

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: March 26, 2018

AGENDA ITEM: Capital Agreement between the City of Marysville and the Community Economic Revitalization Board for the Arlington Marysville Manufacturing Industrial Center Study	
PREPARED BY: Dave Koenig	DIRECTOR APPROVAL:
DEPARTMENT: Community Development	
ATTACHMENTS: Agreement	
BUDGET CODE: 00102020 541000	AMOUNT: \$16,667.00
SUMMARY:	

The Community Economic Revitalization Board (CERB) awarded the City of Marysville a \$50,000.00 grant to be matched by \$16,667.00 to accomplish a study/plan for the Arlington Marysville Manufacturing and Industrial Area. Arlington also received the same amount of funding and we are working together to produce a plan which would meet the CERB study requirements and the Puget Sound Regional Council requirements for being recognized as a Regional Manufacturing and Industrial Center.

It is a requirement by the Puget Sound Regional Council to have a plan accomplished to have the final recognition for the regional Arlington Marysville Manufacturing Industrial Center.

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to sign the Capital Agreement between the City of Marysville and the Community Economic Revitalization Board for the Arlington Marysville Manufacturing Industrial Center Study



Capital Agreement with

City of Marysville

through

Community Economic Revitalization Board

For

Arlington Marysville Industrial Center (AMMIC) Study

Start date: Date of the Last Signature



Department of Commerce

Innovation is in our nature.

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DECLARATIONS

CLIENT INFORMATION

<i>Legal Name</i>	City of Marysville
<i>Loan Number</i>	S17-790A0-138
<i>Federal Tax ID #</i>	91-6001459
<i>Statewide Vendor #</i>	SWV0000432

PROJECT INFORMATION

<i>Title</i>	Arlington Marysville Industrial Center (AMMIC) Study
<i>Project City</i>	Marysville
<i>Project State</i>	Washington
<i>Project Zip</i>	98270

CONTRACT TERMS and CONDITIONS

<i>Initial Offer Date</i>	July 27, 2017
<i>Grant Amount</i>	\$50,000.00
<i>Local Match</i>	\$16,667.00
<i>Project Completion Date</i>	Project must reach completion within (2) years from date of execution

Special Conditions

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FACE SHEET

Contract Number: S17-790A0-138

Washington State Community Economic Revitalization Board

1. Contractor City of Marysville 80 Columbia Avenue Maysville, WA 98270		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative Dave Koenig Community Development Director (306) 363-8211 dkoenig@marysvillewa.gov		4. CERB Representative Janea Delk, CERB Program Director & Tribal Liaison PO Box 42525 Olympia, WA 98504-2525	
5. Grant Amount \$50,000.00	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date Date of Last Signature	8. End Date Two years from the date of last signature
9. Federal Funds (as applicable) N/A		Federal Agency: N/A	
		CFDA Number N/A	
10. Tax ID # 91-6001459	11. SWV # SWV0000432	12. UBI #	13. DUNS #
14. Contract Purpose The Board, defined as the Washington State Community Economic Revitalization Board, and the Contractor have entered into this Contract to undertake a project that furthers the goals and objectives of the Washington State Community Economic Revitalization Board as created in Chapter 43.160 Revised Code of Washington. The Board and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract including documents attached hereto and/or incorporated by reference: Special and General Contract Terms and Conditions; Declarations Page; ATTACHMENT A: PROJECT SCOPE OF WORK; ATTACHMENT B: BUDGET; ATTACHMENT C: PLANNING STUDY MINIMUM REQUIREMENTS.			
FOR CONTRACTOR _____ Jon Nehring, Mayor _____ Date		FOR CERB _____ Randy Hayden, Chair _____ Date APPROVED AS TO FORM ONLY SIGNATURE ON FILE _____ Sandra Adix Assistant Attorney General _____ September 26, 2017 Date	

SPECIAL TERMS AND CONDITIONS

1. **DEFINITIONS**

- A. "THE BOARD" shall mean the Washington State Community Economic Revitalization Board created in Revised Code of Washington (RCW) 43.160, and who is a party to the Contract.
- B. "Authorized Representative" shall mean the Chair and/or the designee authorized in writing to act on the Chair's behalf.
- C. "Contract" or "Agreement" means the entire written agreement between THE BOARD and the Contractor, including any Exhibits, attached documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the public entity identified on the Contract Face Sheet performing service(s) under this Contract and who is a party to the Contract, and shall include all employees and agents of the Contractor.
- E. "Declarations " and "Declared" shall refer to the project information, terms and conditions as stated on the Declarations Page of this Contract, displayed within the contract in THIS STYLE for easier identification
- F. "Initial Offer of Financial Aid" shall mean the written offer of financial assistance offered by the Board and accepted by the Contractor.
- G. "Project" shall mean the project approved for funding by the Board, as described in ATTACHMENT A: SCOPE OF WORK.
- H. "Project Completion Report" shall mean the report provided by the Board to the Contractor to be submitted upon the completion of the Board-funded project.

