

Final Review

Reviewed By

Reviewed On

Review Comments

Recipient Review

Reviewed By

Reviewed On

Review Comments

Project Signatures

Signed By

Signed On

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SUPPLEMENTAL CONTRACT DOCUMENTS

PUBLIC ASSISTANCE PROGRAM

Contract Information:

The F.E.M.A. Public Assistance Program is a state-led program that the Washington Military Department – Emergency Management Division has been designated by the Governor to manage and facilitate. The Washington Military Department is considered the recipient of the federal funds, and your jurisdiction is considered the subrecipient of the federal funds and state funds. A contract must be in place with the Washington Military Department and your jurisdiction to disburse the funds. Delay in completing the W.M.D. Grant Agreement and the Supplemental Contract Documents will delay payment for obligated projects.

Contract Documents:

*W.M.D. Grant Agreement

*Supplemental Contract Documents:

- Disaster Assistance Application
- Designation Letter OR Resolution
- Signature Authorization Form
- Debarment Certification Form
- Audit Certification & FFATA Reporting Form
- Statewide Vendor Number

Electronic Signatures:

The Washington Military Department – Emergency Management Division accepts both wet ink signatures and certified electronic signatures (e.g., DocuSign, Adobe Sign). This agreement may be executed using either signature, and certified electronic signatures shall have the same legal effect and enforceability as wet ink signatures.

E-mail Address:

Submit your contract documents to: **MIL-PA-Admin@mil.wa.gov**

Mailing Address:

If you prefer to mail the documents in, send them to:

Mr. Jonathan Holmes
Washington Military Department
Emergency Management Division
Public Assistance Program MS:
TA-20, Building 20-B
Camp Murray, WA 98430-5122



INSTRUCTIONS

STEP 1: Review the information in **SECTION A – Disaster Event Information**, which has been pre-filled using the information that you submitted in your R.P.A. – Request for Public Assistance.

STEP 2: Complete **SECTION B – Applicant Information** and **SECTION C – Signatories and Jurisdictional Information**, and the information that you input will auto-populate to the Supplemental Contract Documents.

STEP 3: For the **Disaster Assistance Application**, the Applicant Agent and the Alternate Applicant Agent should sign and date in their respective places.

STEP 4: For the **Designation Letter**, submit the letter with the provided template or create the letter on your jurisdiction's letterhead. The Highest Authorizing Authority must sign the letter and should be the individual assigning the Applicant Agent and the Alternate Applicant Agent.

STEP 5: For the Designation of Applicant's Agent **Resolution**, this should only be completed if the Applicant Agent or the Alternate Applicant Agent is the Highest Authorizing Authority. Once it has been completed, the governing body must pass it. A template of the Resolution is provided in this packet. If your jurisdiction uses its own template, then the Clerk of the governing body must sign and date it.

STEP 6: For the **Signature Authorization Form**, the Highest Authorizing Authority should sign in Section 1. The Applicant Agent and the Alternate Applicant Agent should sign in Sections 2 and 3. Additional individuals can also be listed in Sections 1, 2, and 3 and should sign in their respective places. E-signatures are optional and not required for this form.

STEP 7: For the **Debarment Certification Form**, the Highest Authorizing Authority, Applicant Agent, or the Alternate Applicant Agent must sign at the bottom, input their information, and date the form.

STEP 8: For the **Audit Certification & FFATA Reporting Form**, the Authorized Financial Representative must complete Sections A, B, and C, sign it, and date the form.

STEP 9: For the **Statewide Vendor Number**, the Washington State Office of Financial Management maintains a central vendor/supplier file for processing vendor payments. This allows your jurisdiction to receive payments through direct deposit. Input your vendor number, and if you do not have a vendor number, go to: <https://ofm.wa.gov/tech-support/statewide-vendor-payee-services/>

STEP 10: Once the W.M.D. Grant Agreement and Supplemental Contract Documents are complete and signed, e-mail them to: **MIL-PA-Admin@mil.wa.gov**
In the subject line of the e-mail, input: **Contract Submission - The Name of Your Jurisdiction.**

STEP 11: After processing the documents, a W.M.D. Grant Agreement that has been signed by the Washington Military Department will be mailed to you. Keep the agreement for your records, for the length of time you are required to retain it.



SECTION A – Disaster Event Information

Disaster Number:	4906-DR-WA
Event Name:	Severe Storms, Straight-line Winds, Flooding, Landslides, and Mudslides
Declaration Date:	April 7, 2026
Contract Number:	D26-176
FIPS Number:	027-00100-00

SECTION B – Applicant Information

Applicant Name:	City of Aberdeen
Doing Business As (DBA):	
Street Address:	200 E Market Street
City:	Aberdeen
State:	WA
Zip Code:	98520
Mailing Address:	
County:	Grays Harbor
Federal Employer Identification Number (EIN):	91-6001226
Uniform Business Identifier (UBI):	141 000 009
Unique Entity Identifier (UEI):	QCGUMVCBSKZ1
Statewide Vendor Number (SWV #):	0007703-00

SECTION C – Signatories and Jurisdictional Information

1. Enter the information for the **Highest Authorizing Authority**.
 - **One individual** should be listed, and a **Designation Letter** should be submitted with this packet.
 - **Multiple individuals** should be listed if submitting a **Resolution** to designate authorities **via a Board** such as a County Board of Commissioners, City Council, Tribal Council,



School Board, etc. A Resolution should also be used if the Highest Authorizing Authority will be the Applicant Agent or the Alternate Applicant Agent.

Name:	Douglas Orr	Title:	Mayor
Name:		Title:	
Name:		Title:	
Name:		Title:	
Name:		Title:	
Name:		Title:	
Name:		Title:	
Name:		Title:	

2. Enter the information for the **Applicant Agent** (primary contact with signing authority). This should be an individual other than the Highest Authorizing Authority. Examples include the County Commissioner, Executive Director, City Clerk, etc.

Name:	Rick Sangder
Title:	Public Works Director
Email:	rsangder@aberdeenwa.gov
Phone:	360-537-3228
Fax:	

3. Enter the information for the **Alternate Applicant Agent** (back-up contact with signing authority). This should be an individual other than the Highest Authorizing Authority. Examples include the Public Works Director, Finance Director, Finance Manager, Treasurer, etc.

Name:	Cindy Mahama
Title:	Public Works Accountant
Email:	cmahama@aberdeenwa.gov
Phone:	360-537-3202
Fax:	

4. Enter the information for the individuals **authorized to sign contracts** (typically the Applicant Agent and the Alternate Applicant Agent), and other individuals may also be listed as well.

Name:	Douglas Orr	Title:	Mayor
Name:	Rick Sangder	Title:	Public Works Director
Name:		Title:	



5. Enter the information for the individuals **authorized to sign certifications, A-19 invoice vouchers, time extensions**, and other documents pertaining to the grant or reimbursement (typically the Applicant Agent and the Alternate Applicant Agent), and other individuals may also be listed as well.

Name:	Rick Sangder	Title:	Public Works Director
Name:	Nick Bird	Title:	City Engineer
Name:	Cindy Mahama	Title:	Public Works Accountant

6. Enter the information for the **Authorized Financial Representative** that will sign the **Audit Certification & FFATA Reporting Form**.

Name:	Katy Williamsen
Title:	Finance Director
Email	kwilliamsen@aberdeenwa.gov
Phone:	360-537-3201
Fax:	



*Only complete **Question #7 IF** the Applicant Agent or the Alternate Applicant Agent **IS** the Highest Authorizing Authority.

*Skip this question if your jurisdiction will be submitting a **Designation Letter** or using its own **Resolution** format.

7. Enter the information for the **Resolution**

Date of Resolution:					
Date:	24	Month:	June	Year:	26

Governing Body:
City Council

Individual certifying that the Resolution is true and correct (typically the Clerk)			
Name:	Douglas Orr	Title:	Mayor



Date Certifying the Resolution:					
Date:	24	Month:	June	Year:	26

8. Review the options and **select the letter** that corresponds with the **type of Applicant** your jurisdiction is.

Enter the letter in the bordered box.		C
A. State B. County C. City D. School District E. Special Purpose Districts (e.g. Diking Districts, Fire Districts, Water Districts) F. Higher Educational Institution G. Indian Tribe H. Private Nonprofit I. Other (Specify)		
If I. Other, specify type of jurisdiction:		

9. Enter the **Congressional District Number(s)** and **Legislative District Number(s)** associated with your jurisdiction. If it is unknown, go to: <https://app.leg.wa.gov/districtfinder/>

Congressional District Number(s)	6
Legislative District Number(s)	19

DISASTER ASSISTANCE APPLICATION

DEM - 131

Application Identifier:

State Number: D26-176

Federal Disaster Number: 4906-DR-WA

Federal Catalog Number: 97.036

Title: Public Assistance Grants

Declaration Date: April 7, 2026

Applicant's FEMA Project Application Number: 027-00100-00

Legal Applicant Recipient:

Applicant's Name: City of Aberdeen

Street Address: 200 E Market Street

Mailing Address:

County: Grays Harbor

City: Aberdeen

State: WA

Zip Code: 98520

Applicant Agent:

Name: Rick SangderTitle: Public Works Director

Signature: _____

Contact Information:

Phone: 360-537-3228

Fax: _____

E-mail: rsangder@aberndeenwa.gov

Date: _____

Alternate Applicant Agent:

Name: Cindy MahamaTitle: Public Works Accountant

Signature: _____

Phone: 360-537-3202

Fax: _____

E-mail: cmahama@aberndeenwa.gov

Date: _____

Type of Applicant:

A - State

B - County

C - City

D - School District

E - Special Purpose District

F - Higher Educational Institution

G - Indian Tribe

H - Private NonProfit

I - Other (Specify) _____

Enter Appropriate Letter C

Congressional District Number:

6

State Legislative District Number:

19

Governor's Authorized Representative:

Signature _____

Date: _____

NOTE: Shaded blocks for WA EMD use.

Designation Letter

Mr. Jonathan Holmes
Washington Military Department
Emergency Management Division
Public Assistance Program MS:
TA-20, Building 20-B
Camp Murray, WA 98430-5122

Re: Designation Letter

Dear Mr. Holmes:

The purpose of this letter is to designate the Applicant Agent and the Alternate Agent as the authorized representatives for:

Disaster Number: 4906-DR-WA

Applicant Name: City of Aberdeen

Applicant Agent: Rick Sangder

Alternate Applicant Agent: Cindy Mahama

The purpose of this designation as the authorized representatives is to obtain federal and/or State Emergency or Major Disaster Assistance Funds.

These representatives are authorized to execute all contracts, certify completion of projects, request payments, and prepare all required documentation for funding requirements.

Sincerely,

Douglas Orr

Designation of Applicant's Agent Resolution

Be it resolved by City Council of City of Aberdeen
 (Governing Body) (Public Agency)
Rick Sangder, Public Works Director is hereby designated the authorized
 (Name of New Agent) (Title)
 representative and Cindy Mahama, Public Works Accountant is designated
 (Name of Alternate) (Title)
 the alternate for and in behalf of City of Aberdeen, a public
 (Public Agency Name)
 agency established under the laws of the state of Washington.

The purpose of this designation as the authorized representative is to obtain federal and/or state emergency or disaster assistance funds. These representatives are authorized on behalf of the City of Aberdeen to execute all contracts, certify completion of projects, request payments, and prepare all required documentation for funding requirements.

Passed and approved this 24 day of June, 2026.

_____	_____	_____	_____
(Signature)	(Title)	(Signature)	(Title)
_____	_____	_____	_____
(Signature)	(Title)	(Signature)	(Title)
_____	_____	_____	_____
(Signature)	(Title)	(Signature)	(Title)

Certification

I, Douglas Orr, duly appointed and Mayor of City of Aberdeen,
 (Name) (Title) (Public Agency)
 do hereby certify that the above is a true and correct copy of a resolution passed and approved by
 the City Council of City of Aberdeen on the 24 day of June, 2026.
 (Governing Body) (Public Agency)

Date: _____

<u>Finance Director</u>	_____
(Official Position)	(Signature)

INSTRUCTIONS FOR COMPLETING DESIGNATION OF APPLICANT'S AGENT

Governing Body = council, commissioners, board of directors, etc.

Public Agency = name of the applicant entity, i.e., county, city, fire district, etc.

