CITY OF
BAINBRIDGE ISLAND

CITY COUNCIL SPECIAL MEETING
Tuesday, June 12, 2018
Bainbridge City Hall, 280 Madison Avenue N.,
Bainbridge Island, Washington

AGENDA

1. **CALL TO ORDER/ROLL CALL - 6:00 PM**
2. **AGENDA APPROVAL OR MODIFICATION/CONFLICT OF INTEREST DISCLOSURE**
3. **UNFINISHED BUSINESS**
   - **A.** 6:05 PM Cost Allocation Manual Review and Approval, AB 18-062 - Finance (Pg. 3)
4. **NEW BUSINESS**
   - **A.** 6:20 PM Ordinance No. 2018-21 Amending Chapter 5 of the Bainbridge Island Municipal Code Related to Business Licenses, AB 18-102 - Finance (Pg. 45)
   - **B.** 6:30 PM Review Draft Request for Proposals for 2019 Lodging Tax Advisory Committee (Pg. 61)
   - **C.** 6:40 PM Professional Services Agreement for City Hall HVAC System Software Upgrade, AB 18-104 – Public Works (Pg. 74)
   - **D.** 6:50 PM Resolution No. 2018-19 Regarding KKOL 50 kW Transmitter, AB 18-101 - Executive (Pg. 184)
5. **ADJOURNMENT - 7:00 PM**

GUIDING PRINCIPLES

Guiding Principle #1 - Preserve the special character of the Island, which includes downtown Winslow's small town atmosphere and function, historic buildings, extensive forested areas, meadows, farms, marine views and access, and scenic and winding roads supporting all forms of transportation.

Guiding Principle #2 - Manage the water resources of the Island to protect, restore and maintain their ecological and hydrological functions and to ensure clean and sufficient groundwater for future generations.

Guiding Principle #3 - Foster diversity with a holistic approach to meeting the needs of the Island and the human needs of its residents consistent with the stewardship of our finite environmental resources.

Guiding Principle #4 - Consider the costs and benefits to Island residents and property owners in making land use decisions.

Guiding Principle #5 - The use of land on the Island should be based on the principle that the Island's environmental resources are finite and must be maintained at a sustainable level.

Guiding Principle #6 - Nurture Bainbridge Island as a sustainable community by meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Guiding Principle #7 - Reduce greenhouse gas emissions and increase the Island's climate resilience.

Guiding Principle #8 - Support the Island's Guiding Principles and Policies through the City's organizational and operating budget decisions.

City of Bainbridge Island
City Council Agenda Bill

PROCESS INFORMATION	
Subject: 6:05 PM Cost Allocation Manual Review and Approval, AB 18-062 - Finance (Pg. 3)	Date: 6/12/2018
Agenda Item: UNFINISHED BUSINESS	Bill No.: 18-062
Proposed By: Ellen Schroer, Finance Director	Referrals(s):

BUDGET INFORMATION		
Department: Finance	Fund:	
Expenditure Req:	Budgeted?	Budget Amend. Req?

REFERRALS/REVIEW		
:	Recommendation:	
City Manager:	Legal: Yes	Finance:

DESCRIPTION/BACKGROUND

Action Item:
Review and affirm the City's cost allocation manual.

Background:
This discussion builds on the review of the City's cost allocation methodology presented to Council on April 3 and the additional detailed memo emailed to Council on May 1. The methodology used by the City and incorporated into the manual presented today is the result of extensive analysis by finance staff as well as staff across the City.

This cost allocation methodology forms a basis for the City's budget, and Council approval of this manual is an important step in biennial budget development.

Additional information is contained within the attached manual.

RECOMMENDED ACTION/MOTION

I move that the Council affirm the cost allocation methodology as documented in the attached Cost Allocation Manual.

ATTACHMENTS:

Description	Type
2019 - 2020 Cost Allocation Manual a/o 06122018	Backup Material

- Presentation: Cost Allocation Manual Backup Material

Cost Allocation Manual

Goals, background, and methodology of the City of Bainbridge Island's Cost Allocation Plan.

Effective Date: 1/1/2019

City of Bainbridge Island
Cost Allocation Manual

Table of Contents

Definitions

As used in the City of Bainbridge Island Cost Allocation Manual–

1. "Accounting unit" refers to any segment of the coding used to track financial activity (fund, object, organization, department, etc.).
2. "Allocated Central Services" according to OMB Circular A-87 Revised means "central services that benefit operating agencies but are not billed to the agencies on a fee for service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include accounting, personnel administration, purchasing, etc."
3. "B&DS Fund" refers to the Building and Development Services Fund (MUNIS Fund number 407).
4. "COBI" refers to the City of Bainbridge Island. In this document, the term "the City" is also used to refer to COBI.
5. The term "Direct costs" as used in this document is defined by OMB Circular A-87 as "those [costs] that can be identified specifically with a particular final cost objective." An example of a direct cost would be a professional service cost for design of a building.
6. "Enterprise Funds" are a type of Proprietary Fund, specifically used to report activities for which a fee is charged to external users for goods or services.
7. The term "GAAP Guide" refers to the 2009 edition of the *"Governmental GAAP Guide For State and Local Governments"* published by CCH of Chicago, IL.
8. "Governmental Funds" are non-proprietary funds.
9. The term "Indirect costs" as used in this document is defined by OMB Circular A-87 as costs "a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved."
10. "Proprietary Funds" are defined by the GAAP Guide as, "used to account for a state or local government's activities that may be performed by a commercial enterprise… Generally, the purpose of a proprietary fund is to provide a service or product to the public or other governmental entities at a reasonable cost." Proprietary Funds are either Enterprise Funds or Internal Service Funds (for services or activities provided to other funds or departments within the governmental agency). COBI's Proprietary Funds include Enterprise Funds, and consist of the Water, Sewer, SSWM, B&DS Funds, and one Internal Service Fund (Equipment Rental and Revolving Fund).
11. Per the GAAP Guide, "Special Revenue Funds" refer to funds that account for proceeds of specific revenue sources that are legally restricted to expenditures of a specific purpose.
12. "SSWM" refers to Storm and Surface Water Management.
13. "Utility Funds" refers to the city-operated Water, Sewer, and SSWM services Funds (MUNIS Fund numbers 401, 402, and 403, respectively). The term "utilities" refers to the functions served by these funds.

Goal

The City of Bainbridge Island (hereinafter also referred to as "COBI" or "the City") has eight guiding principles, including one of supporting the other principles through "the City's organizational and operating budget decisions." [1] In order to sufficiently measure and compare in line with this goal, it is necessary to ensure that all COBI functions share indirect costs on the basis of relative benefits received.

Additionally, the City's financial policies, as approved by Council in Resolution 2018-07, include the concept of full cost recovery:

- The City shall maintain a structure for all fees and charges where the beneficiary of the service pays the cost of that service except to the extent that the City Council has determined that provision of the specific service in question provides a general public benefit
- On a periodic basis, Building and Development Services (B&DS) rates shall be reviewed, with a goal of full cost recovery for the B&DS Fund. [2]

In order to receive full cost recovery, the City must be able to measure the full cost of services provided, including indirect costs such as administration and other support services.

The cost recovery method described herein complies with applicable guidance from State and Federal agencies.

Background

Some City costs are appropriately shared by one or more City funds. Like all organizations, the City provides certain services that benefit the entire entity. Examples include services received by the City as a whole, such as insurance, City office space, and overhead labor. These services are generally of a support nature and centralized within a single department such as Executive or Finance and Administrative Services. These indirect costs are then allocated out to the City's Funds using a variety of methods depending on the type of service provided. A basis is determined to distribute the costs founded on the relative benefit each fund receives from the function or service. The amount a fund is charged is not intended to represent a per unit cost of a transaction, such as processing a voucher for payment or processing a request for bid, but rather an appropriate allocation of all of the costs related to providing the support service. [3]

The first part of the analysis is to confirm that all Funds share in the indirect labor costs appropriately. This is completed in the COBI Methodology, Section One: Personnel section below. In the department classification analysis that follows, major tasks and functions of department staff are discussed. Then an allocation determination is made based on the cost drivers of those tasks.

---

[1] COBI Comprehensive Plan

[2] Resolution No. 2018-07

[3] The majority of this paragraph borrowed from City of Tacoma 2009-2010 Assessments Overview; statement is applicable to COBI

Applicable Guidance

Governmental Accounting Standards Board (GASB)

GASB is the independent organization that establishes and improves standards of accounting and financial reporting for U.S. state and local governments. While the GASB is not a governmental agency and does not have enforcement authority, compliance with GASB is enforced through the Washington State Auditor's audit of COBI.