2. **AUTHORITY**

Under the authority RCW 43.160, the Board has awarded the Contractor a CERB Planning grant for an approved project as described in the ATTACHMENT A: SCOPE OF WORK.

3. **CONTRACT MANAGEMENT**

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

4. **CONTRACT PERIOD**

The effective date of this Contract is the date of last signature. The term of this Contract runs through project completion date specified on the Declarations Page.

5. **COPYRIGHT PROVISIONS**

Notwithstanding the provisions of General Terms and Conditions 2.13, COPYRIGHT PROVISIONS, of this contract, the Contractor has ownership rights in all data and blueprints that the Contractor produces under this contract, subject to the Board right to royalty free use of these materials.

6. **HISTORICAL OR CULTURAL ARTIFACTS, HUMAN REMAINS**

Prior to commencing construction, Contractor shall complete the requirements of Governor's Executive Order 05-05, where applicable, or Contractor shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts and agrees to hold harmless the Board and the State of Washington in relation to

SPECIAL TERMS AND CONDITIONS

any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 05-05, coordinate with the Washington State Department of Archaeology and Historic Preservation (DAHP), including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed project funded by this Contract. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The Contractor agrees that if historical or cultural artifacts are discovered during construction or other ground disturbing activity, the Contractor shall immediately stop work and notify the local historic preservation officer and the state historic preservation officer at DAHP. If human remains are uncovered, the Contractor shall stop work and report the presence and location of the remains to the coroner and local law enforcement immediately, and contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all subcontracts for work or services related to ATTACHMENT A: SCOPE OF WORK.

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

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

7. INTEREST ON CERB FUNDS

In those cases where funds have been disbursed by CERB, and the funds are not expended within thirty (30) days due to other circumstances, the Contractor shall owe the interest on all unexpended funds past thirty (30) days. All interest accruing on such funds shall inure to the benefit of CERB. Interest shall accrue at the same rate that the funds would have earned in the CERB Account held by the State Treasury Department.

8. NOTICE

All notices, demands, requests, consents, approvals, and other communication which may be or are required to be given by either party to the other under this agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes when delivered or mailed by first class postage or certified mail, postage prepaid, addressed as follows:

A. Notice to the Board:

Community Economic Revitalization Board (CERB)
1011 Plum St SE
P.O. Box 42525
Olympia, WA 98504-2525

SPECIAL TERMS AND CONDITIONS

B. Notice to Contractor:

The address used shall be that as displayed under **Item 1. Contractor**, found on the Contract Face Sheet, or to such other official address the Contractor shall have furnished to the Board in writing.

9. ORDER OF PRECEDENCE

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

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- ATTACHMENT A – Scope of Work
- ATTACHMENT B – BUDGET
- ATTACHMENT C – PLANNING STUDY MINIMUM REQUIREMENTS
- Declarations Page

10. PERFORMANCE REPORTING

The Contractor shall furnish the Board with:

- A.** Quarterly Project Reports, due four times annually until completion of the CERB funded public project. Beginning within six (6) months of contract execution, Quarterly Project Reports shall be due on:
1. January 15,
 2. April 15,
 3. July 15, and
 4. October 15

The Contractor shall also include in the quarterly report any problems, delays, or adverse conditions which will materially affect the ability to meet project objectives, time schedules, or work units by the established time period. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Board assistance needed to resolve the situation.

- B.** Project Completion Report upon completion of the CERB funded public project, and
- C.** Other reports as the Board may require.

Upon final request for reimbursement, the Contractor shall submit a Certified Project Completion Report to the Board, signed by the Contractor's responsible party, which shall include, but not be limited to, an accounting of all expenditures, a description of work accomplished, further refinement of private sector permanent employment impacts, etc. in a format to be provided by the Board.

After submission of the Project Completion Report, the Contractor shall continue, for up to five years or as may be required by the Board, to provide updates on the economic impact of the project. The updates shall be in a format acceptable to the Board and describe, but not be limited to:

1. Number and types of businesses assisted by the project
2. Private sector employment and private investment activity resulting from the project

SPECIAL TERMS AND CONDITIONS

3. Wages and health benefits associated with the private sector employment
4. Amount of state funds and total capital invested in the project
5. Local fund match and local participation in the project
6. Project Distance from Transportation Infrastructure

11. PROJECT COMPLETION

The project shall be completed within two (2) years from the date of contract execution, unless otherwise specified. Extension may be considered upon appropriate written request. Any changes are to be in writing and incorporated into this document as amendments to Special Conditions.