General Notes:

- * Must have signatures of voting members of the governing body; titles may be typed.
- * A majority of the governing body must sign the resolution.
- * The certification must be signed by the clerk of the governing body.
- * The signed resolution itself may be photocopied, but the **certification** needs to have the **original signature** of the signer.
- * A letter may be substituted for the Designation of Applicant's Agent Resolution. The letter should be from the chief executive officer for the public agency, i.e., Mayor, City Manager. **One may not appoint oneself as the applicant agent.**

SIGNATURE AUTHORIZATION FORM (SAF)

WASHINGTON MILITARY DEPARTMENT

Camp Murray, Washington 98430-5122

Please read instructions on page 2 before completing this form.

NAME OF ORGANIZATION

City of Aberdeen

DATE SUBMITTED

06/08/2026

CONTRACT / PROJECT DESCRIPTION

4906-DR-WA

CONTRACT NUMBER

D26-176

1. AUTHORIZING AUTHORITY

PHYSICAL SIGNATURE

E-SIGNATURE

PRINT OR
TYPE NAME

TITLE


Douglas Orr (Jun 8, 2026 13:32:05 PDT)

Douglas Orr

Mayor

2. AUTHORIZED TO SIGN CONTRACTS / AMENDMENTS

PHYSICAL SIGNATURE

E-SIGNATURE

PRINT OR
TYPE NAME

TITLE


Douglas Orr (Jun 8, 2026 13:32:05 PDT)

Douglas Orr

Mayor


Rick Sangder (Jun 15, 2026 15:26:53 PDT)

Rick Sangder

Public Works Director

3. AUTHORIZED TO SIGN REQUESTS FOR REIMBURSEMENT

PHYSICAL SIGNATURE

E-SIGNATURE

PRINT OR
TYPE NAME

TITLE


Rick Sangder (Jun 15, 2026 15:26:53 PDT)

Rick Sangder

Public Works Director

Cindy Mahama
Digitally signed by Cindy Mahama
Date: 2026.06.08 12:27:51 -0700

Cindy Mahama

Public Works Accountant



Nick Bird

City Engineer

INSTRUCTIONS FOR THE SIGNATURE AUTHORIZATION FORM (SAF)

This form identifies the authorizing authority(ies) and person(s) who have the authority to sign contracts, amendments, and requests for reimbursement. It is required for the management of your contracts with the Washington Military Department (WMD). Please complete all sections. The signature and/or e-signatures included on this SAF must match what is on the contracts, amendment, debarment form, and A-19 invoice voucher submitted. It is required that the signatures in WMD's files are current. Changes in staffing or responsibilities will require a new SAF.

At least one person must be assigned to each of the three roles and the same person can be assigned to multiple roles. If more than one individual will be signing a contract, amendment, or reimbursement request please make sure everyone signs this form. If additional lines are needed, please fill out two forms and title them 1 of 2 and 2 of 2.

1. **Authorizing Authority.** Generally, the person(s) signing in this section heads the organization such as the chief executive office. In some cases, other employees within the organization may have been delegated this authority.
2. **Authorized to Sign Contracts / Amendments.** The person(s) given the authority to bind the organization to the terms and conditions of the contract.
3. **Authorized to Sign Requests for Reimbursement.** Often the chief financial officer or members of the accounts receivable team. When a request for reimbursement is received, the signature on the A-19 invoice voucher is verified that it matches the signature on this form. **It is advisable to have more than one person authorized to sign reimbursement requests.** This will help prevent delays in processing a request if one person is temporarily unavailable. The payment can be delayed if the request is presented without the proper signature.

Once filled out, send the original to WMD with the signed contract. It is recommended you keep a copy with the executed contract in your files.

If you have any questions regarding this form or to request new forms, please email the contracts office at contracts.office@mil.wa.gov.

Debarment, Suspension, Ineligibility or Voluntary Exclusion Certification Form

NAME City of Aberdeen		Doing business as (DBA)	
ADDRESS 200 E Market Street Aberdeen WA 98520	Applicable Procurement or Solicitation #, if any:	WA Uniform Business Identifier (UBI) 141 000 009	Federal Employer Tax Identification #: 91-6001226
This certification is submitted as part of a request to contract.			

Instructions For Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

READ CAREFULLY BEFORE SIGNING THE CERTIFICATION. Federal regulations require contractors and bidders to sign and abide by the terms of this certification, without modification, in order to participate in certain transactions directly or indirectly involving federal funds.

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the department, institution or office to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable CFR, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under applicable CFR, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business activity.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under applicable CFR, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

The prospective lower tier participant certifies, by submission of this proposal or contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this form.

Bidder or Contractor Signature: _____

Date: _____

Print Name and Title: _____

FEDERAL DEBARMENT, SUSPENSION INELIGIBILITY and VOLUNTARY EXCLUSION

(FREQUENTLY ASKED QUESTIONS)

What is “Debarment, Suspension, Ineligibility, and Voluntary Exclusion”?

These terms refer to the status of a person or company that cannot contract with or receive grants from a federal agency.

In order to be debarred, suspended, ineligible, or voluntarily excluded, you must have:

- had a contract or grant with a federal agency, and
- gone through some process where the federal agency notified or attempted to notify you that you could not contract with the federal agency.
- Generally, this process occurs where you, the contractor, are not qualified or are not adequately performing under a contract, or have violated a regulation or law pertaining to the contract.

Why am I required to sign this certification?

You are requesting a contract or grant with the Washington Military Department. Federal law (Executive Order 12549) requires Washington Military Department ensure that persons or companies that contract with Washington Military Department are not prohibited from having federal contracts.

What is Executive Order 12549?

Executive Order 12549 refers to Federal Executive Order Number 12549. The executive order was signed by the President and directed federal agencies to ensure that federal agencies, and any state or other agency receiving federal funds were not contracting or awarding grants to persons, organizations, or companies who have been excluded from participating in federal contracts or grants. Federal agencies have codified this requirement in their individual agency Code of Federal Regulations (CFRs).

What is the purpose of this certification?

The purpose of the certification is for you to tell Washington Military Department in writing that you have not been prohibited by federal agencies from entering into a federal contract.

What does the word “proposal” mean when referred to in this certification?

Proposal means a solicited or unsolicited bid, application, request, invitation to consider or similar communication from you to Washington Military Department.

What or who is a “lower tier participant”?

Lower tier participants means a person or organization that submits a proposal, enters into contracts with, or receives a grant from Washington Military Department, OR any subcontractor of a contract with Washington Military Department. If you hire subcontractors, you should require them to sign a certification and keep it with your subcontract.

What is a covered transaction when referred to in this certification?

Covered Transaction means a contract, oral or written agreement, grant, or any other arrangement where you contract with or receive money from Washington Military Department. Covered Transaction does not include mandatory entitlements and individual benefits.

Sample Debarment, Suspension, Ineligibility, Voluntary Exclusion Contract Provision

Debarment Certification. The Contractor certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any Federal department or agency. If requested by Washington Military Department, the Contractor shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Contractor for this Contract shall be incorporated into this Contract by reference.



WASHINGTON MILITARY DEPARTMENT

Audit Certification and FFATA Reporting Form

CONTACT INFORMATION

Subrecipient Name (Agency, Local Government, or Organization): City of Aberdeen

Subrecipient Unique Entity Identifier (UEI) Number:

Authorized Financial Representative (Name and Title): Katy Williamsen, Finance Director

Address: 200 E Market St. Aberdeen, WA 98520

Email: kwilliamsen@aberdeenwa.gov

Phone Number: 360-537-3201

Directions: As required by 2 CFR Part 200 Subpart F, non-federal entities that expend \$750,000 in federal awards in a fiscal year shall have a single or program-specific audit conducted for that year.

- If your entity ***is not*** subject to these requirements, you must complete **Section A** of this Form.
- If your entity ***is*** subject to these requirements, you must complete **Section B** of this form.
- **All subrecipients must complete Section C (FFATA)** of this form.

Failure to return this completed Form to contracts.office@mil.wa.gov may result in delay of grant agreement processing, withholding of federal awards or disallowance of costs, and suspension or termination of federal awards.

SECTION A: Entities NOT subject to the audit requirements of 2 CFR Part 200 Subpart F

(check all that apply)

- ☐ We did not expend \$750,000 or more of total federal awards during the preceding fiscal year. (Please note that the Single Audit threshold has been raised to \$1,000,000 for fiscal years starting **on or after** October 1, 2024.)
- ☐ We are a for-profit organization.
- ☐ We are exempt for other reasons (describe):

However, by signing below, I agree that we are still subject to the audit requirements, laws, and regulations governing the program(s) in which we participate; that we are required to maintain records of federal funding and to provide access to such records by federal and state agencies and their designees; and that WMD may request and be provided access to additional information and/or documentation to ensure proper stewardship of federal funds.

SECTION B: Entities that ARE subject to the audit requirements of 2 CFR Part 200 Subpart F

(Check the appropriate box and complete the information below)

- ☒ We completed our last 2 CFR Part 200 Subpart F Audit on [09/18/2025] for fiscal year [2024]. There were no findings related to federal awards or internal controls.
- ☐ We completed our last 2 CFR Part 200 Subpart F Audit on [enter date] for fiscal year [enter date] and there were findings related to federal awards and/or internal controls.
- ☐ Our completed 2 CFR Part 200 Subpart F Audit will be available on [enter date] for fiscal year [enter date].

Provide a complete copy of the audit report electronically to contracts.office@mil.wa.gov or provide the state audit number [1038094].

SECTION C: Federal Funding Accountability and Transparency Act (check the corresponding answer)

In your preceding fiscal year, did your organization receive 80% or more of its gross revenues from federal funding? ☐ Yes ☒ No

In your preceding fiscal year, did your organization receive \$25,000,000 or more in federal funding? ☐ Yes ☒ No

If you answered yes to the previous questions, you must report the names and total compensation of the top 5 highly compensated officials of your organization.

- 1.
- 2.
- 3.
- 4.
- 5.

I hereby certify that I am an individual authorized by the above identified entity (subrecipient) to complete this form. Further, I certify that the above information is true and correct, and all material findings contained in the audit report/statement have been disclosed. Additionally, I understand this form is to be submitted every fiscal year for which this entity is a subrecipient of federal award funds from the Department until the grant agreement is closed.


Signature of Authorized Financial Representative:

Date: 11/4/2025

Statewide Vendor Number

The Washington State Office of Financial Management maintains a central vendor/supplier file for Washington State agencies to use for processing vendor payments. This allows your jurisdiction to serve as a vendor/supplier and receive payments from all participating state agencies. This allows you to receive payments through direct deposit, which is the state's preferred method of payment.

If you already have a Statewide Vendor Number, input it here:

SWV- 0007703-00

If you do not have a Statewide Vendor Number, go to:

<https://ofm.wa.gov/tech-support/statewide-vendor-payee-services/>



CITY OF ABERDEEN
Washington
Since 1884

Request for Council Action

Date Action is Requested: 6/24/2026

Subject: 2nd Reading & PH of the Franchise Agreement with Forged Fiber 37, LLC

COMMITTEE:

☐ Finance

☐ Public Safety

☒ Public Works

☐ Special Agenda Item

TYPE OF ACTION REQUESTED:

☒ Ordinance No. 2026-08

☐ Motion

☐ No Action - Information Only

☐ Resolution No.

☐ Discussion

☐ Other:

SUMMARY OF REQUEST:

Request the 2nd reading of the franchise agreement with Forged Fiber 37, LLC.

POLICY IMPLICATIONS:

☒ This Action is in Accordance with Current Policies and Procedures.

☐ This Action Would Require a New ☐ Policy ☐ Ordinance ☐ Resolution ☐ Other Action from the City Council.

☐ This Action Requires a Revision to ☐ Policy ☐ Ordinance ☐ Resolution ☐ Other.

☐ This Action Does Not Affect Current Policies and Procedures.

FISCAL IMPACT:

No negative fiscal impact, however, RCW 35.21.860(1)(b) authorizes the City to require reimbursement for the City's costs resulting from reviewing the franchise which could include the legal fees we incurred in review.

BUDGETARY STATUS:

☐ Funds have Already been Authorized in this Year's Budget.

☐ This is an Extra-Budget Expenditure.

☐ Funds will be Requested for this Action, if Approved, in Next Year's Budget.

☐ This Action Will Bring in Additional Revenue.

☒ This Action Will Require City Staff Time and/or Labor.