GASB has not issued any specific guidance describing the method of cost allocation to be applied by government agencies. The overarching principle applied by COBI is found in the GASB Summary of Concept Statement No. 1, "Financial reports are used primarily to compare actual financial results with the legally adopted budget; to assess financial condition and results of operations; to assist in determining compliance with finance-related laws, rules, and regulations; and to assist in evaluating efficiency and effectiveness."[4]

OMB Circular A-87

OMB Circular A-87[5] establishes cost principles for State, Local, and Indian Tribal Governments for determining costs for Federal awards. Item 5 of the Circular states that, "The principles are for determining allowable costs only." In defining allowable costs, the Circular provides a definition of allocable costs at Attachment A, paragraph C.3.a, "A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received." This definition can reasonably be applied to both A-87 and non-A-87 allocation goals.

Washington State Auditor

The Washington State Auditor's office prescribes the accounting and reporting of local governments in the State of Washington under RCW 43.09.210.[6] This RCW states in part, "All service rendered by…from, one department…to another, shall be paid for at its true and full value by the department…receiving the same, and no department…shall benefit in any financial manner whatever by an appropriation or fund made for the support of another." Therefore, a well-developed plan should include relevant, up-to-date information about overhead and how to distribute it. Also, the factors used should equitably allocate overhead.

In 2009 the State Auditor's Office audited COBI's cost allocation plan. The conclusion was COBI was following many of the cost allocation leading practices, but not all. The noted leading practices we needed to improve upon were as follows: "be up-to-date and detail the basis for overhead charges, and use allocation factors that equitably allocate overhead to each fund and department." The methodology set forth in this manual outlines how we meet all leading practices.

[4] GASB Concepts Statement No. 1 Summary, published by the Governmental Standards Board

[5] Published by the Federal Office of Management and Budget

[6] "Budgeting, Accounting, and Reporting System (BARS)" Manual, published by the Washington State Auditor's office and available online at www.sao.wa.gov. "RCW" refers to the Revised Code of Washington.

COBI Methodology

Section One: Personnel

Classification of Departments

In classifying costs as allocable, COBI analyzed departments and individual objects to determine whether the costs should be allocated, as well as the appropriate basis for allocation. COBI uses its cost allocation methodology for salaries and benefits only. Step one in building the plan was to analyze the organization by department, and determine whether or not costs were allocable. COBI departments are as follows: city council, municipal court, executive, finance, public safety, planning and community development, and public works. Below is a brief narrative of the organization's initial department analysis, followed by an in-depth look at each department.

Attachment B of OMB Circular A-87 Revised provides principles to be applied in establishing whether or not certain costs are allowed for Federal reimbursement. It states general costs of government are not allowable. These general government costs include: city council, municipal court and police costs.[7] Therefore, COBI directs charges all costs associated with those departments to the general fund.

Next, we identify our central service departments as executive and finance. Costs from central service departments are indirect costs, which are incurred for a common or joint purpose benefiting more than one task, activity or fund. Indirect costs are allocable with proper identification and documentation. Furthermore, as noted in RCW 43.09.210, allocations must be fair and equitable where one fund does not benefit from another.

The final two departments Planning and Community Development and Public Works, core work is centered around specific work tasks or programs. Employees in these departments have a combination of direct charged time, as well as an allocation for some hours.

Determination of Allocation Factors

Below is a brief description of each department that has any allocations, accompanied by a summary of allocation factors used for that department. Attachment A outlines the below information by department in greater detail as required by OMB Circular A-87 Attachment C.

<u>Executive</u>

Discussion:
The Executive Department provides "direction, coordination, and oversight"[8] for the City as a whole, including Proprietary Fund activities. The Executive Department includes Executive Administrators, Legal, Human Resource, City Clerk, and Emergency Management positions.

Allocation Determination:
The allocation basis is determined by the tasks and duties for each specific position. The allocation basis used for the various positions in the Executive Department are as follows: FTE by fund, council agenda items, operating expenses, number of contracts, risk management, receipts and invoices, public record requests, community support and litigation dollars by fund.

[7] Published by the Federal Office of Management and Budget and available online at www.whitehouse.gov
[8] COBI 2017-2018 Final Budget

Finance and Administrative Services

Discussion:
The Finance department provides support to all City departments and all funds, including Proprietary Funds. In addition to financial reporting, budgeting, accounts payable, payroll, and IT functions, the Finance department manages all utility, LID billings and payments, as well as GIS and mapping maintenance.

Allocation Determination:
The allocation basis is determined by the tasks and duties for each specific position. The allocation basis used for the various positions in the Finance Department include, but are not limited to, the following: FTE by fund, council agenda items, operating expenses, capital projects, public record requests, cash receipts, AP vouchers, LID and utility accounts, long-term debt by fund, map requests and special projects.

Planning and Community Development

Discussion:
The Planning & Community Development department works with land use and construction activities on the Island; administers building, shoreline, environmental, and subdivision regulations; reviews development proposals; performs code enforcement; administers land use applications; prepares and updates long-range plans. A significant portion of PCD effort is related to the B&DS Fund, and the Department is also involved in the development of utility projects.

Allocation Determination:
The allocation basis is determined by the tasks and duties for each specific position. The allocation basis used for the various positions in the Planning Department include, but are not limited to, the following: Land Use Code updates, code enforcement case load, NPDES permit requirements, building and planning permits, shoreline monitoring project, Comprehensive Plan implementation, inspection and observance of on-site construction issues, and related ordinances.

Public Works

Discussion:
The Public Works Department is responsible for acquiring, constructing, operating and maintaining public infrastructure. This includes City-owned utilities. The Administrative division supports the Engineering and Operation and Maintenance (O&M) divisions by providing services such as reporting, grant and contract management, and records management. The Engineering division is primarily responsible for the pre-design, design, and construction of all public improvements and implementation of the capital improvement plan (CIP) adopted by City Council. This includes Proprietary Fund CIP projects. The Engineering Division also directs Development Engineering and the City's Water Resources planning and protection activities. The O&M Division operates and maintains the City's infrastructure, to include; streets, storm drain, water and sewer infrastructure facilities, vehicles, parks and open space.

Allocation Determination:
The Public Works O&M Division uses the work order system and therefore direct charges their hours. The Engineering Division direct charges most of their hours to operating or capital projects. In addition, tasks that are general in nature are allocated based on work order or project

history, and forward looking work plans. Public Works Administrative personnel are allocated based support of capital and operating projects, contracts, right of way expenses, customer support, and development and management support.

Allocating Costs / Surcharge and Rebate

Throughout the year, employees are either direct charging their time to specific projects, tasks or work orders, or their hours are allocated to a department/organization and fund based on that positions allocation factors. At the end of the year, an analysis that compares all direct charged time to that of allocated time by position. If, for a particular position, the direct-charged time differs by more than 3% on a percentage basis by fund from the allocated time, a surcharge or rebate adjusts the totals.

Section Two: Central cost

Insurance

OMB Circular A-87 identifies insurance as an allowable and allocable cost. Allocating insurance expense follows the rule of "beneficiary pays" as long as the allocated costs follow the cost drivers. In a leading practice study, presented by Washington State Auditor's Office Performance Audit, Report No. 1006136, the following factors should be used to allocate insurance expense: number of staff (FTE), claims or loss history, square footage, property values insured, and risk factor.

- City of Bainbridge Island's (COBI) insurance invoice is separated into five "Coverage/Program" areas; Auto Physical Damage, Boiler and Machinery, Crime/Fidelity, Liability, and Property.
- To allocate the costs under each "Coverage/Program," COBI uses three cost drivers. They are as follows: asset value, FTE, and loss history.
    - Asset value – is used to distribute Auto Physical Damage, Boiler and Machinery, and Property Coverage/Program expenses. The asset value by fund is taken from the financial statements from the most current year-end close.
    - FTE – is used to distribute Crime/Fidelity and a portion of the Liability expenses.
    - Loss history – is used to allocate the other portion of Liability expenses. The data is a 5 year history report provided to the City from WCIA.

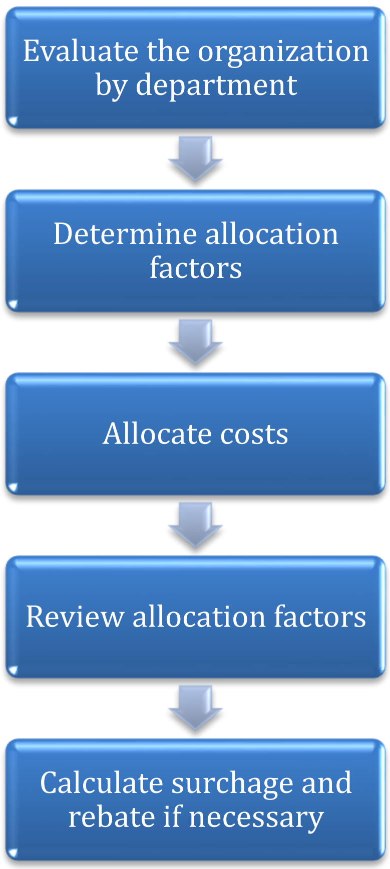
Interfund Rent

OMB Circular A-87 Attachment B Section 37 requires that "less-than-arms-length" rental transactions, such as those between divisions of a governmental unit, are allowable in the same amount as they would be "had title to the property vested in the governmental unit." A-87 specifically states that depreciation is an allowable component of such cost, and it is commonly interpreted as additionally allowing for the interest component of debt service.
COBI uses the following methodology to allocate Interfund Rent:

- For an individual facility (for example, City Hall), the total square footage is identified, and the square footage occupied by each department is identified.
- The square footage for each department is then allocated by FTE in a proportion equal to the ratio of each fund's FTE as a share of that department's total FTE.