12. PROJECT PERFORMANCE

The Contractor's performance shall commence within six months after execution of the Final Contract, unless otherwise specified. Extension may be considered upon appropriate written request. Any changes are to be incorporated into this document as additions or amendments to Special Conditions.

If at any time during the term of this agreement the Board determines that project performance is unsatisfactory, including, but not limited to: (a) defective work not remedied, or (b) a reasonable doubt that the Contract can be completed for the balance then unpaid, the Board reserves the right to withhold payments until the problem is remedied or to exercise its rights of termination under General Terms and Conditions 40, 41, and 42.

13. RE-APPROPRIATION

The parties hereto understand and agree that any state funds not expended by **the end of the declared BIENNIUM**, including the ten percent (10%) retainage as described in SPECIAL TERMS AND CONDITIONS, Section 17: REIMBURSEMENT, will lapse on that date unless specifically re-appropriated in an enacted Capital Budget. The Board will make all necessary efforts to seek re-appropriation of funds into the declared BIENNIUM. If funds are so re-appropriated, the Board's obligation under the terms of this Contract shall be contingent upon the terms of such re-appropriation.

14. CONTRACT SUSPENSION

In the event that the Washington State Legislature fails to pass and the Governor does not authorize a Capital Budget by June 30 of each biennium, the Washington State Constitution Article 8 Section 4 and RCW 43.88.130 and RCW 43.88.290 prohibit expenditures or commitments of state funds in the absence of appropriation.

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

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

15. RECAPTURE PAYMENT AND COSTS

In the event that the Contractor fails to expend state funds in accordance with state law and/or the provisions of this Contract, the Board reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance. Repayment by the Contractor of state funds under this recapture provision shall occur within thirty (30) days of demand. In the event that the Board is

SPECIAL TERMS AND CONDITIONS

required to institute proceedings to enforce this recapture provision, the Board shall be entitled to its cost thereof, including reasonable attorney's fees.

16. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Contract are withdrawn, reduced, or limited in any way by the Washington State Governor or Legislature during the Contract period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of the Board, and shall meet and renegotiate the Contract accordingly. Any changes are to be incorporated into this document as additions or amendments to Special Conditions.

17. REIMBURSEMENT

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

The Board shall reimburse the Contractor for eligible project expenditures up to the maximum GRANT AMOUNT values as displayed on the Declarations Page of this Contract. When requesting reimbursement for costs incurred, the Contractor shall submit a signed and completed Invoice Voucher (Form A19), referencing ATTACHMENT A: SCOPE OF WORK project activity performed, and any appropriate documentation such as bills, invoices, and receipts. For eligible administrative costs of Contractor staff, the Contractor must include payroll records for reimbursing for salaries and benefits. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Contractor shall send these items to the Board at the following address:

Community Economic Revitalization Board
1011 Plum St SE
PO Box 42525
Olympia, WA 98504-2525

The Board will pay the Contractor after Contractor has completed the work described in this Contract and the Contractor has sent the Board properly completed invoices. Invoices shall be submitted to the Board not more often than monthly.

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

The Board may, at its sole discretion, terminate the contract or withhold reimbursement if the Contractor fails to satisfactorily comply with any term or condition of this contract.

The Board will make no payments in advance or in anticipation of completion of work described in this Contract.

SPECIAL TERMS AND CONDITIONS

Total amounts paid under this Contract shall be the lesser of actual amounts required for the work described in this Contract or the amount of the Board award.

CERB funds are disbursed on reimbursement basis-only for eligible costs within the approved project's scope of work. CERB funds will be reimbursed and the identified match funds will be paid out, in concert at the same percentages as the total project cost split, until CERB funds or matching funds are exhausted. Exceptions to this requirement may be granted by the Program Director & Tribal Liaison on a case-by-case basis. The Recipient must meet the identified match commitment over the project period.

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

The Board shall withhold ten percent (10%) of the total funding award until project completion and acceptance of the final Project Completion Report by the Board.

Eligible Costs

Eligible project costs are those which are incurred on or after the date of the *Initial Offer of Financial Aid*, shown on the Declarations Page as: INITIAL OFFER DATE, and are incurred under the performance of work specified in the approved Scope of Work (Attachment A).

Ineligible Costs

Internal administrative activities, fundraising activities, and salary & benefits for the employees of the applicant.