☐ This Action has no Budgetary Implications.

☐ This Action Will Reduce Expenditures.

☐ Other:



CITY OF ABERDEEN
Washington
Since 1884

BACKGROUND/RATIONALE:

In May of 2025, AT&T announced the planned purchase of Lumen's Mass Market fiber assets. which includes fiber assets and associated facilities that are located within the rights-of-way of Aberdeen. This franchise agreement grants rights to access and occupy rights-of-way within Aberdeen to enable the continued operation of the transferred Lumen assets as currently conducted.

Forged Fiber 37 is a relatively new telecommunications infrastructure company that builds, owns, operates, and maintains fiber-optic networks. Rather than selling internet services directly to consumers, it operates as a wholesale fiber network provider and leases network capacity to service providers. According to the company, its first major tenant is AT&T.

RECOMMENDATION(S):

Approve the 2nd reading of the attached ordinance

ATTACHMENTS:

- Ordinance No. 2026-08
- ABERDEEN Forged Fiber FRANCHISE ORDINANCE

Rick Sangder

Director Name

Director Signature

Joshua Francy

Committee Chair Name

Committee Chair Signature

This request aligns with the following City Council Values:

- | | |
|---|---|
| ☐ Workforce Engagement & Development | ☐ Vibrant, Safe & Healthy Community |
| ☒ Economic Development | ☒ Infrastructure Investment |
| ☒ Fiscal Responsibility | ☐ Communications & Outreach |

BILL # 26-08

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABERDEEN, WASHINGTON ADOPTING A FRANCHISE AGREEMENT WITH FORGED FIBER 37, INC.; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Forged Fiber 37, Inc. (“Forged Fiber”) is a subsidiary of AT&T and has acquired the assets of Lumen’s facilities currently located in the Aberdeen ROW; and

WHEREAS, Forged Fiber does not plan to install connections to buildings in Aberdeen, and this franchise formalizes the change in ownership from Lumen to Forged Fiber 37, Inc.; and

WHEREAS, RCW 35A.47.040 requires two readings of any ordinance granting a franchise prior to the franchise’s effective date; and

WHEREAS, the City Council finds that it is in the best interest for the City to enter into Franchise Agreement with Forged Fiber, 37 Inc.;

NOW THEREFORE, be it ordained by the Mayor and City council of the City of Aberdeen:

SECTION 1. ADOPTION OF FRANCHISE AGREEMENT. The Franchise Agreement between the City of Aberdeen and Forged Fiber 37, Inc. attached hereto as Exhibit A is hereby adopted by reference as if fully set forth herein.

SECTION 2. SEVERABILITY. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation.

SECTION 3. CORRECTIONS. The City Clerk and codifiers of the Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

SECTION 4. PUBLICATION BY SUMMARY. In lieu of publication of this Ordinance in its entirety, the attached summary of this Ordinance shall be published in the official newspaper

SECTION 5. EFFECTIVE DATE. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF ABERDEEN, WASHINGTON, AT A _____ MEETING THEREOF, THIS ____ DAY OF _____, 2026.

CITY OF ABERDEEN:

APPROVED AS TO FORM:

Douglas Orr, Mayor

Alexandra Kenyon, Corporation Counsel

ATTEST/AUTHENTICATED:

Katy Williamsen, Finance Director

SUMMARY FOR PUBLICATION
ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF ABERDEEN, WASHINGTON
ADOPTING A FRANCHISE AGREEMENT WITH FORGED FIBER 37,
INC.; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN
EFFECTIVE DATE.**

Section 1: Adoption of Franchise Agreement. Adopting a Franchise Agreement with Forged Fiber 37, Inc. for .

Section 2: Severability. Severing any portion declared unconstitutional or invalid, while retaining remaining portions.

Section 3: Corrections. Authorizing City Clerk and codifiers of the Ordinance to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

Section 4: Authorizing Publication by Summary. Authorizing publication of this summary in lieu of entirety.

Section 5: Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED: _____ day of _____, 2026.

Signed: /s/ Douglas Orr, Mayor

Attest: /s/ Katy Williamsen, Finance Director

TELECOMMUNICATIONS FRANCHISE

between the City of Aberdeen and Forged Fiber 37, Inc.

THIS TELECOMMUNICATIONS FRANCHISE (this “Franchise”) is entered into on _____, 2026 by and between the City of Aberdeen (the “City”) and Forged Fiber 37, LLC, a Delaware limited liability company (“Grantee”).

Section 1. Grant of Franchise.

The City hereby grants to Grantee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege, and authority to construct, operate, maintain, restore, replace, acquire, sell, and lease its Facilities within the Public Ways of the City.

A. “Facilities” as used in this Franchise means authorized plant equipment, fixtures, appurtenances, and other facilities necessary to furnish and deliver telecommunications services, including but not limited to wires, lines, conduits, cables, communication and signal lines, braces, poles, guys, anchors, cabinets, manholes, handholes, pedestals, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of Services (as hereinafter defined).

B. “Public Ways” means land acquired or dedicated for public roads and streets, but does not include: (1) State highways not governed by Section 3.B. of this Franchise; (2) land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; (3) structures, including poles and conduits, located within the right-of-way; (4) federally granted trust lands or Forest Board trust lands; (5) lands owned or managed by the State Parks and Recreation Commission; or (6) federally granted railroad rights-of-way acquired under 43 USC 912 and related provisions of federal law that are not open for motor vehicle use.

C. Location of Franchise Area. The authority granted herein is to occupy and use the Public Ways throughout the City (the “Franchise Area”). The Grantee is authorized to place its Facilities in the Public Ways only consistent with this Franchise, the Aberdeen Zoning Code, the Comprehensive Plan, the Design and Construction Standards and the Aberdeen Municipal Code (“AMC”) as they now exist and are hereinafter amended (collectively the “Codes”). As described in Section 5, construction is not authorized without the appropriate City permits. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Public Ways of the City to the Grantee other than for the purpose of providing telecommunications services, and this franchise shall not be construed as any warranty of title. Grantee hereby agrees that it plans to provide the following services within the City: high speed data and fiber optic services, internet protocol-based services, internet access services, conduit and dark fiber leasing, and data transport services (the “Services”).

D. Terms, Conditions, and Provisions of Aberdeen Municipal Code (“AMC”) and Charter. All rights granted hereunder are subject to the terms, conditions, and requirements of certain Chapters of the AMC including AMC 13.40 concerning work in the right-of-way and franchised utilities in the right-of-way, respectively, unless this Franchise specifically provides to the contrary. In the event that a conflict exists between the terms of this Franchise and the terms of the AMC, terms of this Franchise shall control.

E. No Wireless Communications Facilities or Cable Services. This Franchise does not grant Grantee the right to install and/or operate Wireless Communication Facilities. As used herein, “Wireless Communications Facilities” means those “personal wireless services” as defined in RCW 35.99.010(4). Any entity that seeks to install and/or operate such Wireless Communications Facilities must have an independent franchise to use the Public Ways outside of this Franchise. Further, this Franchise does not grant the right to offer cable services as defined in 47 U.S.C. § 522(6). Any entity that seeks to install and/or operate such cable services must have an independent franchise to use the Public Ways outside of this Franchise.

F. No Access to City-Owned Property. No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than the Public Ways, or upon private property without the owner’s consent, or upon any City, public or privately owned poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Public Way of the City to Grantee other than for the purpose of providing the Services, or to subordinate the primary use of the right-of-way as a public thoroughfare. If Grantee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Grantee desires to use City owned property, including poles and structures within the Public Ways, it shall enter into a separate lease or license agreement with the City.

G. Leased Capacity. Grantee shall have the right, without prior City approval, to offer or provide fiber capacity or bandwidth to other carriers, resellers, customers, or subscribers consistent with this Franchise; provided, however, that Grantee shall remain responsible for compliance with this Franchise.

H. Nonexclusive Grant.

This Franchise shall not in any manner prevent the City from constructing, operating, and/or maintaining telecommunication systems or facilities of its own or entering into other similar agreements or franchises in, under, on, across, over, through, along or below any Public Ways of the City. Further, this Franchise shall in no way prevent or prohibit the City, consistent with applicable law, from using any of its Public Ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvements, and dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Public Ways.

Section 2. Term of Franchise.

The term of this Franchise shall be for a period of ten (10) years from the Effective Date.

Section 3. Location of Telecommunications Network Facilities.

A. Location of Facilities. Grantee may locate its Facilities anywhere within the Franchise Area consistent with the City's applicable Code requirements and the City's Design and Construction Standards. Grantee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Grantee does not expand its Services beyond those described in Section 1.A.

B. WSDOT. To the extent that any Public Ways within the Franchise Area are part of the state highway system ("State Highways") and are considered managed access by the City and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Grantee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Grantee specifically agrees that: 1. any pavement trenching and restoration performed by Grantee within State Highways shall meet or exceed applicable WSDOT requirements; 2. any portion of a State Highway damaged or injured by Grantee shall be restored, repaired and/or replaced by Grantee to a condition that meets or exceeds applicable WSDOT requirements; and 3. without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Section 4. Relocation of Facilities.

A. Relocation Requirement. To the extent required by law, including RCW 35.99.060, Grantee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect (where doing so will not cause a customer service outage or disrupt 911 service, and, if required, upon approval of the Washington Utilities and Transportation Commission), relocate, or remove from any Public Way any of its Facilities when so required by the Public Works Director upon his/her determination that such relocation or removal of Facilities is necessary for (1) the construction, repair, maintenance or installation of any City or other public improvement in or upon the Public ways or (2) the operations of the City or other governmental entity in or upon the Public Ways. The City shall provide Grantee at least ninety (90) days written notice prior to such relocation or removal of Facilities.

B. Notice and Relocation Process. If the City determines that the Public Improvement Project necessitates the relocation of Grantee's existing Facilities, the City shall provide Grantee in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). For purposes of herein, "Public Improvement Project" shall mean a capital improvement project within the Franchise Area that requires the relocation of Facilities within the Franchise Area, is funded by the City (either with its own funds or with other public monies obtained by the City for such capital improvement project) and is undertaken by the City. In calculating the Relocation Date, the City shall consult with Grantee and consider the extent of Facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the City's overall project construction sequence and constraints, to safely complete the relocation. Grantee shall complete the relocation by the Relocation Date, unless the

City or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2). To provide guidance on this notice process, the City will make reasonable efforts to involve Grantee in the predesign and design phases of any Public Improvement Project. After receipt of the written notice containing the Relocation Date, Grantee shall relocate such Facilities to accommodate the Public Improvement Project consistent with the timeline provided by the City and at no charge or expense to the City, except as otherwise permitted by RCW 35.99.060. Such timeline may be extended by a mutual agreement.

C. Locate Facilities. Upon request of the City or of a third-party performing work on behalf of the City in the Public Ways and in order to facilitate the design of the Public Ways, Grantee agrees, at Grantee's sole cost and expense, to locate and, if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Improvement Project shall be made by the City upon review of the location and construction of Grantee's Facilities. The City shall provide Grantee at least thirty (30) days' written notice prior to any excavation or exposure of Facilities.

D. Third Party Requests for Relocation. The provisions of this Section shall in no manner preclude or restrict Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities for projects that are not Public Improvement Projects, including recovering costs for relocation from private parties or other entities that do not control the Public Ways.

E. Contractor Delay Claims. Grantee agrees to work cooperatively with the City, other franchisees and/or utilities, and the City's third-party contractor with respect to the Public Improvement Project. Upon a notification of a delay due solely to Grantee's actions or inactions, Grantee agrees to work cooperatively with the City, other Grantees and utilities, and the City's third-party contractor to resolve such issues. Except in the case of a Force Majeure Event, if Grantee breaches its obligations under Section 4 with respect to relocating its Facilities within the Franchise Area by the Relocation Date, and to the extent such breach causes a delay in the work being undertaken by the Public Improvement Project that results in a claim by the City's third party contractor(s) for costs, expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option: (1) tender the Contractor Delay Claim to Grantee for defense and indemnification in accordance with Section 4.F and Section 9; or (2) require that Grantee reimburse the City for any such costs, expenses, and/or damages that are legally required to be paid by the City to its third-party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by Grantee under this subsection, the City shall first give Grantee written notice of the Contractor Delay Claim and give Grantee the opportunity to work with the third-party contractor(s) to resolve the Contractor Delay Claim.