- Total square footage by fund is summed across all departments in the facility and expressed as a share of the facility's total square footage. This percentage is then applied to eligible interfund rent expenses
- COBI allocates three types of interfund rent expenses:
    - Interest expense of the bonds associated with the purchase and building of City Hall and the PW Yard.
    - Depreciation expense of assets purchased with General Fund monies used by all personnel, which therefore benefits all funds.
    - A land component is also allocated. The cost of the land is divided by 40, so as to match the 40-year depreciation schedule of the buildings.

Process Overview Summary



COBI's process to complete the cost allocation plan was:

1. Determine funds, departments and object codes that are allocable.
2. Discuss tasks/job duties with each staff member to determine approximately how much time is devoted to completing listed tasks.
3. Based on discussion and job description, determine logical allocation basis.
4. Calculate cost allocation for each position based on answers and data from above.
5. At the end of every year, run actual data for each allocation base.
6. Apply all rebate and surcharge costs accordingly.

Section Three: Roads and Stormwater Facilities Construction and Maintenance Costs

The City Council completed a review of the Storm and Surface Water Utility (SSWM) in 2015 and confirmed the policies for charging various operating costs related to the SSWM facilities, roads, and other City properties. These policies are:

Street Sweeping and Road Maintenance Spoils

City charging practices for roads-related maintenance and spoils disposal has evolved and changed over the years. The following table shows the standing work order charging practice for Public Works O&M labor:

		Spoils Related Work Order Charges			
WO#	WO Type	WO Description	Split	Org	Org Description
14916	Standing	Spoils Hauling	100	73431835	SSWM Maintenance
14917	Standing	Street Sweeping	80/20	73637945	Allocation SSWM/Streets
14963	Standing	Ditching	100	73431835	SSWM Maintenance
14823	Standing	Shoulder Maintenance	100	73111427	Streets Roadside
14964	Standing	Bikelane Sweeping	100	73111423	Streets Roadway

The data in the table indicate that the SSWM utility pays for 100% of City labor for spoils hauling and ditching, as well as 80% for street sweeping. The Streets Fund pays for the labor for shoulder maintenance and bike lane sweeping, as well as 20% for street sweeping. The justification for the charging practice is that street sweeping aids in the maintenance of the stormwater collection system so can appropriately be charged to the SSWM utility.

Fleet Capital Purchases

Fleet equipment purchases for street sweepers will be allocated similarly to the labor costs, i.e., 80% to SSWM and 20% to General Fund (Roads).

Water Quality and Flow Monitoring Program

The Water Quality and Flow Monitoring Program (WQFMP) helps the City implement National Pollutant Discharge Elimination System (NPDES) permit monitoring requirements and directs and informs pollutant source identification efforts outlined in the Illicit Discharge Detection and Elimination (IDDE) program. The primary goal of the WQFMP is to develop and implement a long term comprehensive monitoring program that will identify water quality and water flow problems in freshwater and marine nearshore environments. The WQFMP also defines thresholds for initiation of management responses in support of the City's efforts to protect and restore beneficial uses associated with water quality on Bainbridge Island.

At the July 12th, 2016 Council Meeting, Council approved the WQFMP costs to be funded by 50% General Fund, 40% Stormwater Fund, and 10% Water Fund.

Groundwater Management Program

Groundwater is the sole source of drinking water on Bainbridge Island. Therefore, it's essential to have a thorough understanding of the island's complex aquifer system through scientific study and long-term monitoring. At present, the city collects monthly water level data and annual chloride measurements from approximately 30 wells on the Island at various locations. Water level data is used to help assess the quantity of water in different aquifers, and the chloride data is an indicator of seawater intrusion.

City Policy is the Groundwater Program be entirely funded by the General Fund.

Kitsap Conservation District Farm Assistance

The City currently has over 1,400 acres of agricultural lands. Many of these farms are required to establish and implement farm plans in accordance with provisions in the City's Municipal Code. The City and the Kitsap Conservation District (KCD) share a common goal to promote Best Management Practices to protect water quality, provide education to landowners regarding agricultural impacts and support the use of Low Impact Development practices. Well-designed conservation practices increase farm productivity while protecting water quality and reducing soil erosion. KCD has the expertise and experience to provide Farm Plans to meet the requirements of Bainbridge Island Municipal Code Section 18.09.030 and provide assistance on land management activities and their impacts on natural resources. In providing these services, KCD assists with compliance of the City's NDPES permit, including assistance with the IDDE Program and education/outreach.

The value of the annual contract with the KHD has been approximately $40,000, and an annual analysis of program tasks by city staff has determined that approximately 50% of the activities under the program tasks support water quality benefits. Therefore, the SSWM utility will pay 50% of the KHD billing under this agreement, and the General Fund will pay 50%.

Roads and SSWM Capital Improvement Projects

City Ordinance 2012-06 exempted City-owned rights-of-way from payment of SSWM fees. The justification for this charging methodology under Section 2.A. of the ordinance was that City streets were responsible for contributing at least $27 million in stormwater infrastructure over and above what would be needed for just street runoff.

In order to continue this exemption from stormwater fees for City streets, all future stormwater infrastructure required in the construction or improvements of City streets, or non-motorized facilities as part of or separate from City streets, will be paid by the General Fund. This includes the construction of collection and piping systems that replace existing drainage ditch systems.

Costs for repair and replacement of existing stormwater systems that were constructed as part of the City streets, including culverts, will be paid by SSWM utility funds.

Allocation Information by Department

The following pages allocation factors for each position in departments in which cost allocation applies to personnel costs.

Departments shown

- Executive
- Finance & Administration
- Planning and Community Development
- Public Works

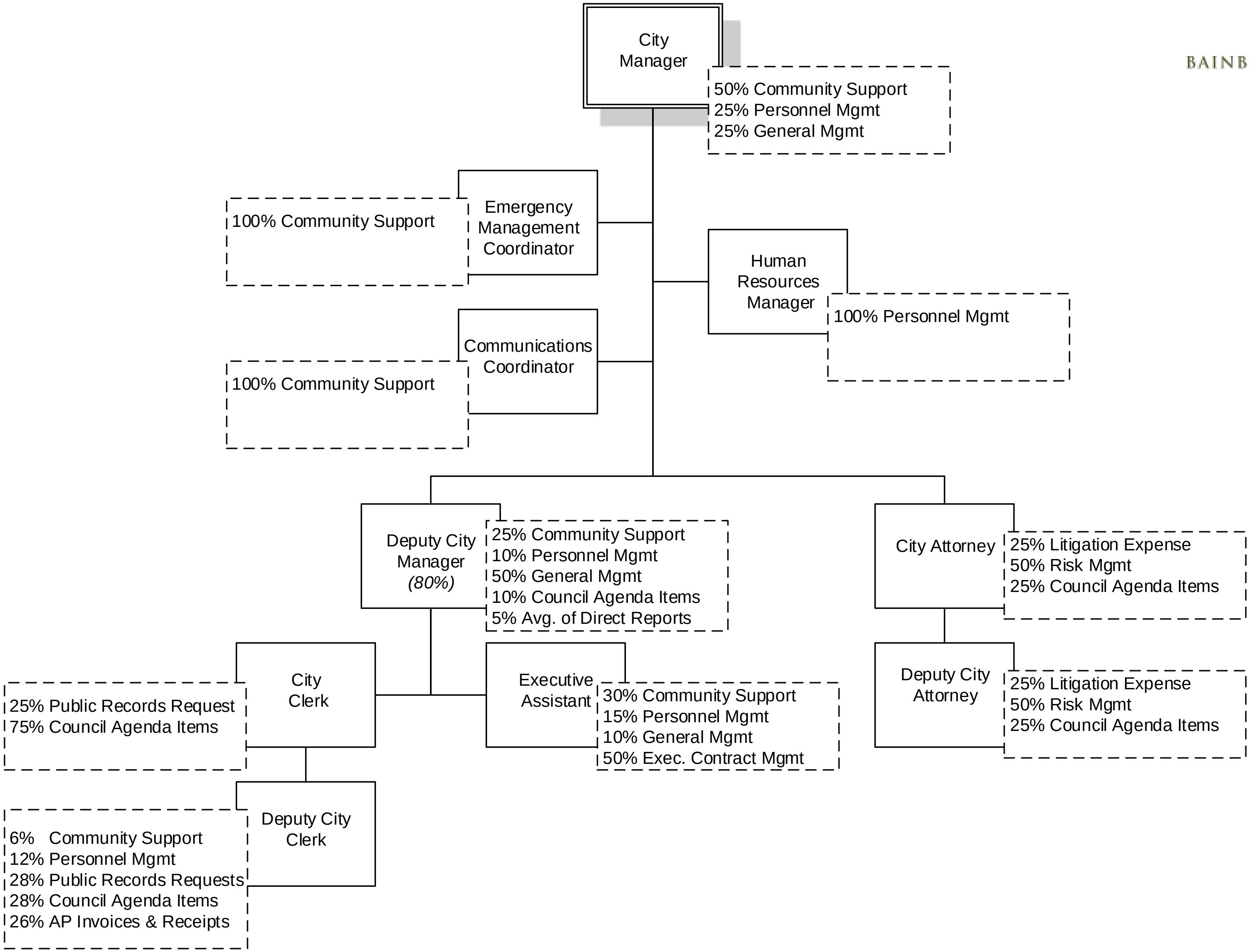
Departments not shown because their costs are entirely supported by the General Fund