Duplication of Billed Costs

The Contractor shall not bill CERB for work under this Agreement, and CERB shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

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

Access to Work and Records

All property, facilities, and records developed pursuant to this Agreement shall be available for inspection upon request during regular business hours by the Board or its authorized representative. All records supporting every request for payment shall be maintained in a manner which will provide an audit trail to the expenditures. Copies of records shall be furnished to the Board immediately upon request. This paragraph shall be included in any and all subcontracts let by the Contractor under this agreement.

17. RESTRICTIONS ON CONVERSION OF FACILITY TO OTHER USES

The Contractor shall not convert any property or facility acquired or developed pursuant to this agreement to uses other than those for which CERB assistance was originally approved for a period of 10 years beginning from the date of contract execution without the prior written approval of CERB. If CERB no longer exists at the time of the proposed conversion, such written approval must be obtained from the Governor's Office, or from an agency designated by the Governor's Office.

SPECIAL TERMS AND CONDITIONS

In the event that the Contractor converts any such property or facility to an unapproved use, the Contractor shall pay to CERB all funds disbursed under this contract with interest in full upon demand.

18. SUBCONTRACTING

Notwithstanding the provisions of General Terms and Conditions, Section 37: SUBCONTRACTING, of this contract, the term "subcontracting" shall not refer to subcontracting of the actual planning project

GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS**

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

- A. "THE BOARD" shall mean the Washington State Community Economic Revitalization Board created in Revised Code of Washington (RCW) 43.160, and who is a Party to the Contract.
- B. "Authorized Representative" shall mean the Chair and/or the designee authorized in writing to act on the Chair's behalf.
- C. "Contract" or "Agreement" means the entire written agreement between THE BOARD and the Contractor, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the public entity identified on the Contract Face Sheet performing service(s) under this Contract and who is a party to the Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. **ALLOWABLE COSTS**

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

3. **ALL WRITINGS CONTAINED HEREIN**

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

4. **AMENDMENTS**

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

5. **AMERICANS WITH DISABILITIES ACT (ADA)**

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

6. **APPROVAL**

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

7. **ASSIGNMENT**

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

GENERAL TERMS AND CONDITIONS

8. **ATTORNEYS' FEES**

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

9. **AUDIT**

A. General Requirements

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

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

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

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

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

B. State Funds Requirements

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

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

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

C. Documentation Requirements

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

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

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

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

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

GENERAL TERMS AND CONDITIONS

10. CODE REQUIREMENTS

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

11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

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

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

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

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

12. CONFORMANCE

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

13. CONFLICT OF INTEREST

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

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

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

14. COPYRIGHT PROVISIONS

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

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

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

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

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15. DISALLOWED COSTS

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

16. DISPUTES

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

The request for a dispute hearing must:

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

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

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

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

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

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

17. DUPLICATE PAYMENT

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

18. GOVERNING LAW AND VENUE

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

19. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, THE BOARD, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury,

GENERAL TERMS AND CONDITIONS

sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

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

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

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

20. INDEPENDENT CAPACITY OF THE CONTRACTOR

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

21. INDUSTRIAL INSURANCE COVERAGE

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

22. LAWS

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

Washington State Laws and Regulations

- A. Affirmative action, RCW 41.06.020 (1).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17A RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Housing assistance program, Chapter 43.185 RCW
- G. Interlocal cooperation act, Chapter 39.34 RCW.
- H. Noise control, Chapter 70.107 RCW.
- I. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open public meetings act, Chapter 42.30 RCW.

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- K. Prevailing wages on public works, Chapter 39.12 RCW.
- L. Public records act, Chapter 42.56 RCW.
- M. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.
- N. Shoreline management act of 1971, Chapter 90.58 RCW.
- O. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- P. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State environmental policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05 Archeological and Cultural Resources.

23. LICENSING, ACCREDITATION AND REGISTRATION

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

24. LIMITATION OF AUTHORITY

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

25. LOCAL PUBLIC TRANSPORTATION COORDINATION

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

26. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

27. POLITICAL ACTIVITIES

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

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

28. PREVAILING WAGE LAW

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

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29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

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

30. PUBLICITY

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

31. RECAPTURE

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

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

32. RECORDS MAINTENANCE

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

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

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

33. REGISTRATION WITH DEPARTMENT OF REVENUE

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

34. RIGHT OF INSPECTION

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

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35. SAVINGS

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

36. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

37. SUBCONTRACTING

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

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

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

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

38. SURVIVAL

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

39. TAXES

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

40. TERMINATION FOR CAUSE

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

GENERAL TERMS AND CONDITIONS

take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

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

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

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

41. TERMINATION FOR CONVENIENCE

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

42. TERMINATION PROCEDURES

Upon termination of this contract, THE BOARD, in addition to any other rights provided in this contract, may require the Contractor to deliver to THE BOARD any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

THE BOARD shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by THE BOARD, and the amount agreed upon by the Contractor and THE BOARD for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by THE BOARD, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of THE BOARD. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. THE BOARD may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect THE BOARD against potential loss or liability.