F. Indemnification. Except to the extent caused by the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers, and representatives, Grantee will indemnify, defend, and hold harmless the City, in accordance with the provisions of

Section 9, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects to the extent caused by or arising out of the failure of Grantee to remove or relocate its Facilities in a timely manner and that are not caused by a Force Majeure Event.

G. City's Costs. If Grantee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City as described in this Section 4, except for in Section 4.D, then, after providing Grantee an additional thirty (30) days' notice and Grantee's continued failure to comply as directed, the City may perform such work or cause it to be done, and the City's costs shall be paid by Grantee pursuant to Section 7.

H Survival. The provisions of this Section 4 shall survive the expiration or termination of this Franchise for so long as Grantee continues to have Facilities in the Public Ways.

Section 5. Work in the Public Ways.

A. All work performed shall be in compliance with all local, state, and federal laws, including but not limited to the requirements in AMC 13.40. Permits, including but not limited to rights-of-way permits, must be obtained from the City and if applicable, the state and or federal agencies for any work performed in the Public Ways. Grantee shall provide the City with at least twenty (20) working days' advance notice prior to commencing any non-emergency work in the Public Ways, unless otherwise stated in the permit. Grantee shall not unnecessarily obstruct the passage or proper use of the Public Ways, and all work by Grantee in any area covered by this Franchise and as described in this Section shall be performed in accordance with applicable Codes.

B. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the Public Ways and other public properties so as to interfere as little as is reasonably possible with the free passage of traffic (including but not limited to motor vehicles, pedestrians, and bicycles) and the free use of adjoining property. Grantee shall at all times post and maintain proper site safety including but not limited to the use of barricades, traffic control devices, and temporary paving, and make reasonable efforts to comply with all applicable safety and American Disability Act regulations during such period of construction, general ordinances of the City or state or federal laws, including RCW 39.04.180 for the construction of trench safety systems.

C. Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations, and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by a grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

D. Upon request, Grantee shall provide the City with a schedule of their proposed construction activities in, around, or that may affect the rights-of-way. Grantee shall meet with the City and other franchise holders and users of the rights-of-way annually or upon written notice as determined by the City, to schedule and coordinate construction in the rights-of-way. All

construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

Section 6. Restoration After Construction.

A. Grantee shall comply with the restoration requirements provided in the applicable permit(s). The Public Works Director or designee shall have final approval of the completeness of all restoration work and Grantee shall warrant said restoration work for a period of 2 years.

B. In the event Grantee damages a Public Way or improvement in or to a Public Way and does not repair a Public Way or an improvement in or to a Public Way or if such work does not comply with the permit, then after providing Grantee with thirty (30) days prior notice and Grantee's continued failure to repair the damage, the City may repair the damage and shall be reimbursed its actual cost within thirty (30) days of submitting an invoice to Grantee.

C. Whenever the construction, installation or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may provide Grantee written notice and direct Grantee, at Grantee's own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time. In the event that Grantee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely provide written notice to Grantee to request that Grantee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Grantee shall be liable to the City for the costs thereof.

7. Recovery of Costs.

A. To the extent permitted under applicable law, Grantee shall be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs reasonable costs and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, including but not limited to outside attorneys, consultants, City staff and City Attorney's office, then, to the extent permitted by applicable law, Grantee shall reimburse the City directly for any and all costs within thirty (30) days after receiving an invoice documenting said costs and expenses in sufficient detail to demonstrate that they were necessary to perform the aforementioned actions. As used in this Agreement, the word "costs" or "expenses" shall mean the actual, reasonable and documented costs or expenses incurred.

B. Grantee shall pay a fee for the actual administrative expenses incurred by the City that are related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this

Franchise. To the extent permitted by applicable law, Grantee shall pay all costs of publication of this Franchise and any and all notices prior to any public meeting or hearing in connection with this Franchise.

C. Grantee shall reimburse the City for any costs incurred by the City in performing work for Grantee that Grantee is obligated to perform under this Franchise, including but not limited to removing any of Grantee Facilities upon abandonment, or acting in response to an emergency involving Grantee's Facilities, if Grantee's failure continues after Grantor has provided Grantee at least thirty (30) days prior written notice and opportunity to cure.

D. To the extent permitted by applicable law, Grantee shall reimburse the City for the Grantee's proportionate share of all actual expenses incurred by the City in planning, constructing, installing, repairing or altering any City facility as a result of the construction or the presence in the Public Way of the Grantee's telecommunications facilities.

E. The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. The billing may be on a monthly basis, and the City shall provide Grantee with the City's itemization of costs at the conclusion of each project for information and reimbursement purposes.

F. All costs reimbursable to the City pursuant to this Agreement shall be paid within sixty (60) days after Grantee's receipt of an itemized invoice documenting such costs and expenses in sufficient detail to demonstrate that they were necessary to perform the aforementioned action.

Section 8. Reservation of Rights.

A. Grantee hereby warrants that its operations as authorized under this Franchise are those of a service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Franchise. The City hereby reserves its right to impose a franchise fee on Grantee if Grantee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed; provided that (i) the City will give one hundred eighty (180) days' notice to invoke this provision, (ii) the parties agree to follow the modification procedure in Section 12, and (iii) any franchise fee under this section shall be prospective in nature. In either instance, the City also reserves its right to require that Grantee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Grantee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

B. Grantee agrees that, if, in the future, Grantee provides telephone business services or wireless telephone services under this Franchise that are taxable, the Grantee shall pay to the City the rate applicable to such taxable services under AMC 3.76, respectively and consistent with state and federal law. The parties agree that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City as may be permitted by law.

Section 9. Indemnification.

A. Except to the extent caused by the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers, and representatives, Grantee hereby releases, and agrees to indemnify, defend and hold harmless the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers, and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person or damage to property to the extent caused by or arising out of any negligent acts or omissions of Grantee, its agents, servants, officers, or employees by virtue of Grantee's exercise of the rights granted herein, or in any franchise or permit. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, prior to the culmination of any litigation or the institution of any litigation.

B. Inspection or acceptance by the City of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Grantee has been given prompt written notice by the City of any such claim, said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend or participate in the defense of any such claim at its own costs and has the right to approve any non-monetary settlement or other compromise of any such claim.

C. Should a court of competent jurisdiction determine that the franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the City, its officers, officials, employees, and volunteers, the Grantee's liability shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided constitutes the Grantee's waiver of immunity under Industrial Insurance, RCW Title 51, solely for the purposes of this indemnification. The obligations of Grantee under this subsection shall be mutually negotiated by the parties, and Grantee shall acknowledge that the City would not enter into a franchise without Grantee's waiver.

D. The City shall promptly notify Grantee of any claim or suit and request in writing that Grantee indemnify the City. Grantee may choose counsel to defend the City subject to the City's consent which shall not be unreasonably withheld and consistent with this subsection. City's failure to notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event that Grantee refuses the tender of defense in any suit or any claim, as required pursuant to this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Grantee, Grantee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision.

E. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, then the Grantee and City shall immediately meet and confer and determine whether alternative counsel or other alternative is possible to resolve the concern. If no alternative is agreeable to the parties, upon the prior written approval and consent of Grantee that such a conflict requires the City to retain separate counsel, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and

Grantee shall pay the reasonable fees and expenses of such separate counsel, except that Grantee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee. Grantee and the City shall cooperate and cause their employees and agents to cooperate with each other in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

F. Notwithstanding any other provisions of this section, Grantee assumes the risk of damage to its Facilities located in the Public Ways from activities conducted by the City, its officials, officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from the negligence or malicious act on the part of the City, its officials, officers, agents, employees or contractors. Except for the indemnity obligations under this Franchise, in no event shall the City or Grantee be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under the Franchise.

G. The provisions of this Section 9 shall survive the expiration, revocation, or termination of this Franchise.

Section 10. Insurance.

A. Grantee shall secure and maintain the following liability insurance policies insuring Grantee and including the City as an additional insured as their interest may appear under this Agreement against claims for injuries to persons, death or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted to Grantee:

1. Commercial general liability insurance with limits of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including premises-operations, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract and liability arising from explosion, collapse or underground property damage. The policy shall have limits of:

2. Commercial Automobile liability insurance in the amount of \$2,000,000 combined single limit each accident for bodily injury and property damage covering all owned, non-owned, hired and leased vehicles.

3. Worker's compensation within statutory limits and employer's liability insurance with limits of \$1,000,000 each accident/disease/policy limit.

4. Contractors Pollution liability insurance with a limit of \$2,000,000 per occurrence, and \$2,000,000 in the aggregate. Grantee may self-insure for Contractors Pollution liability insurance.

B. The liability insurance policies required by this Franchise shall be maintained by Grantee throughout the term of the Franchise, and such other period of time during which the Grantee is operating in the Public Ways without a franchise or is engaged in the removal of its Facilities. The commercial general liability and commercial automobile liability insurance policies shall include the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants and volunteers as additional insureds as their interest may appear under this Agreement. The Grantee shall provide a certificate of insurance (COI), together with the blanket additional insured endorsement(s) to the City, upon acceptance of the Franchise. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Grantee. The insurance required by this Franchise shall apply separately to each insured against whom a claim is made or suit is brought. Grantee's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance, self insurance, or self-insured pool coverage maintained by the City shall be excess of Grantee's insurance and shall not contribute with it. Receipt by the City of any certificate or evidence of insurance showing less coverage than required is not a waiver of Grantee's obligations to fulfill the requirements.

C. Upon receipt of notice from its insurers, Grantee shall provide the City with thirty (30) days' prior written notice of cancellation of any required coverage that is not replaced. At least 30 days prior to any said cancellation or nonrenewal effective date, Grantee shall obtain and furnish to the City certificates of insurance evidencing replacement insurance policies meeting the requirements of this section. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Franchise shall be considered a material breach of the Franchise after City provides Grantee an additional thirty (30) days prior written notice and Grantee's continued failure to cure.

D. Grantee's maintenance of insurance or its scope of coverage as required herein shall not be construed to limit the liability of the Grantee to the specific coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or in equity. Further, Grantee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Grantee.

E. As of the Effective Date of this Franchise, Grantee is not self-insured except for pollution insurance. Should Grantee wish to become self-insured at the levels outlined in this Franchise at a later date for insurance coverage other than pollution liability insurance and property

damage insurance, Grantee must provide the City with thirty (30) days advanced written notice of its intent to self-insure. Grantee shall comply with the following:

(i) provide the City, upon request, a copy of Grantee's most recent audited financial statements;

(ii) Grantee is responsible for all payments within the self-insured retention; and

(iii) Grantee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

F. The City may review all insurance limits once every calendar year during the Term, and may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to Grantee. Grantee shall then issue a certificate or other evidence of insurance to the City showing compliance with these adjustments.

Section 11. Security; Bonds.

Security Fund. Grantee shall establish a security fund ("Security Fund") in the amount of \$50,000 by providing a bond reasonably acceptable to the City to guarantee the full and complete performance of the requirements of this Franchise, and to guarantee payment of any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to Grantee to comply with the codes, ordinances, rules, regulations, or permits of the City.

12. Modification.

The City and Grantee reserve the right to modify the terms and conditions of this Franchise upon written agreement of both parties to such modification. The City reserves the right at any time to request Grantee to agree to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. If the parties do not reach agreement as to the terms of the amendment within six (60) days of the call for negotiations unless the parties mutually agree to extend such timeline, the parties shall submit the issue to non-binding mediation. If such mediation is unsuccessful, the parties may then submit the issue to a court of competent jurisdiction.

Section 13. Remedies to Enforce Compliance.

A. In addition to any other remedy provided in this Franchise, the City and Grantee reserve the right to pursue any remedy to compel the other party and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy shall not prevent them from thereafter declaring a default, or revocation for breach of the conditions herein as provided in the Aberdeen Municipal Code or as allowed by law. All rights and remedies provided herein shall be in addition to and cumulative with any and all other rights and remedies available to the City or Grantee. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or

remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. The parties reserve the right to seek and obtain injunctive relief with respect to this Franchise to the extent authorized by applicable law and that the execution of this Franchise shall not constitute a waiver or relinquishment of such right. The parties agree that in the event a party obtains injunctive relief, neither party shall be required to post a bond or other security and the parties agree not to seek the imposition of such a requirement.