- City Council
- Municipal Court
- Public Safety

Numerical Allocations Used		
Basis	**Data**	**Description**
Community Support	100% General Fund	Community Support
FTE by Fund	Average of Hours Worked 2015-2017	Personnel Mgmt
General Mgmt	Average of operating costs 2015-2017	General Mgmt
Council Agenda Items	Agenda Items evaluated and assigned by Fund 2017	Council Agenda Items
Public Records Request	Requests evaluated and assigned by Fund 2017	Public Records Request
Litigation Expense	Average of Legal Costs 2015-2017 by Fund	Litigation Expense
Risk Mgmt	Average of Costs Incurred 2015-2017	Risk Mgmt
Exec Contract Mgmt	Average Contract Amounts for Executive 2015-2017	Exec Contract Mgmt (100% General Fund)
Contract Mgmt	Average Contract Amounts 2015-2017	Contract Mgmt
AP Invoices	Average of invoice count 2015-2017	AP Vouchers
Receipts	Average of receipt count 2015-2017	Receipts
Avg of Direct Reports	Average of direct reports to a Manager	Avg of Direct Reports
UB Customers	Average of Number of accounts 2015-2017	Utility Billing
Operating Projects	Average of Operating Project Costs 2015-2017	Operating Projects
Capital Projects	Average of Capital Project Costs 2015-2017	Capital Projects
Long Term Debt	Average of Debt Service	Long Term Debt
General Customer Service	100% General Fund	Business Management
Utility Tax	100% General Fund	Utility Tax