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

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

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;

GENERAL TERMS AND CONDITIONS

3. Assign to THE BOARD, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case THE BOARD has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to THE BOARD and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to THE BOARD;
6. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
7. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which THE BOARD has or may acquire an interest.

43. WAIVER

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

Scope of Work

COMMUNITY ECONOMIC REVITALIZATION BOARD

Contractor: City of Marysville
Contract Number: S17-790A0-138
Project Title: Arlington Marysville Industrial Center (AMMIC) Study

The project's scope of work is comprised of the following activities (All activities will be completed no later than 2 years from contract execution):

Task 1: Launch Project

Task 2: Stakeholder Engagement

Task 3: Analyze Conditions

Task 4: Craft Visions & Goals

Task 5: Develop Alternatives

Task 6: Public Workshop/Charette

Task 7: Draft Subarea Plan

Task 8: Prepare Integrated SEPA Strategy

Task 9: Public Workshop #2

Task 10: Final Subarea Plan

Attachment C: Planning Study Minimum Requirement

Deliverables:

- Copy of the completed study funded under this agreement.
- Final Project Report. Report format to be provided by CERB.
- Progress Reports.

The Contractor shall make all plans and documents funded in whole or in part by this Contract available for the Board's review upon reasonable request.

The Contractor, by its signature below, certifies that the project's scope of work and performance measures set forth above have been reviewed and approved by the Contractor's governing body as of the date and year written below.

Signature

Jon Nehring

Name

Mayor

Title

Date

Budget

COMMUNITY ECONOMIC REVITALIZATION BOARD

A. CERB AWARD:

- Grant Amount: \$50,000.00

B. Budget

The budget shall consist of the following elements:

	CERB Award	Other Funds	Total
1. Feasibility Study	\$50,000.00	\$16,667.00	\$66,667.00
TOTAL	\$50,000.00	\$16,667.00	\$66,667.00

Special Budget Provisions:

A total amount of transfers of funds between line item budget categories in this Contract shall not exceed ten (10) percent of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed ten percent, the total budget shall be subject to justification and negotiation of a Contract amendment by the Contractor and CERB.

A sum of ten (10) percent of CERB funds shall be withheld until all activities and final products defined in Attachment "A" have been successfully completed by the Contractor and accepted fully by CERB.

Planning Study Minimum Requirements

COMMUNITY ECONOMIC REVITALIZATION BOARD

The planning study must contain the following **minimum requirements**:

- a. A product market analysis linked to economic development.
- b. A market strategy containing action elements linked to timelines.
- c. Identification of targeted industries.
- d. Identification of the group responsible for implementing the marketing strategy. Describe the group's capacity to complete the responsibility.
- e. The site's appropriateness by addressing, at minimum, appropriate zoning, affect to the state or local transportation system, environmental restrictions, cultural resource review, and the site's overall adequacy to support the anticipated development upon project completion.
- f. A location analysis of other adequately served vacant industrial land.
- g. Total funding for the public facilities improvements is secured or will be secured within a given time frame.
- h. An analysis of how the project will assist local economic diversification efforts.
- i. Indicate the specific issues that will be addressed.
- j. List one or more economic outcomes that you expect from the proposed CERB project.
- k. Describe the specific, quantifiable measures of the outcome(s) that will indicate success. Describe in measurable terms what you expect to be able to show as progress toward the outcome for each year before the whole outcome has been achieved.
- l. Describe what data you will collect to determine whether the outcome is being achieved.
- m. Describe the data collection procedure including when data will be collected, from whom and by whom.
- n. The estimated median hourly wage of the jobs created when development occurs.
- o. If the project is determined to be feasible, the following information must be provided within the final report:
 1. Total estimated jobs created (in FTEs).
 2. Describe benefits offered to employees.
 3. Describe the median hourly wage of the new jobs in relation to the median hourly county wage.
 4. The county three-year unemployment rate in relation to the state rate.
 5. County population change in the last five years.
 6. The estimated jobs created represent what percentage of the county's labor force.
 7. The estimated jobs created represent what percentage of the county's unemployed workers.
 8. Estimated new annual state and local revenue generated by the private business.
 9. Estimated private investment generated by project.