B. If Grantee violates or fails to comply with any of the material provisions of this Franchise, or should Grantee fail to heed or comply with any notice given to Grantee under the provisions of this Franchise, the City shall provide Grantee with written notice and an opportunity to cure such violation as follows: the City shall provide Grantee with written notice specifying with reasonable particularity the nature of any such breach and the Grantee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If Grantee does not cure the breach within thirty (30) days, then the Public Works Director or the City Council may elect that in lieu of revocation and without any prejudice to any other legal rights and remedies, to pursue other remedies, the City may: (1) seek damages of two hundred Fifty dollars (\$250.00) per day against the Grantee or Security Fund set forth in Section 11; (2) suspend the issuance of additional permits; (3) obtain an order from the Superior Court having jurisdiction compelling Grantee to comply with the provisions of this Franchise; or (4) pursue other remedies as permitted by law. To the extent permitted by applicable law, the rights granted under this Franchise may be revoked or forfeited.

C. If the City shall violate or fail to comply with any of the provisions of this Franchise, the Grantee shall provide the City with written notice specifying with reasonable particularity the nature of any such breach and the City shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the breach is not cured within the specified time, or the City does not comply with the specified conditions, the Grantee may, at its discretion, (1) terminate this Franchise, or (2) pursue other remedies as permitted by law.

D. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the parties may agree to a longer cure period.

Section 14. Non-Waiver.

The failure of a party to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants, agreements or option or any other covenants, agreements or option.

Section 15. Survival.

All of the obligations, conditions and requirements of Section 1.C Section 5, Section 6, Section 10, Section 11, Section 12, Section 25 and Section 27.B of this Franchise arising by reason of any occurrence taking place during the term of this Franchise shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof.

Section 16. Severability.

In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provisions of this Franchise.

Section 17. Notice.

Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3) days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given. City: City of Aberdeen, Attn: Director of Public Works, Aberdeen City Hall, 200 E. Market, 2nd Floor, Aberdeen, WA . Grantee: Forged Fiber 37, LLC: Attn: AT&T Legal Department, 208 South Akard Street, Dallas, Texas 75202-4206, with a copy to: FF_Right_Of_Way@att.com.

Section 18. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 19. Eminent Domain. This Franchise is subject to the power of eminent domain. In any proceeding under eminent domain, this Franchise itself shall have no value.

Section 20. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Grantee by reason of such vacation; provided, however, that the City shall notify the Grantee in writing not less than sixty (60) days before considering such vacation and shall work with Grantee where possible in securing an easement to allow the Facilities to remain in place. Upon Grantee's entry into an easement for the Facilities, this Franchise shall no longer apply with respect to such vacated area. If an easement cannot be retained, or any other accommodation made for the Facilities to remain (e.g., a ground lease or license agreement) Grantee's relocation from the affected parcel shall be governed by section 4 of this Agreement.

Section 21. Signs and Symbols. Except for labels marking equipment, all signs or symbols placed by Grantee shall be subject to the prior approval of the City. In the event Grantee shall place signs or symbols where they are visible from the street and not acceptable to the City, the City may demand the immediate removal of such signs or symbols and the refusal of Grantee to comply with such demand within will constitute a breach of this Franchise, thereby entitling the City to exercise any available legal remedy and to remove the signs or symbols. Grantee is not permitted to install any lighting on its Facilities unless required by the FAA or FCC.

Section 22. Compliance with All Applicable Laws. The parties agree to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Grantee, and Grantee shall promptly conform with all such regulations, unless compliance would cause Grantee to violate other requirements of law or the terms of this Franchise. Grantee further expressly acknowledges that following the approval of this Franchise, the City may modify its Codes and such Code modifications shall apply to Grantee's Facilities, except that existing Facilities may be maintained by Grantee per regulations in effect at the time of installation as approved in the permit and plan for said installation. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) enacted under the City's police powers shall take precedence over the provisions set forth herein.

Section 23. Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

Section 24. Hazardous Substances. Grantee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Grantee allow any of its agents, contractors or any person under its control to do the same. Except to the extent caused by the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers, and representatives, Grantee will be solely responsible for and will defend, indemnify and hold the City, its agents and employees harmless from and against any and all direct claims, costs and liabilities including reasonable attorneys' fees and costs, to the extent arising out of or in connection with the cleanup or restoration of the property associated with Grantee's use, storage, or disposal of hazardous substances or the use, storage or disposal of such substances by Grantee's agents, contractors or other persons acting under Grantee's control.

Section 25. Licenses, Fees, and Taxes. Prior to constructing the Facilities, Grantee shall obtain a business or utility license from the City, if so required by the AMC and applicable law. Except as otherwise provided in this Franchise or any applicable law, Grantee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Grantee and shall pay all license fees and public utility charges relating to the conduct of its business; shall pay for all permits, licenses, and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City.

Section 26. Assignment or Transfers of Grant. Ownership or control of a telecommunication system or franchise may, directly or indirectly, be transferred or assigned or disposed of by sale, lease, merger, consolidation or other act of the Grantee, by operation of law or otherwise, without

the prior written consent of City, but written notice to the City is required. In the event that a transfer, assignment, or disposal of Grantee's ownership is approved by the Washington Utilities and Transportation Commission ("WUTC"), the City will be deemed to have consented to such transfer for purposes of any WUTC case docket or other proceeding. Grantee will provide City with a copy of any such WUTC approval.

Section 27. Miscellaneous.

A. City and Grantee respectively represent that its signatory is duly authorized and has full right, power, and authority to execute this Franchise.

B. This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or Grays Harbor County Superior Court.

C. Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

D. Where the context so requires, the singular shall include the plural and the plural includes the singular.

E. Grantee shall be responsible for obtaining all other necessary approvals, authorizations and agreements from any party or entity from whom it is leasing utility poles.

F. This Franchise may be enforced at both law and equity.

G. This Franchise may be executed in counterparts, each of which shall be deemed an original.

H. Grantee acknowledges that it, and not the City, shall be responsible for Grantee's Facilities' compliance with all marking and lighting requirements of the FAA and the FCC. Except to the extent caused by the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers, and representatives, Grantee shall indemnify, defend and hold the City harmless from any fines or other liabilities to the extent caused by Grantee's failure to comply with such requirements. Should Grantee or the City be cited by either the FCC or the FAA because the Grantee's Facilities is not in compliance and should Grantee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, then, after providing Grantee with thirty (30) days prior written notice and opportunity to cure and Grantee's continued failure to cure, the City may either terminate this Franchise immediately on notice to Grantee or proceed to cure the conditions of noncompliance at Grantee's expense.

I. Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as circumstances that are beyond a party's reasonable control, and include strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which

prevents construction), acts of the public enemy, wars, terrorism, insurrections, pandemics, and any other similar event.

J. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Grantee and all privileges, as well as all obligations and liabilities of Grantee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever Grantee is named herein.

Section 28. Acceptance. This Franchise and the rights, privileges and authority granted hereunder shall take effect and be in force from and after the Effective Date of this Franchise. Unless executed by Grantee prior to the City's execution, Grantee shall execute this Franchise within sixty (60) days after the City's execution of this Franchise. Such written acceptance shall be accompanied by the memorandum of insurance and additional insured endorsement specified in Section 10, the bonding requirements in Section 11, and the reimbursement to the City pursuant to Section 7.B. This Franchise is voidable unless accepted in writing with the required memorandum of insurance, bond, and reimbursement by Grantee within this sixty (60) days.

Section 29. Effective Date. This Franchise, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after the passage and publication of an approved summary thereof consisting of the title

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

For the City of Aberdeen:

Douglas Orr, Mayor
City of Aberdeen, WA

Date

For Forged Fiber 37, LLC:

[Name], President

Date



CITY OF ABERDEEN
Washington
Since 1884

Request for Council Action

Date Action is Requested: 06/24/2026

Subject: 2nd Reading & PH - Zoning Code Amendment; Fencing Requirements

COMMITTEE:

☐ Finance

☐ Public Safety

☒ Public Works

☐ Special Agenda Item:

TYPE OF ACTION REQUESTED:

☒ Ordinance No. Bill #26-07

☐ Motion

☐ No Action - Information Only

☐ Resolution No.

☐ Discussion

☐ Other:

SUMMARY OF REQUEST:

Amend the fencing portion of the zoning code to provide some clarity on fencing requirements.

POLICY IMPLICATIONS:

☐ This action is in accordance with current policies and procedures.

☐ This action would require a new ☐ policy ☐ ordinance ☐ resolution ☐ other action from the Council.

☒ This action requires a revision to ☐ policy ☒ ordinance ☐ resolution ☐ other.

☐ Does not affect current policies and procedures.

FISCAL IMPACT:

This project has no fiscal impact.

BUDGETARY STATUS:

☐ Funds have already been authorized in this year's budget.

☐ This is an extra-budget expenditure.

☐ Funds will be requested for this action, if approved, in next year's budget.

☐ This action will bring in additional revenue.

☒ This action has no budgetary implications.

☐ This action will reduce expenditure.

☐ Other:



CITY OF ABERDEEN
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BACKGROUND/RATIONALE:

The City Council approved a new zoning code in 2024 and as staff have been working with the new code, we have found some areas that need to be amended, so that the code becomes a bit more user friendly and clearer to those who are using it.

RECOMMENDATION(S):

Approve the amended ordinance.

ATTACHMENTS:

- Draft ordinance, with changes underlined.

Lisa Scott

Community Development Director Name

Community Development Director Signature

Rick Sangder

Public Works Director Name

Public Works Director Signature

Joshua Francy

Committee Chair Name

Committee Chair Signature

This request aligns with the following City Council Values:

☐ Workforce Engagement & Development

☒ Vibrant, Safe & Healthy Community

☒ Economic Development

☐ Infrastructure Investment

☐ Fiscal Responsibility

☐ Communications & Outreach

Bill # 26-07

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABERDEEN, WASHINGTON, AMENDING ABERDEEN MUNICIPAL CODE SECTION 17.67.030, RELATED TO FENCES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the Community Development Director has recommended revisions to the Zoning Code; and

WHEREAS, there are several inaccuracies in the fencing portion of the zoning code that need to be corrected; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ABERDEEN:

SECTION 1. CODE SECTION. The following Aberdeen Municipal Code Chapter 17.67 related to “Fences and Hedges” is hereby amended to read as follows:

CHAPTER 17.67.030 – Location, Height, and Design.

- A. *Applicability.* All fences, where allowed by this title, shall meet the following standards unless otherwise regulated within this code:
- B. *Location.*
1. Fences shall be wholly contained on an owner’s property or located on a property line when both abutting property owners provide written agreement.
 2. Fences shall not be placed in a manner that hinders access to an easement.
 3. Fences shall not be permitted on property lines abutting buildings, structures or fences. A minimum 3-foot separation is required when abutting any building, structures or fences.
 4. Fences are required to have a minimum 3’ setback from the crest of all stormwater drainage ditches.
- C. *Height.*
1. See Table 17.67.030(C) for maximum fence heights in setbacks (Section ~~17.42.090~~020).

Table 17.67.030(C)(1) Maximum fence heights within setbacks	
Location	Maximum Height
Street <u>front property line</u>	4 ft.*
Side <u>yard property line (Interior Line)</u>	6 ft.
Side <u>yard; street or alley (see vision triangle)</u>	4 ft.*
Rear <u>yard property line</u>	6.ft.

*Additional permits may be required for any deviations from the code. If setbacks are met [AMC 17.42.020(A) (B) (C)] the maximum height is 6'.

2. The maximum fence heights near intersections of public rights-of-way shall be three (3) feet when within ~~twenty~~ fifteen (~~20~~ 15) feet of a street intersection or ten (10) feet of an intersection involving an alley when the city engineer has determined that no part of the construction endangers life, health or safety. The distance to intersection is measured from the corner of intersecting rights-of-way.
3. No maximum fence height shall apply to nonresidential public playgrounds, public utility installations or other public installations when the city engineer has determined that no part of the construction endangers life, health or safety.
4. Maximum fence heights do not apply in C; or F-I, ~~or W~~ zones after the city engineer has determined that no part of the construction endangers life, health or safety.

(Ord. 6715 §§ 1, 2 (Exh. A), Repealed & Replaced, 11/13/2024)

SECTION 2. PUBLICATION BY SUMMARY. The City Clerk is authorized and directed to publish the attached summary in lieu of this ordinance.

SECTION 3. SEVERABILITY. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

SECTION 4. CORRECTIONS. The City Clerk and codifiers of the Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five (5) days after the date of publication in the City's official newspaper.