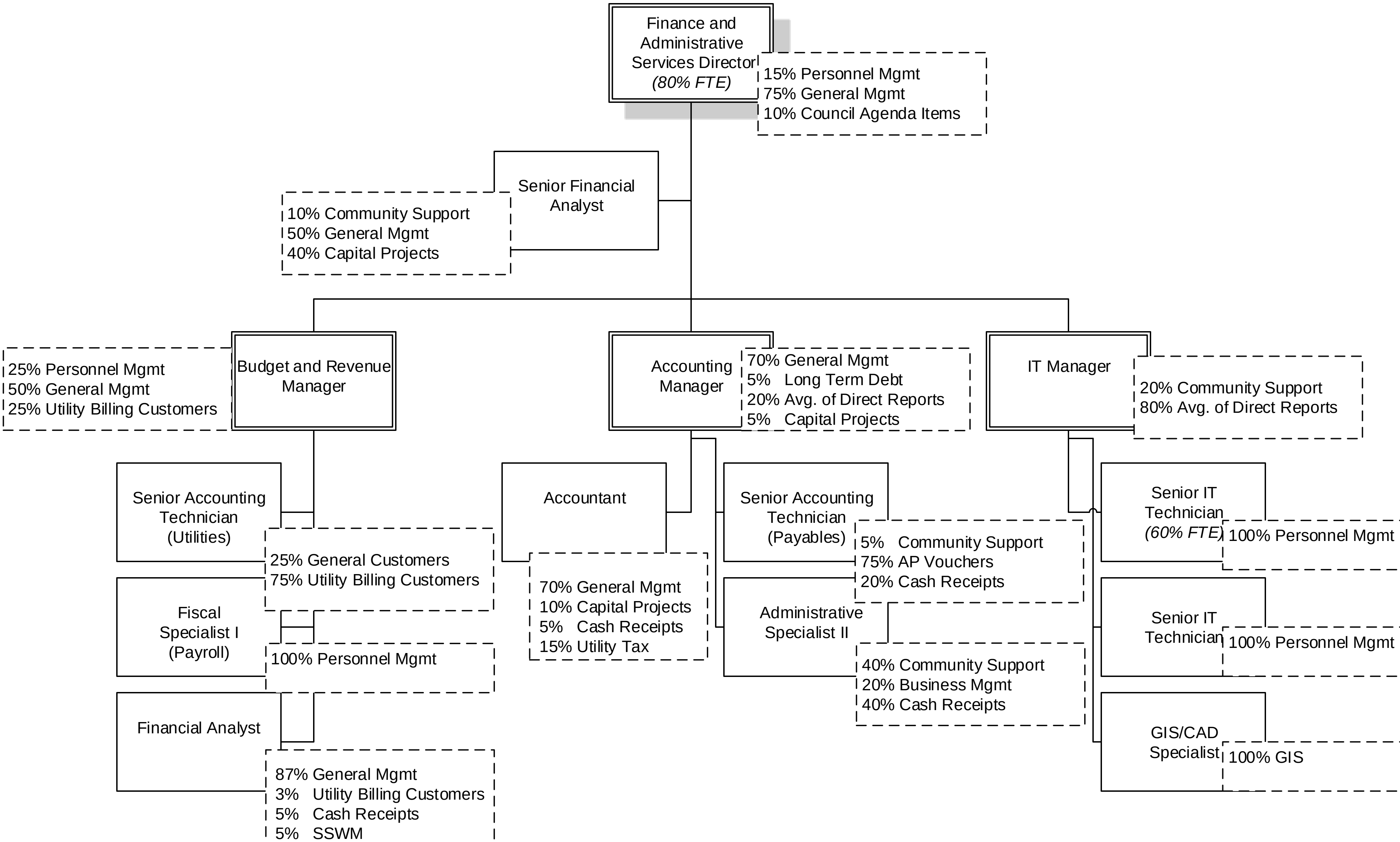
City of Bainbridge Island

Executive



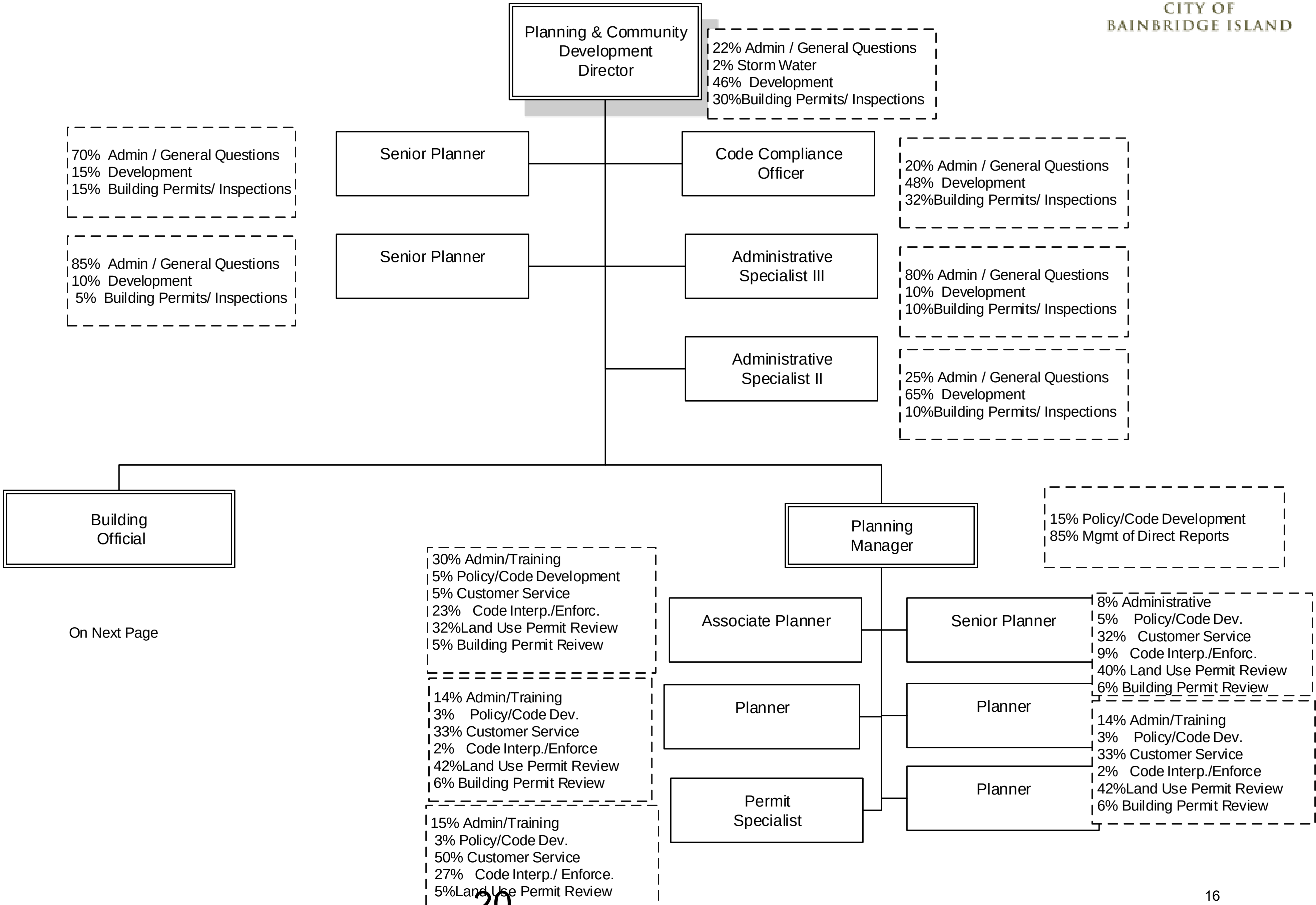
City of Bainbridge Island

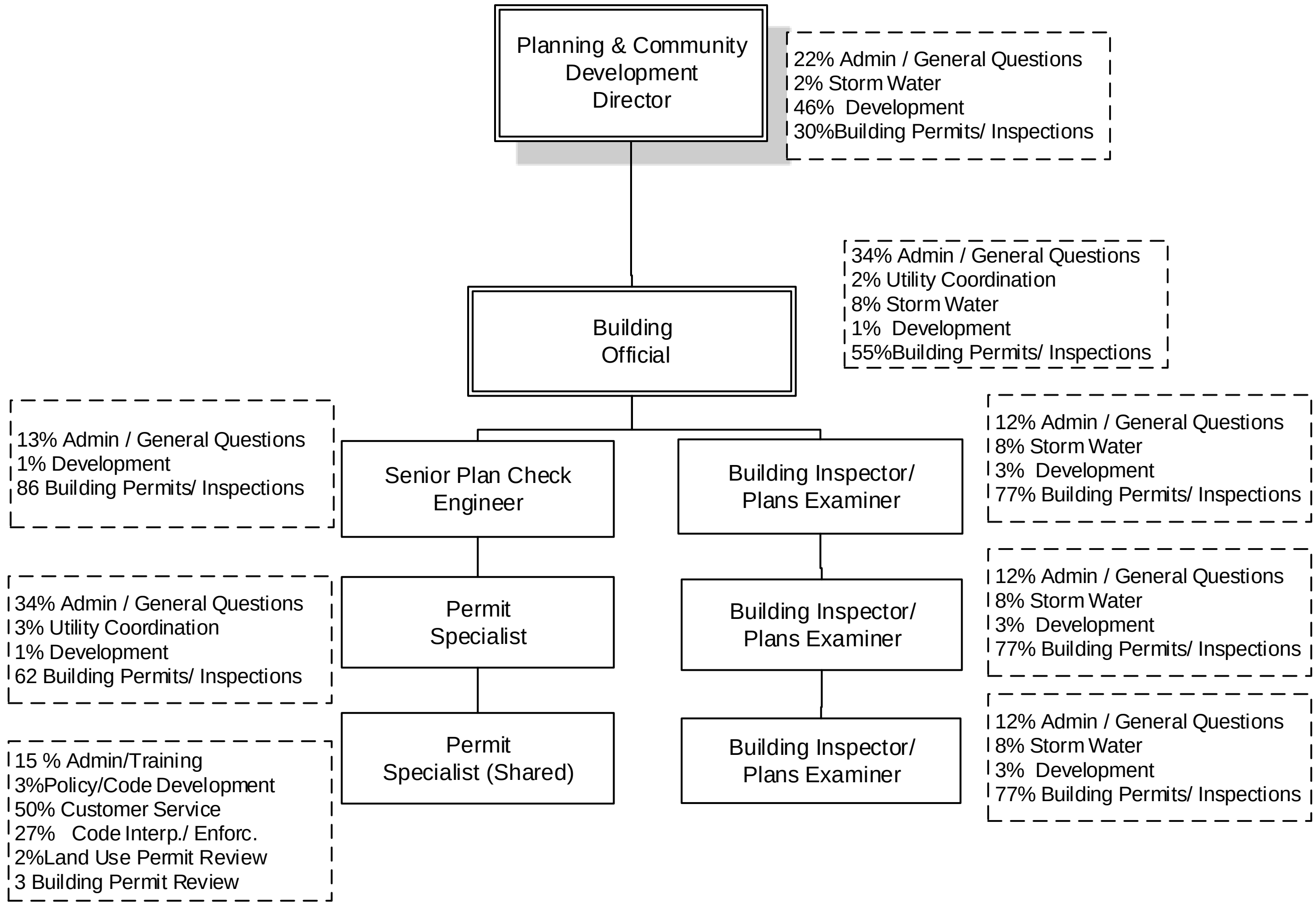
Finance & Administrative Services



City of Bainbridge Island

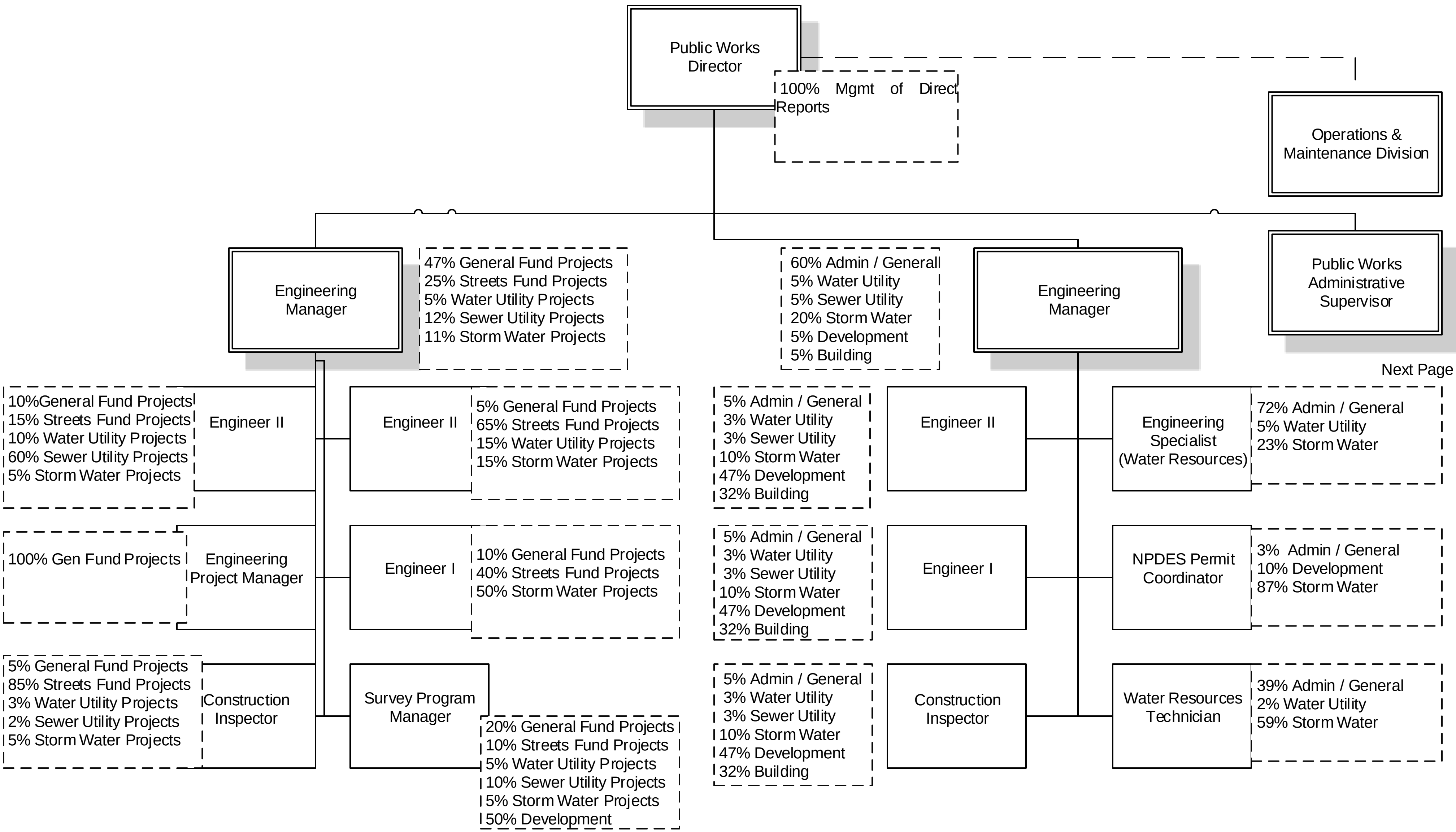
Planning & Community Development

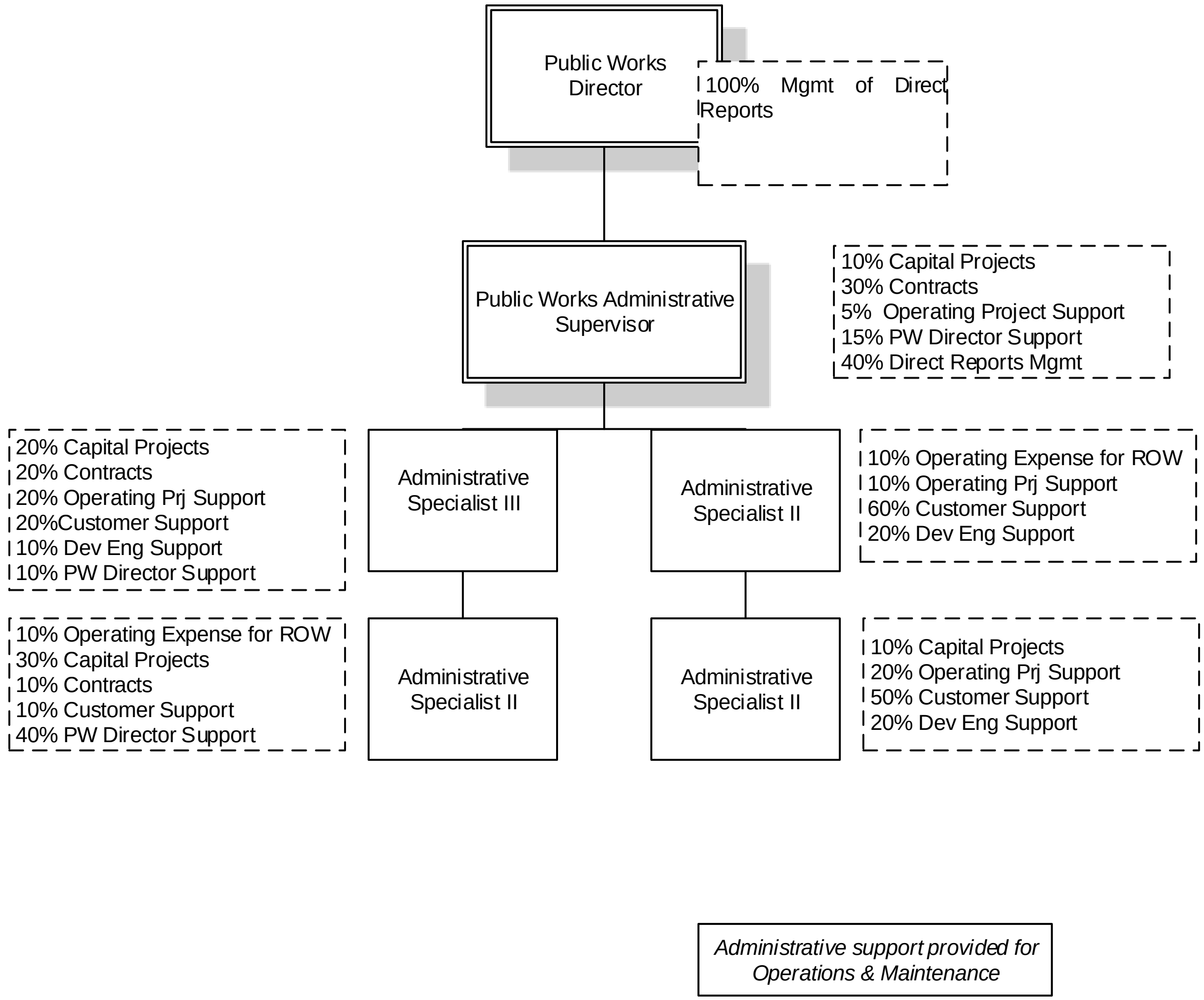



Planning & Community Development Director
22% Admin / General Questions
2% Storm Water
46% Development
30%Building Permits/ Inspections
Building Official
34% Admin / General Questions
2% Utility Coordination
8% Storm Water
1% Development
55%Building Permits/ Inspections
13% Admin / General Questions
1% Development
86 Building Permits/ Inspections
Senior Plan Check Engineer
Building Inspector/ Plans Examiner
12% Admin / General Questions
8% Storm Water
3% Development
77% Building Permits/ Inspections
34% Admin / General Questions
3% Utility Coordination
1% Development
62 Building Permits/ Inspections
Permit Specialist
Building Inspector/ Plans Examiner
12% Admin / General Questions
8% Storm Water
3% Development
77% Building Permits/ Inspections
15 % Admin/Training
3%Policy/Code Development
50% Customer Service
27% Code Interp./ Enforc.
2%Land Use Permit Review
3 Building Permit Review
Permit Specialist (Shared)
Building Inspector/ Plans Examiner
12% Admin / General Questions
8% Storm Water
3% Development
77% Building Permits/ Inspections