PASSED and APPROVED this ____ day of _____, 2026.

Douglas Orr, Mayor

ATTEST:

Katy Williamson, Finance Director



CITY OF ABERDEEN
Washington
Since 1884

Request for Council Action

Date Action is Requested: 6/24/2026

Subject: **A Resolution Designating Authorized Representatives for Purposes of Obtaining Federal And/ Or State Emergency or Disaster Assistance Funds**

COMMITTEE:

☐ Finance

☐ Public Safety

☒ Public Works

☐ Special Agenda Item

TYPE OF ACTION REQUESTED:

☐ Ordinance No.

☐ Motion

☐ No Action - Information Only

☒ Resolution No. 2026-24

☐ Discussion

☐ Other:

SUMMARY OF REQUEST:

This resolution designates Authorized Representatives to act on the City's behalf in matters related to federal and state emergency or disaster assistance funding. The designated representatives are authorized to execute contracts and agreements, certify project completion, request payments and reimbursements, and prepare and submit all documentation required to obtain and administer emergency or disaster assistance funds. The resolution remains in effect until modified or rescinded by the City Council.

POLICY IMPLICATIONS:

☒ This Action is in Accordance with Current Policies and Procedures.

☐ This Action would Require a New ☐ Policy ☐ Ordinance ☐ Resolution ☐ Other Action from the City Council.

☐ This Action Requires a Revision to ☐ Policy ☐ Ordinance ☐ Resolution ☐ Other.

☐ This Action Does Not Affect Current Policies and Procedures.

FISCAL IMPACT:

Project Number: Street-2026-0003

Amount FEMA Funded: \$85,000 Federal, \$15,000 State

Amount Requested: \$15,000 City Share

Source of Funding: Arterial Streets Remaining Funding from 3rd Ave Slide FEMA DR 4650 (\$69,000)

City Fund/Department: 305/Arterial Streets

In Budget? ☐ Yes ☒ No

Supplemental Budget? ☒ Yes ☐ No ☐ Uncertain

BARS Numbers: Project BARS not assigned yet



CITY OF ABERDEEN

Washington
Since 1884

BUDGETARY STATUS:

- ☐ Funds Have Already been Authorized in this Year's Budget.
- ☒ This is an Extra-Budget Expenditure.
- ☐ Funds will be Requested for this Action, if Approved, in Next Year's Budget.
- ☒ This Action Will Bring in Additional Revenue.
- ☐ This Action Will Require City Staff Time and/or Labor.
- ☐ This Action has no Budgetary Implications.
- ☐ This Action Will Reduce Expenditures.
- ☐ Other:

BACKGROUND/RATIONALE:

The Washington State Emergency Management Division (WA EMD) and various federal disaster assistance programs require local governments to designate authorized representatives who are empowered to act on behalf of the agency in matters related to emergency and disaster assistance funding.

RECOMMENDATION(S):

Adopt the resolution designating Authorized Representatives

ATTACHMENTS:

- Resolution No. 2026-24

Rick Sangder

Director Name

Director Signature

Joshua Francy

Committee Chair Name

Committee Chair Signature

This request aligns with the following City Council Values:

- | | |
|---|---|
| ☐ Workforce Engagement & Development | ☐ Vibrant, Safe & Healthy Community |
| ☒ Economic Development | ☒ Infrastructure Investment |
| ☒ Fiscal Responsibility | ☐ Communications & Outreach |

12/10/09



CITY OF ABERDEEN
Washington
Since 1884

Request for Council Action

Date Action is Requested: 6/24/2026
Subject: Vacant Building Program/Property Registration

COMMITTEE:

- ☐ Finance ☒ Public Works
☐ Public Safety ☐ Special Agenda Item:

TYPE OF ACTION REQUESTED:

- ☐ Ordinance No. ☐ Resolution No.
☐ Motion ☒ Discussion
☐ No Action - Information Only ☐ Other:

SUMMARY OF REQUEST:

Discussion on amending the vacant building section of the Aberdeen Municipal Code.

POLICY IMPLICATIONS:

- ☒ This action is in accordance with current policies and procedures.
☐ This action would require a new ☐ policy ☐ ordinance ☐ resolution ☐ other action from the Council.
☒ This action requires a revision to ☐ policy ☒ ordinance ☐ resolution ☐ other.
☐ Does not affect current policies and procedures.

FISCAL IMPACT:

None at this time.

BUDGETARY STATUS:

- ☐ Funds have already been authorized in this year's budget.
☐ This is an extra-budget expenditure.
☐ Funds will be requested for this action, if approved, in next year's budget.
☐ This action will bring in additional revenue.
☐ This action has no budgetary implications.
☐ This action will reduce expenditure.
☒ Other: **None at this time.**

BACKGROUND/RATIONALE:

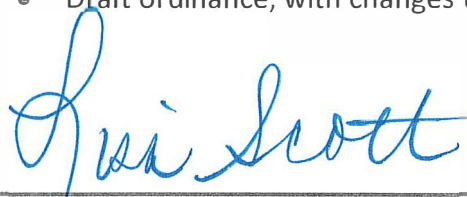
The Mayor and City Council are looking for stronger vacant structure codes.

RECOMMENDATION(S):

Discussion item.

ATTACHMENTS:

- Draft ordinance, with changes underlined and stricken.



Community Development Director Signature

Lisa Scott

Community Development Director Name

Rick Sangder

Public Works Director Name

Public Works Director Signature

Joshua Francy

Committee Chair Name

Committee Chair Signature

This request aligns with the following City Council Values:

☐ Workforce Engagement & Development

☒ Vibrant, Safe & Healthy Community

☒ Economic Development

☐ Infrastructure Investment

☐ Fiscal Responsibility

☐ Communications & Outreach

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABERDEEN, WASHINGTON, REPEALING CHAPTER 15.40 MAINTENANCE OF VACANT BUILDINGS IN THE DOWNTOWN PARKING AND BUSINESS IMPROVEMENT DISTRICT AND AMENDING TITLE 15.10 PROPERTY MAINTENANCE AND RENTAL REGISTRATION AND INSPECTION BY ADDING CHAPTER 15.10.175 VACANT PROPERTY REGISTRATION AND AMENDING CHAPTER 15.10.030 DEFINITIONS AND CHAPTER 15.10.170 GENERALLY.

WHEREAS, the Community Development Director has recommended revisions to the Buildings and Construction Title; and

WHEREAS, the City Council has determined that vacant buildings in Aberdeen impact citizens' use and enjoyment of the area; and

WHEREAS problems may include cleaning up debris, closing the buildings to entry, or even ordering demolition, and

WHEREAS it is not illegal for buildings to be vacant, but responsible people must keep buildings closed to unauthorized entry, and

WHEREAS responsible people must comply with maintenance standards so that vacant buildings are clear of junk and overgrown vegetation, have a maintained exterior, including stairs, porches and yard areas so as not to create a nuisance in our community.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ABERDEEN:

SECTION 1. CODE SECTION. The following Aberdeen Municipal Code Chapter 15.40 related to "Maintenance of vacant buildings in the downtown parking and business improvement district" is hereby repealed.

SECTION 2. CODE SECTION. The following Aberdeen Municipal Code Chapter 15.10.030 "Definitions" is hereby amended to add the following definitions:

CHAPTER 15.10.030 – Definitions.

"responsible party" means the owner, owner's authorized agent, or other person having legal control of the property.

“Vacant property” means any parcel of land, structure, or portion of a structure that is unoccupied for more than sixty (60) consecutive days, regardless of whether it is secured.

SECTION 3. CODE SECTION. The following Aberdeen Municipal Code Chapter 15.10.170 “Generally” is hereby amended:

CHAPTER 15.10.170 – Generally.

B. Vacant Structures and Land. Vacant structures and premises thereof or vacant land must comply with this code and shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or otherwise adversely affect the public health, safety or quality of life.

1. *Appearance.* All vacant structures and premises thereof must appear to be occupied or appear able to be occupied with little or no repairs. When commercial buildings are not occupied for more than thirty (30) days, a responsible person must take steps to maintain a vibrant streetscape and avoid adverse impacts on neighborhood character by applying at least one (1) of the following measures to all ground-floor windows that face sidewalks, streets or public open space:

a. Paint windows with visually appealing scenes depicting or suggesting business or cultural activities and/or

b. Display works of art or provide other displays of cultural or educational value, using background panels or other methods to screen views from the street; and/or

c. Other measures consistent with these examples approved by the director.

2. *Security.* All vacant structures and premises thereof must be secured against outside entry at all times. Security shall be by the normal building amenities such as windows and doors having adequate strength to resist intrusion. All doors and windows must remain locked. There shall be at least one (1) operable door into every structure and into each housing unit. Exterior walls and roofs must remain intact without holes.

a. ~~*Architectural (Cosmetic) Structural Panels.*~~ ~~Architectural structural panels may be used to secure windows, doors and other openings provided they are cut to fit the opening and match the characteristics of the structure. Architectural panels may be of exterior-grade finished plywood, medium density overlaid plywood (MDO) that is painted to match the structure’s exterior or covered with a reflective material such as plexiglass or other similar like material.~~ Exception: Untreated plywood or similar structural panels may be used to secure windows, doors and other openings for a maximum period of thirty (30) days. Doors and Windows. If window glass or door glass is broken or missing or doors and locks are not secure, building owners must install plywood on a temporary basis, to secure the structure. Plywood may not remain in place for more than seventy-two (72) hours or as such extension that may be granted by the Building Official. Building owners are required to replace broken glass with new glass or a hardened

polycarbonate covering. Building owners may show proof of purchase for an extension of time, if needed.

b. *Security Fences.* Temporary construction fencing shall not be used as a method to secure a structure from entry.

Exception: Temporary construction fencing may be used for a maximum period of thirty (30) days.

3. *Weather Protection.* The exterior roofing and siding shall be maintained as required in Section 15.10.190.

4. *Fire Safety.*

a. *Fire Protection Systems.* All fire suppression and alarm systems shall be maintained in a working condition and inspected as required by the fire department.

b. *Flammable Liquids.* No vacant structure or premises or portion thereof shall be used for the storage of flammable liquids or other materials that constitute a safety or fire hazard.

c. *Combustible Materials.* All debris, combustible materials, litter and garbage shall be removed from vacant structures, their accessory structures and adjoining yard areas. The structure and premises shall be maintained free from such items.

d. *Fire Inspections.* ~~Periodic fire department inspections may be required at intervals set forth by the chief or his designee.~~ Annual fire and life safety inspections will be required.

SECTION 4. CODE SECTION. The following “new” Aberdeen Municipal Code Chapter 15.10.175 “Vacant property registration” is hereby added:

new CHAPTER 15.10.175 – Vacant property registration.

A. Purpose. The purpose of this section is to protect the public health, safety and welfare by establishing a system for registering, monitoring and maintaining vacant properties, ensuring they do not contribute to blight, create nuisances, or become unsafe or hazardous.

B. Registration Required.

1. The responsible party shall register a vacant property with the code official or his/her designee within thirty (30) days of vacancy.

2. Properties containing multiple structures shall register each vacant structure individually.

3. Any property posted unsafe or unfit for human habitation under this chapter shall be subject to registration.

C. Registration Form and Fee. The registration shall be submitted on a form provided by the city and shall include:

1. Legal owner information;
2. Local contact or agent available 24/7;
3. Utility status;
4. Maintenance or rehabilitation plan, if applicable;

5. Proof of liability insurance, if required.
6. Registration fees and renewal fees are established by resolution.
- D. Maintenance and Security Requirements. Vacant properties shall comply with:
 1. Section 15.10.1 70(B) regarding appearance, security, fire safety, utilities, and structural conditions of vacant structures.
 2. Section 15.10.180 regarding exterior property sanitation, weeds, drainage, and prohibited conditions.
 3. Section 15.10.190 regarding the exterior of a structure.
 4. 15.10.200 regarding the interior of a structure.
 5. 15.10.210 regarding component serviceability of a structure and equipment therein.
 6. 15.10.220 regarding handrails and guardrails.
 7. 15.10.230 regarding rubbish and garbage.
 8. 15.10.240 regarding pest elimination.

Specific requirements include:

 - a. Openings shall always remain secured using approved methods;
 - b. Structures must appear occupied or capable of immediate occupancy;
 - c. Exterior property must be kept clean, safe and sanitary;
 - d. No accumulation of debris, combustible material or rubbish is permitted.
- E. Inspection.
 1. Upon registration, the code official may inspect the property to ensure compliance.
 2. Additional inspections may occur at reasonable intervals to maintain safety.
- F. Plan of Action.
 1. The responsible party may submit a rehabilitation, sale, or demolition plan.
 2. The code official may approve, conditionally approve, or deny the plan.
 3. Approved plans pause enforcement actions if timelines are met.
- G. Change of Ownership. Vacant property registration obligations transfer to the new owner. Updated registration must be submitted within thirty (30) days.
- H. Failure to Register. Failure to register a vacant property constitutes a violation subject to the enforcement provisions of Section 8.08.030, including penalties, costs, and potential liens.
 1. Registration Term. Registration is valid for one year and must be renewed annually until the property is legally occupied, demolished, or removed from the program by the code official.

SECTION 5. PUBLICATION BY SUMMARY. The City Clerk is authorized and directed to publish the attached summary in lieu of this ordinance.

SECTION 6. SEVERABILITY. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state

or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

SECTION 7. CORRECTIONS. The City Clerk and codifiers of the Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

SECTION 8. EFFECTIVE DATE. This ordinance shall take effect five (5) days after the date of publication in the City’s official newspaper.

PASSED and APPROVED this ____ day of _____, 2026.

Douglas Orr, Mayor

ATTEST:

Katy Williamson, Finance Director



CITY OF ABERDEEN

Washington
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Request for Council Action

Date Action is Requested: June 24, 2026
Subject: **Teamsters Benefits for Department Heads**

COMMITTEE:

- | | |
|--|---|
| ☐ Finance | ☐ Public Works |
| ☐ Public Safety | ☒ Special Agenda Item |

TYPE OF ACTION REQUESTED:

- | | |
|---|--|
| ☐ Ordinance No. Click or tap here to enter text. | ☐ Resolution No. Click or tap here to enter text. |
| ☒ Motion | ☐ Discussion |
| ☐ No Action - Information Only | ☐ Other: Click or tap here to enter text. |

SUMMARY OF REQUEST:

Request to allow Department Heads to enter into a contract with Teamsters upon acceptance for benefits only.

POLICY IMPLICATIONS:

- ☒ This action is in accordance with current policies and procedures.
- ☐ This action would require a new ☐ policy ☐ ordinance ☐ resolution ☐ other action from the Council.
- ☐ This action requires a revision to ☐ policy ☐ ordinance ☐ resolution ☐ other.

FISCAL IMPACT:

\$723 PER MONTH

BUDGETARY STATUS:

- ☐ Funds have already been authorized in this year's budget.
- ☐ This is an extra-budget expenditure.
- ☒ Funds will be requested for this action, if approved, in next year's budget.
- ☐ This action will bring in additional revenue.
- ☐ This action has no budgetary implications.
- ☐ This action will reduce expenditures.
- ☐ Other: Position is grant funded

BACKGROUND/RATIONALE:

On June 18, 2026, members of the Personnel Committee met and discussed a request from the Human Resources Director to allow the Department Heads to enter into a contract with Teamsters, upon acceptance, for benefits only. Teamsters offers excellent benefits with a retiree package. This change in benefits will assist with retention and succession planning.



CITY OF ABERDEEN

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Request for Council Action

The Teamsters benefits package offers an optional benefit for retirees which would be beneficial to the city for retention and succession planning. The retiree option would be 100% paid by the employee.

RECOMMENDATION(S):

It is recommended that the City Council allow the Department Heads to enter into a contract with Teamsters upon acceptance.

ATTACHMENTS:

Requested by:

Dani Smith, HR Director

City Administrator Reviewed:

[Signature]

Department Director:

Dani Smith, HR Director



CITY OF ABERDEEN

Washington
Since 1884

Request for Council Action

Date Action is Requested: June 24, 2026
Subject: **Reclass Parks Director Salary**

COMMITTEE:

- | | |
|--|---|
| ☐ Finance | ☐ Public Works |
| ☐ Public Safety | ☒ Special Agenda Item |

TYPE OF ACTION REQUESTED:

- | | |
|---|--|
| ☐ Ordinance No. Click or tap here to enter text. | ☐ Resolution No. Click or tap here to enter text. |
| ☒ Motion | ☐ Discussion |
| ☐ No Action - Information Only | ☐ Other: Click or tap here to enter text. |

SUMMARY OF REQUEST:

Request to reclass the Parks Director Salary

POLICY IMPLICATIONS:

- ☒ This action is in accordance with current policies and procedures.
- ☐ This action would require a new ☐ policy ☐ ordinance ☐ resolution ☐ other action from the Council.
- ☐ This action requires a revision to ☐ policy ☐ ordinance ☐ resolution ☐ other.

FISCAL IMPACT:

-\$1,433 PER MONTH

BUDGETARY STATUS:

- ☐ Funds have already been authorized in this year's budget.
- ☐ This is an extra-budget expenditure.
- ☒ Funds will be requested for this action, if approved, in next year's budget.
- ☐ This action will bring in additional revenue.
- ☐ This action has no budgetary implications.
- ☐ This action will reduce expenditures.
- ☐ Other: Position is grant funded

BACKGROUND/RATIONALE:

On June 18, 2026, members of the Personnel Committee met and discussed a request from Human Resources Director to reclassify the Parks Director Salary to a 27e, from a 30e, to align the salary with market trends for Parks Director positions comparable to our city's size.



CITY OF ABERDEEN

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Request for Council Action

The salary study conducted by Cabot Dow in 2022 compared our Parks Director position with Parks Director positions along the I-5 corridor with large park facilities that included golf courses, swimming facilities, and major sport complexes. This new range aligns the position with market trends for comparable sized cities. The new Parks Director salary pay range will be a 27-e \$9,102-\$11,063 per month.

RECOMMENDATION(S):

It is recommended that the City Council adopt the reclassification of the Parks Director salary.

ATTACHMENTS:

Requested by:

Dani Smith, HR Director

City Administrator Reviewed:

[Signature]

Department Director:

Dani Smith, HR Director



Request for Council Action

Date Action is Requested: 06/24/26

Subject: **Museum Transition Committee Creation and Appointments**

COMMITTEE:

- | | |
|--|---|
| ☐ Finance | ☐ Public Works |
| ☐ Public Safety | ☒ Special Agenda Item |

TYPE OF ACTION REQUESTED:

- | | |
|---|--|
| ☐ Ordinance | ☒ Resolution 2026-24 |
| ☒ Motion | ☐ Discussion |
| ☐ No Action - Information Only | ☐ Other |

SUMMARY OF REQUEST:

The Mayor has requested the creation of a Museum Transition Committee to assist in the transition of collection ownership, moving the collection, and other goals as defined by the City Council.

POLICY IMPLICATIONS:

- ☒ This action is in accordance with current policies and procedures.
- ☐ This action would require a new ☐ policy ☐ ordinance ☐ resolution ☐ other action from the Council.
- ☐ This action requires a revision to ☐ policy ☐ ordinance ☐ resolution ☐ other.
- ☐ Does not affect current policies and procedures.

FISCAL IMPACT:

There is no fiscal cost.

BUDGETARY STATUS:

- ☐ Funds have already been authorized in this year's budget.
- ☐ This is an extra-budget expenditure.
- ☐ Funds will be requested for this action, if approved, in next year's budget.
- ☐ This action will bring in additional revenue.
- ☐ This action will require city staff time and/or labor.
- ☒ This action has no budgetary implications.
- ☐ This action will reduce expenditures.
- ☐ Other:

BACKGROUND/RATIONALE:

Mayor Douglas Orr recognizes the need to ensure transparency and accountability as the City transitions out of the museum collection ownership as desired by the Aberdeen City Council. This committee will be tasked with working with History98520 to ensure a smooth transition, to review processes and to assist where needed or as directed by Mayor Orr, keeping in mind the goals of the council.

RECOMMENDATION(S):

Approve the creation and appointments to the Museum Transition Committee.

REVIEWED BY LEGAL: ☒ YES ☐ NO ☒ NOT REQUIRED

ATTACHMENTS: .

- Resolution
- List of Appointments

Ruth Clemens, City Administrator

Staff Name

Sydney Swor, Council President

Committee Chair Name

Staff Signature

Committee Chair Signature

This request aligns with the following City Council Values:

- | | |
|---|---|
| ☐ Workforce Engagement & Development | ☒ Vibrant, Safe & Healthy Community |
| ☐ Economic Development | ☐ Infrastructure Investment |
| ☒ Fiscal Responsibility | ☐ Communications & Outreach |

Museum Transition Committee Appointments

June 24, 2026

1. Councilmember John Shaw
2. Councilmember Joshua Francy
3. Ruth Hamilton, History98520
4. Les Bolton, History98520
5. George Donovan, Local Historian
6. John Hughes, Former State Historian

RESOLUTION NO. 2026-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABERDEEN, WASHINGTON, ESTABLISHING AN AD HOC MUSEUM TRANSITION COMMITTEE TO ASSIST WITH THE TRANSITION OF THE CITY'S HISTORICAL COLLECTION TO HISTORY98520.

WHEREAS, the City of Aberdeen has historically maintained and preserved a collection of artifacts, records, and materials documenting the history and heritage of the City of Aberdeen and the surrounding region; and

WHEREAS, the Aberdeen Museum of History was destroyed by fire, resulting in the loss of the museum facility and the City's ability to operate a traditional museum program; and

WHEREAS, the City Council has determined that the ownership and operation of a museum is no longer a core municipal function and is not in the long-term interests of the City; and

WHEREAS, History98520, a Washington nonprofit corporation dedicated to preserving and promoting the history of Aberdeen and the greater Grays Harbor region, has expressed a willingness to assume responsibility for the management, preservation, and public interpretation of the collection; and

WHEREAS, the City Council desires to ensure that any transfer of collection management responsibilities is conducted in a transparent, orderly, and responsible manner that protects the historical significance of the collection and serves the interests of the community; and

WHEREAS, the City Council finds it beneficial to establish a temporary advisory committee to provide recommendations and assistance during the transition process;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ABERDEEN, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. Creation of Committee. There is hereby established an Ad Hoc Museum Transition Committee ("Committee") for the purpose of advising the City Council and City Administration regarding the transition of the City's historical collection to History98520.

Section 2. Purpose. The Committee shall serve in an advisory capacity only and shall make recommendations to the City Council regarding the transfer, preservation, stewardship, and future accessibility of the collection.

Section 3. Membership. The Committee shall consist of up to six (6) members appointed by the Mayor and confirmed by the City Council. Membership may include:

1. Two (2) City Councilmembers;
2. Two (2) representatives of History98520;
3. Two (2) representatives from the historical and educational community and an interest in local history, archives, preservation, and/or community heritage.

The City Administrator or designee shall serve as staff liaison to the Committee.

Section 4. Duties. The Committee shall have the following duties:

- A. Review and provide recommendations regarding the proposed transfer of collection management responsibilities to History98520;
- B. Assist in identifying and documenting the scope and condition of the collection;
- C. Review and provide recommendations regarding inventories, accession records, deaccession records, and collection documentation;
- D. Provide recommendations concerning preservation, storage, security, insurance, and care of collection items during and after the transition;
- E. Review and provide recommendations concerning any proposed agreement between the City and History98520 regarding the collection;
- F. Assist in identifying opportunities for public access, exhibitions, educational programming, and community engagement following the transition;
- G. Assist in identifying potential grant opportunities, fundraising efforts, partnerships, and other resources that may support the preservation of the collection;
- H. Provide recommendations regarding the long-term stewardship and governance of the collection;
- I. Conduct public outreach and solicit community input regarding the future of the collection; and
- J. Prepare a final report and recommendation to the City Council regarding the transition process.

K. Make recommendations regarding:

1. Use of remaining museum funds.
2. Disposition of 118 W Wishkah St., (purchased with museum funds).
3. Any continued financial contributions from the city.
4. Disposition of any furniture or equipment currently used to support the collection but owned by the city.

Section 5. Authority. The Committee shall act solely in an advisory capacity. The Committee shall have no authority to expend City funds, enter into contracts, transfer property, direct City staff, or otherwise bind the City.

Section 6. Open Public Meetings. The Committee shall conduct its meetings in compliance with applicable provisions of Washington law, including the Open Public Meetings Act, to the extent required.