City of Bainbridge Island

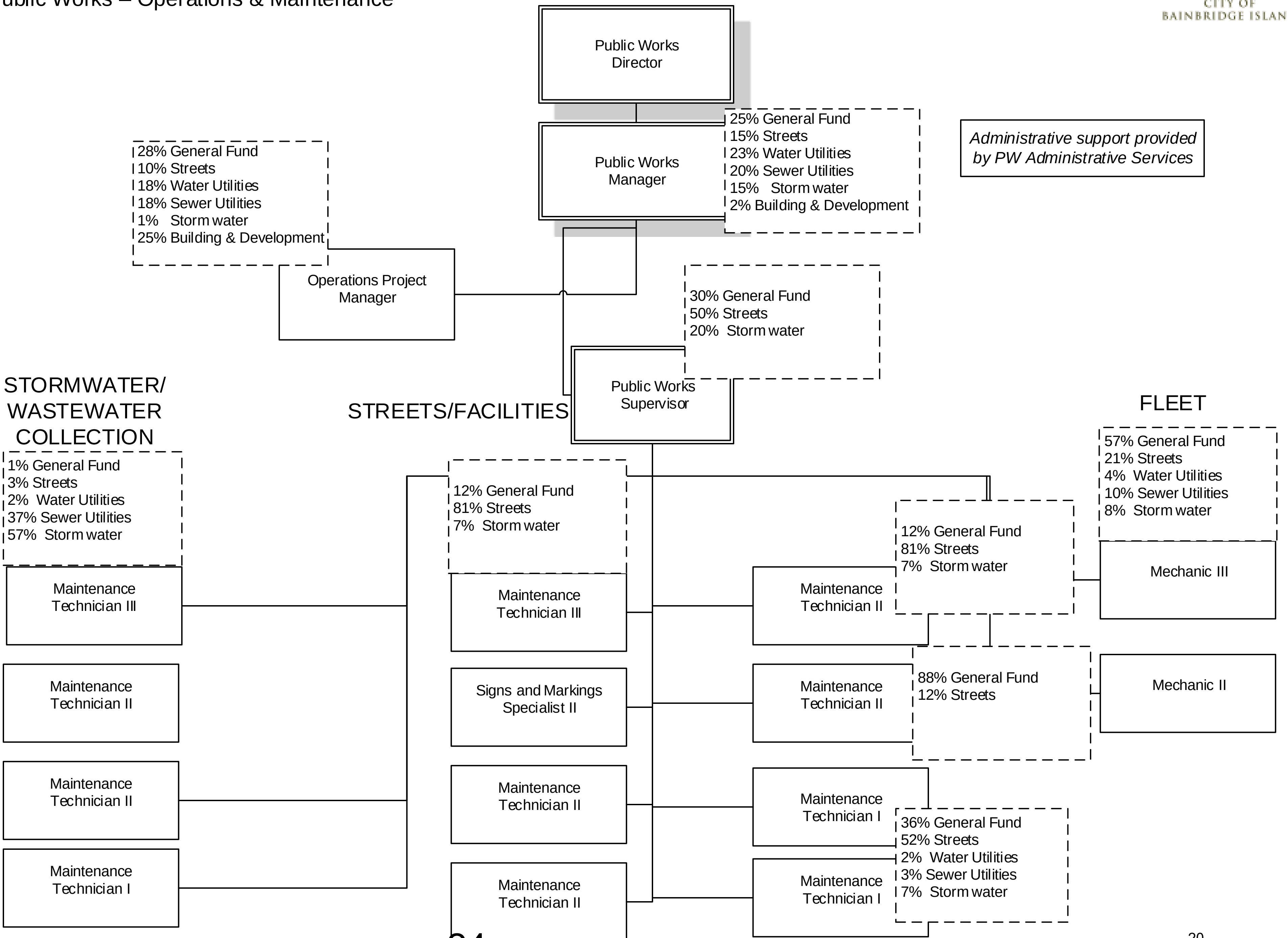
Public Works - Engineering

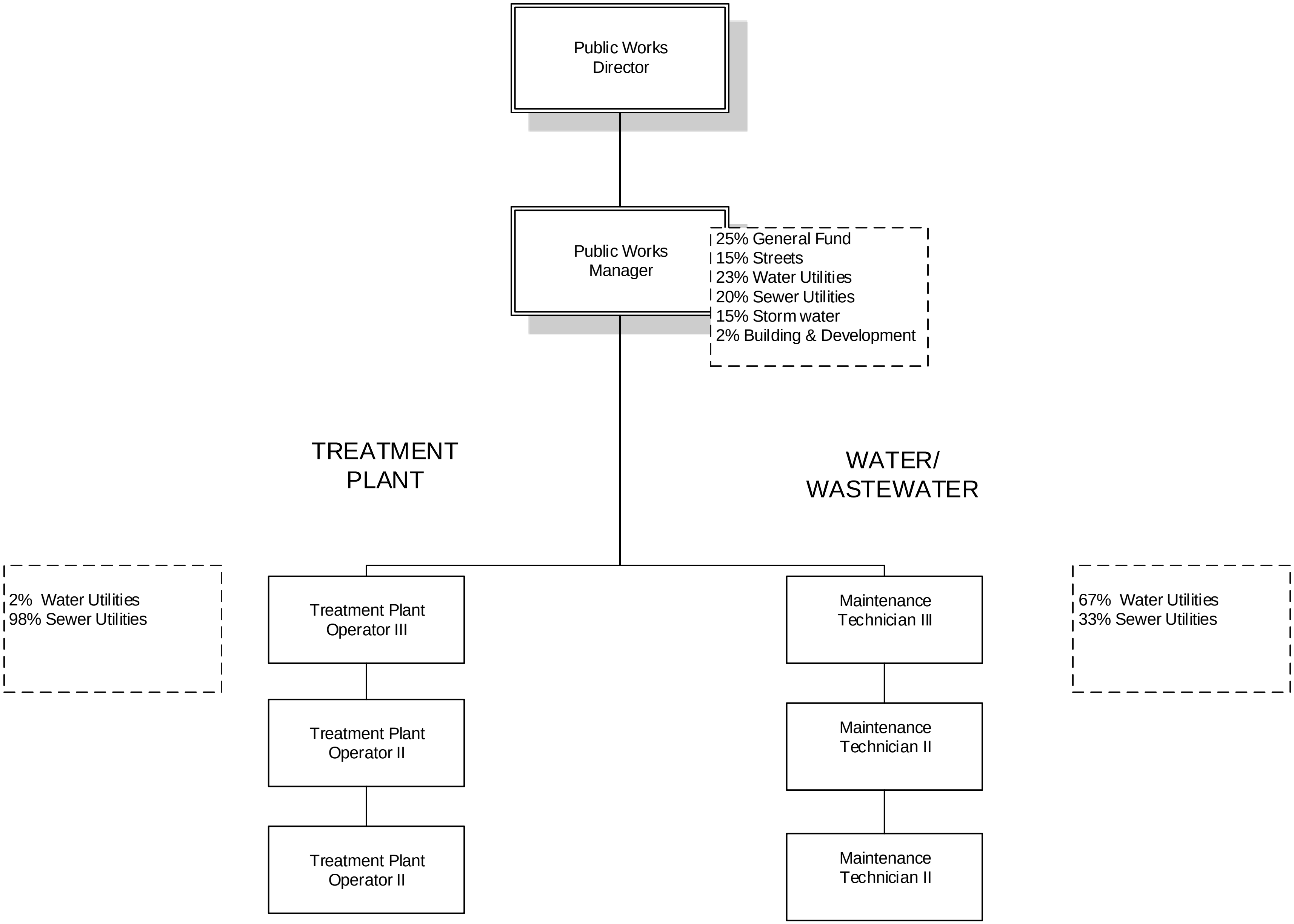



Public Works Director
100% Mgmt of Direct Reports
Public Works Administrative Supervisor
10% Capital Projects
30% Contracts
5% Operating Project Support
15% PW Director Support
40% Direct Reports Mgmt
20% Capital Projects
20% Contracts
20% Operating Prj Support
20%Customer Support
10% Dev Eng Support
10% PW Director Support
Administrative Specialist III
Administrative Specialist II
10% Operating Expense for ROW
10% Operating Prj Support
60% Customer Support
20% Dev Eng Support
10% Operating Expense for ROW
30% Capital Projects
10% Contracts
10% Customer Support
40% PW Director Support
Administrative Specialist II
Administrative Specialist II
10% Capital Projects
20% Operating Prj Support
50% Customer Support
20% Dev Eng Support
Administrative support provided for Operations & Maintenance

City of Bainbridge Island

Public Works – Operations & Maintenance




Public Works Director
Public Works Manager
25% General Fund
15% Streets
23% Water Utilities
20% Sewer Utilities
15% Storm water
2% Building & Development
TREATMENT PLANT
WATER/ WASTEWATER
2% Water Utilities
98% Sewer Utilities
Treatment Plant Operator III
Treatment Plant Operator II
Treatment Plant Operator II
Maintenance Technician III
Maintenance Technician II
Maintenance Technician II
67% Water Utilities
33% Sewer Utilities

CITY OF
BAINBRIDGE ISLAND

COST ALLOCATION MANUAL

JUNE 12, 2018

JAN - MARCH

Overview of process
Financial policies
Priority-Based Budgeting (PBB)

APRIL

Cost allocation methodology overview
Community Services funding review

JUNE

Approval of cost allocation plan
Capital Improvement Plan (CIP) overview

AUGUST

Initial revenue and expense trend forecasts for 2019-2020

Water and sewer utility rates

SEPTEMBER

2019-2024 CIP approved by Council

2019-2020 Proposed Budget delivered to Council

OCT/NOV

Budget discussions

Property tax levy

NOV/DEC

2019-2020 Adopted Budget approved by Council

What is Cost Allocation?

- Cost allocation provides a uniform method of funding and charging shared costs across projects, funds and departments
- Allocated costs represent $16.7M, or 64% of the operating budget
- Represents policy choices to share costs fairly

Cost Allocation at the City of Bainbridge Island - Context

- Community and Council area of interest
- Participant in statewide Performance Audit (2009-2011)
- Current methodology based on plan developed by outside consultant
- Ongoing focus for City budget team
- Part of budgetary framework

Cost Allocation 2019-2020

Costs we allocate

- Personnel
  - *For allocated positions: distribution by Fund*
  - *For other positions: 100% General Fund*
- Insurance
  - *Distribution by fund based on asset value, FTE and loss history*
- Interfund rent
  - *Distribution by fund based on square footage and FTE*

Salary and benefit allocations –
Budgeted FTE by fund for 2019-2020

Fund	Budgeted FTE
General Fund	63.3
Streets Fund	11.8
Building and Development Services Fund	20.9
Water Fund	5.1
Sewer Fund	9.7
SSWM Fund	8.6

Allocation Overview Personnel

- ❖ Results
  - *Shift towards General Fund in Executive and Finance*
  - *Shift towards Building and Development Services and away from General Fund in PCD due to shift from development to implementation of Comprehensive Plan*
  - *Additional hours seen in Water and Sewer Utilities due to cross training and increased customer base*
  - *Reduction in SSWM due to fewer capital projects*
- ❖ Review of actuals against budget for employees who complete work orders and charge time to projects

Shared cost allocations –
Budgeted distribution by fund for 2019-2020

Fund	Interfund Rent	Insurance
General Fund	41%	45%
Streets Fund	14%	14%
Building and Development Services Fund	22%	16%
Water Fund	4%	4%
Sewer Fund	9%	14%
SSWM Fund	10%	7%

Budget Process – steps related to cost allocation

- ✓ Overview of cost allocation methodology
- ✓ Staff: update plan using data through 2017; prepare cost allocation manual (April – May)
- ❖ Council: review and approve cost allocation manual (June)
- ❖ Staff: apply approved methodology to applicable costs to develop budget

QUESTIONS?