Section 7. Sunset. The Committee shall automatically dissolve upon the earlier of:

- A. Completion of its final report and acceptance of that report by the City Council; or
- B. December 31, 2027;

unless extended by subsequent action of the City Council.

Section 8. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED BY THE CITY COUNCIL OF THE CITY OF ABERDEEN, WASHINGTON, at a regular meeting thereof held on the 24th day of June, 2026.

Douglas Orr, Mayor

ATTEST:

Katy Williamsen, Finance Director



CITY OF ABERDEEN

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Request for Council Action

Date Action is Requested: June 24, 2026

Subject: **Appointment by the Mayor of members of the public to the
Utility Rate Advisory Committee**

COMMITTEE:

- | | |
|--|---|
| ☐ Finance | ☐ Public Works |
| ☐ Public Safety | ☒ Special Agenda Item |

TYPE OF ACTION REQUESTED:

- | | |
|---|--|
| ☐ Ordinance No. Click or tap here to enter text. | ☒ Resolution No. |
| ☐ Motion | ☐ Discussion |
| ☐ No Action - Information Only | ☐ Other: Click or tap here to enter text. |

SUMMARY OF REQUEST:

Request for appointment by the Mayor of members of the public to the Utility Rate Advisory Committee.

POLICY IMPLICATIONS:

- ☒ This action is in accordance with current policies and procedures.
- ☐ This action would require a new ☐ policy ☐ ordinance ☐ resolution ☐ other action from the Council.
- ☐ This action requires a revision to ☐ policy ☐ ordinance ☐ resolution ☐ other.

FISCAL IMPACT:

None

BUDGETARY STATUS:

- ☐ Funds have already been authorized in this year's budget.
- ☐ This is an extra-budget expenditure.
- ☐ Funds will be requested for this action, if approved, in next year's budget.
- ☐ This action will bring in additional revenue.
- ☒ This action has no budgetary implications.
- ☐ This action will reduce expenditures.
- ☐ Other:

BACKGROUND/RATIONALE:

On November 26, 2024 the City Council approved the creation of a Utility Rate Advisory Committee. A notice was published seeking any interested parties respond with a letter of interest. At this time the City has received 3 letters of interest from three different Wards and the Mayor has requested that these members of the public be appointed to the URAC.



CITY OF ABERDEEN

Washington
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Request for Council Action

RECOMMENDATION(S):

It is recommended that the City Council appoint the recommended members to the Utility Rate Advisory Committee

Ward 1 – Kacey Ann Morrison

Ward 3 – Jim Sannes

Ward 5 – Patty Thomas

ATTACHMENTS:

- none

Ruth Clemens

Staff Name

Sydney Swor

Committee Chair Name

Staff Signature

Committee Chair Signature

Request for Council Action

Date Action is Requested: June 24, 2026
Subject: **Approval of AMC Review Committee and appointment of initial members**

COMMITTEE:

- | | |
|--|---|
| ☐ Finance | ☐ Public Works |
| ☐ Public Safety | ☒ Special Agenda Item |

TYPE OF ACTION REQUESTED:

- | | |
|---|--|
| ☐ Ordinance | ☒ Resolution 2026-26 |
| ☐ Motion | ☐ Discussion |
| ☐ No Action - Information Only | ☐ Other |

SUMMARY OF REQUEST:

City Council has created an AMC Review Committee to periodically review and update section of the Aberdeen Municipal Code. Periodic review will help maintain legal consistency, administrative efficiency, transparency, and usability for elected officials, staff and the public.

POLICY IMPLICATIONS:

- ☒ This action is in accordance with current policies and procedures.
- ☐ This action would require a new ☐ policy ☐ ordinance ☒ resolution ☐ other action from the Council.
- ☐ This action requires a revision to ☐ policy ☐ ordinance ☐ resolution ☐ other.
- ☐ Does not affect current policies and procedures.

FISCAL IMPACT:

Staff time to support the committee.

BUDGETARY STATUS:

- ☐ Funds have already been authorized in this year's budget.
- ☐ This is an extra-budget expenditure.
- ☐ Funds will be requested for this action, if approved, in next year's budget.
- ☐ This action will bring in additional revenue.
- ☐ This action will require city staff time and/or labor.
- ☐ This action has no budgetary implications.
- ☐ This action will reduce expenditures.
- ☒ Other: Staff time; Exempt staff will be used to support this committee.

BACKGROUND/RATIONALE:

City Council has created an AMC Review Committee to periodically review and update section of the Aberdeen Municipal Code. Periodic review will help maintain legal consistency, administrative efficiency, transparency, and usability for elected officials, staff and the public.

A structured municipal code review process promotes good governance by ensuring that city regulations remain current, legally compliant, administratively workable, and accessible to the public. The City has not previously had a program to periodically review portions of the AMC but rather has updated sections on an intermittent and issue specific basis.

The Committee shall serve solely in an advisory capacity. The Committee may review, research, evaluate, and recommend amendments to the AMC.

The following Council Members will be the appointed the initial members of the committee:

- Carrie Hubbard
- Jerry Rajcich
- John Shaw
- Sydney Swor

These appointments will remain in effect until successors are appointed or until modified by future action of the City Council.

RECOMMENDATION(S):

Approve the creation of the AMC Review Committee.

REVIEWED BY LEGAL:

☐ YES

☐ NO

☒ NOT REQUIRED

ATTACHMENTS:

- Resolution 2026-26
- AMC Review Framework

Ruth Clemens, City Administrator

Staff Name

Sydney Swor

Committee Chair Name

Staff Signature

Committee Chair Signature

This request aligns with the following City Council Values:

☐ **Workforce Engagement & Development**

☐ **Vibrant, Safe & Healthy Community**

☐ **Economic Development**

☐ **Infrastructure Investment**

☒ **Fiscal Responsibility**

☒ **Communications & Outreach**

RESOLUTION NO. 2026-26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABERDEEN, WASHINGTON, ESTABLISHING THE ABERDEEN MUNICIPAL CODE REVIEW COMMITTEE, ADOPTING ITS PURPOSE AND OPERATING FRAMEWORK, AND CONFIRMING INITIAL APPOINTMENTS.

WHEREAS, the Aberdeen Municipal Code serves as the primary codification of the City's ordinances, policies, and regulatory framework; and

WHEREAS, periodic review of the Municipal Code is necessary to maintain legal consistency, administrative efficiency, transparency, and usability for elected officials, staff, and the public; and

WHEREAS, a structured municipal code review process promotes good governance by ensuring that city regulations remain current, legally compliant, administratively workable, and accessible to the public; and

WHEREAS, amendments to the Municipal Code have historically occurred on an intermittent and issue-specific basis, without a structured long-term review process; and

WHEREAS, the City Council finds that a formal review framework will promote predictability, documentation, institutional memory, informed policymaking, and procedural safeguards while reducing the likelihood of reactive or inconsistent code amendments; and

WHEREAS, the City Council desires to establish an advisory committee to review and evaluate portions of the Municipal Code and provide recommendations for Council consideration;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
ABERDEEN AS FOLLOWS:**

SECTION 1. ESTABLISHMENT.

The Aberdeen Municipal Code Review Committee is hereby established as a standing advisory committee of the City Council.

The Committee shall continue in existence unless modified or dissolved by future action of the City Council.

SECTION 2. PURPOSE.

The purpose of the Committee shall be to review, research, evaluate, and develop recommendations regarding the Aberdeen Municipal Code in accordance with a structured multi-year review schedule.

The Committee shall operate under the following guiding principles:

- A. Preserve administrative stability;
- B. Respect Charter limitations;
- C. Prioritize legal consistency;
- D. Improve transparency and usability;
- E. Encourage informed policymaking; and
- F. Ensure that amendments are deliberative rather than reactionary.

SECTION 3. SCOPE OF AUTHORITY.

The Committee shall serve solely in an advisory capacity.

The Committee may review, research, evaluate, and recommend amendments to the Aberdeen Municipal Code.

The Committee shall not:

- A. Direct City staff;
- B. Administer City departments;
- C. Exercise authority over City operations or personnel;
- D. Independently establish or alter City policy; or
- E. Take action on behalf of the City Council.

Recommendations of the Committee shall be forwarded to the appropriate department director or designated staff member for review prior to Council consideration.

Nothing in this Resolution shall be construed as limiting the authority of the City Council, Mayor, City Administrator, or department directors as otherwise provided by the City Charter, Municipal Code, or state law.

SECTION 4. MEMBERSHIP.

The Committee shall consist of three (3) to four (4) members of the City Council selected jointly by the Council President and Mayor.

Department directors and other City staff may be invited to participate as subject matter experts when appropriate.

SECTION 5. REVIEW FRAMEWORK.

The Committee shall conduct its review according to the following schedule unless modified by future Council action:

Year 1: Titles 1 through 5

Year 2: Titles 6 through 10

Year 3: Titles 11 through 14

Year 4: Titles 15 through 17

SECTION 6. RECOMMENDATION REQUIREMENTS.

Recommendations submitted by the Committee shall include, whenever applicable:

- A. Existing code citation;
- B. Identification of the issue or problem;
- C. Proposed amendment;
- D. Legal implications;
- E. Operational impacts; and
- F. Fiscal impacts.

Recommendations lacking sufficient supporting analysis may be returned for additional review prior to Council consideration.

SECTION 7. SAFEGUARDS.

Recommendations involving the addition, repeal, or substantial rewrite of an entire chapter shall require approval by at least three-fourths (3/4) of the Committee membership before being forwarded.

All proposed code amendments recommended by the Committee shall be subject to legal review prior to Council consideration.

SECTION 8. TRANSPARENCY AND PUBLIC ENGAGEMENT.

The Committee shall:

- A. Develop an annual work plan;
- B. Maintain a publicly available review schedule;
- C. Provide opportunities for public comment;

- D. Prepare plain-language summaries of recommendations when practical;
- E. Submit an annual report to the City Council; and
- F. Maintain a record tracking the status of recommendations.

SECTION 9. INITIAL APPOINTMENTS.

The following Council Members are hereby appointed to serve on the Aberdeen Municipal Code Review Committee:

- Council Member Carrie Hubbard
- Council Member Jerry Rajcich
- Council Member John Shaw
- Council President Sydney Swor

The above appointments shall remain in effect until successors are appointed or until modified by future action of the City Council.

SECTION 10. EFFECTIVE DATE.

This Resolution shall take effect immediately upon its adoption.

PASSED and **APPROVED** by the City Council of the City of Aberdeen, Washington, at a regular meeting thereof this day of 24th day of June 2026.

ATTEST:

Katy Williamsen, Finance Director

Douglas Orr, Mayor

AMC Review Framework

Year 1: Title 1-5

Year 2: Title 6-10

Year 3: Title 11-14

Year 4: Title 15-17

Core Principles:

- Preserve Administrative Stability
- Respect Charter Limitations
- Prioritize Legal Consistency
- Improve Transparency and Usability
- Encourage Informed Policymaking
- Ensure that amendments are deliberative instead of reactionary

Scope of Authority:

- **Advisory Only**
- The committee will review, research, evaluate, and recommend
- The committee will not direct staff, administer departments, or independently alter policy.

The committee will serve solely in an advisory capacity to the City Council and shall not exercise administrative authority over city operations, personnel, or departmental functions.

Membership Structure:

- 3-4 Council Members
- Selected by Council President and Mayor

Directors will be asked to join periodically to provide subject matter expertise.

No recommendations will come before Council before being presented to the Staff Member charged with overseeing the work this pertains to.

Every change recommendation must include:

- Existing Code Citation
- Identified Issue/Problem
- Proposed Amendment
- Legal Implications
- Operational Impact
- Fiscal Impact (If applicable)

Recommendations lacking sufficient supporting analysis may be returned for additional review prior to Council consideration.

Safeguards:

- For major policy recommendations (adding, removing, or completely rewriting a chapter),
3/4 majority committee approval is needed.
- Mandatory Review Process:
 - Committee Approval
 - Legal Review

Transparency & Public Trust Measures:

- Annual Work Plan
- Publicly Posted Review Schedule
- Public Comment Opportunities
- Plain-Language Summaries
- Annual Report to Council
- Tracking Status of Recommendations

Right now, code amendments occur inconsistently, often reactively, and without a long-term maintenance structure. A formal review process creates predictability, documentation, institutional memory, and procedural safeguards that reduce volatility rather than increase it.