DISCUSSION

Guiding policies

- Governmental Accounting Standards Board (GASB)
  - *Concept Statement No. 1*
- OMB Circular A-87 Revised
  - *Establishes standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements.*
- Washington State Auditors Office (SAO)
  - *The "beneficiary pays" principle provides a foundation for leading practices in cost allocation*
- COBI Resolution 2009-34 Section 5.2
  - *States "the beneficiary of the service pays the cost of that service…" unless the City Council has determined that the service provides a general public benefit*

Leading practices per state auditors office (SAO)

- Reflect overhead cost to be allocated
  - *Include relevant, up-to-date information*
  - *Use factors that equitably allocate central overhead costs*
  - *Allocate overhead to all benefiting funds and departments*
  - *Ensure general government costs or questionable costs are charged entirely to the general fund*
- Properly charge department or fund
  - *Only charge after services are provided*
  - *Only charge for actual costs*
- Maintain appropriate documentation
  - *Be able to demonstrate allocation basis*

Current practice at COBI

- City currently allocates:
  - *Some personnel costs (salaries and benefits)*
  - *Interfund rent*
  - *Insurance*
  - *Minor non-labor expenses*
- Seeks quantitative basis whenever possible
- Uses different factors/formulas for different functions
- Is applied consistently across all funds
- Is updated with each budget cycle to reflect actual results
- Is well-documented

Salary and benefit allocations

- *Public Works*
  - Some direct charges and some allocations
- *Planning and Community Development, Executive, Finance and Administrative Services*
  - Mostly allocated
- *City Council, Municipal Court, Public Safety*
  - Direct charge entirely to the General Fund

Shared services

- ❖ Insurance and Interfund Rent
  - o *Interfund Rent allocation is based on two factors*
    - ➢ What share of total square footage is used by each department
    - ➢ Within each department, what share of FTE belongs to each fund
  - o *Insurance allocation uses three weighted factors*
    - ➢ Asset value
    - ➢ FTE by fund
    - ➢ 5-year loss history by fund
  - o *Details of allocation method for both items can be found in the Cost Allocation Manual Section Two*

Shared costs by both Streets and Stormwater Funds

- Maintenance
- Fleet Capital Purchases
- Water Quality and Flow Monitoring Program
- Kitsap Conservation District Farm Assistance
- Roads and SSWM Capital Improvement Projects

Salary and benefit allocations – *Budgeted FTE by fund for 2019-2020*

Department	FTE	General Fund	Streets Fund	Water Fund	Sewer Fund	SSWM Fund	B&DS Fund
Municipal Court	4.85	4.85	-	-	-	-	-
Executive	9.80	7.46	0.55	0.22	0.40	0.32	0.86
Finance	13.40	7.55	1.24	1.12	1.62	0.82	1.05
Public Safety	28.35	28.35	-	-	-	-	-
Planning & Community Development	20.00	4.60	0.00	0.02	0.02	0.33	15.03
Public Works	43.00	10.50	10.03	3.73	7.65	7.17	3.92
TOTAL	119.40	63.30	11.82	5.09	9.69	8.64	20.85

City of Bainbridge Island
City Council Agenda Bill

PROCESS INFORMATION	
Subject: 6:20 PM Ordinance No. 2018-21 Amending Chapter 5 of the Bainbridge Island Municipal Code Related to Business Licenses, AB 18-102 - Finance (Pg. 45)	Date: 6/12/2018
Agenda Item: NEW BUSINESS	Bill No.: AB 18-102
Proposed By: Ellen Schroer, Director of Finance and Administrative Services	Referrals(s):

BUDGET INFORMATION		
Department: Finance	Fund:	
Expenditure Req:	Budgeted?	Budget Amend. Req?

REFERRALS/REVIEW		
:	Recommendation:	
City Manager:	Legal: Yes	Finance:

DESCRIPTION/BACKGROUND

Action Item:

Consider ordinance updating Chapter 5 of the Bainbridge Island Municipal Code relating to business licenses.

Background:

In 2017, the Washington state legislature passed Engrossed House Bill (EHB) 2005, which is intended to simplify the administration of municipal general business licenses for the applicants and improve the business climate. There are three required actions, including that all cities with business licenses administer their business licensing through the state's business license system (BLS) by 2027 or through the FileLocal system by 2020.

The City of Bainbridge Island requires business licenses for most businesses, as provided by Chapter 5 of the Bainbridge Island Municipal Code. In accordance with EHB 2005, the City has been working with the State of Washington to move administration of the City's business licenses to the state business license system (BLS). Our transition is slated for July of 2018.

The attached ordinance brings the BIMC into alignment with BLS business practices and is part of the City's compliance with the required changes.

Anticipated results of working with BLS include:

- A simplified process for businesses with locations in more than one jurisdiction as they can apply for all business licenses needed via one online location.
- A change from a calendar year license (Bainbridge Island current practice) to a rolling 12-month license (State of Washington practice).
- Elimination of a one-hour additional fee at time of application for marijuana businesses that is not supported by BLS.
- Elimination of the civil penalty for late payments. Instead, BLS imposes a delinquency fee.

RECOMMENDED ACTION/MOTION
I move to forward Ordinance No. 2018-21, amending Chapter 5 of the Bainbridge Island Municipal Code, for approval with the June 26, 2018, Consent Agenda.

ATTACHMENTS:

	Description	Type
🗋	Ordinance No. 2018-21	Ordinance
🗋	MRSC Background for 2017 business license legislation	Backup Material

ORDINANCE NO. 2018-21

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to business licenses and amending Chapters 5.04, 5.12, 5.16, 5.24, 5.28 and 5.40 of the Bainbridge Island Municipal Code (BIMC) to update items in accordance with the State of Washington business license system requirements.

WHEREAS, the City of Bainbridge Island requires certain businesses to obtain business licenses; and

WHEREAS, Engrossed House Bill (EHB) 2005 was passed by the Washington State Legislature with an effective date of July 23, 2017; and

WHEREAS, EHB 2005 is intended to simplify the administration of municipal general business licenses for the applicants and improve the business climate; and

WHEREAS, EHB 2005 requires that all cities with business licenses administer their business licensing through the state's business license system (BLS) by 2027 or through the FileLocal system by 2020; and

WHEREAS, the City of Bainbridge Island will administer its business licensing through BLS starting in 2018; and

WHEREAS, the BLS has requested changes to the BIMC to align with BLS business practices.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 5.04 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

5.04.010 Purpose.

The provisions of this chapter are an exercise of the police and taxation powers of the city to license for revenue purposes and to govern the privilege of engaging in business in the city.

5.04.020 Definitions and presumption.

A. This chapter incorporates by reference all definitions set forth in Chapter 82.04 RCW, hereafter amended, except where a conflicting definition is stated in this chapter.

B. "Director" means the director of finance and administrative services for the city.

<u>**C.** "Business Licensing Service" or "BLS" is the office within the Washington State Department of Revenue providing business licensing services to the city</u>.

~~C.~~**D.** Businesses or persons soliciting business within the city or using either a business telephone number or business address within the city shall be presumed to be engaged in business within the city.

5.04.030 License required.

Every person who engages in business activities within the city ~~shall apply for~~ must obtain ~~from the director~~ a city business license for the privilege of engaging in business within the city ~~for each calendar year or portion thereof~~. The fee for the business license shall be in the amount established by resolution of the city council. No person shall engage in any business for which a business license is required under this chapter without being so licensed, regardless of the amount of income received, except as otherwise provided in this title.

5.04.040 License – Application and issuance.

A. Business licenses must be obtained and the fee paid before a business commences operation within the city. The license fee shall be considered delinquent if not paid when due.

B. The business license required by this chapter shall expire on ~~December 31st of the year for which it is issued~~ the date established by the Business Licensing Service, and must be renewed on or before that expiration date. ~~A new license shall be required for each year and the fee paid on or before the last day of February.~~

C. Applications for business licenses ~~shall be made to and issued by the finance director on forms provided by the city, which shall state the residence of the applicant, the nature of each business activity in which the applicant desires to engage, and the place where the applicant proposes to conduct its business~~ must be submitted to the Business Licensing Service through the online license application or on a business license application form provided by BLS and must include all fees due, including the city license fee, the BLS handling fee required by RCW 19.02.075, and all fees for other licenses being requested on the application. The application information will be forwarded to the city for review. If the director finds that the application is complete and correct, that all required fees have been paid, and all laws and requirements have been complied with, the business license shall be ~~issued~~approved for issuance through BLS.

D. The director shall, when appropriate, refer applications to the department of planning and community development, the department of public safety, the Bainbridge Island Fire Department, and other governmental agencies for their review.

~~E. Multiple business activities under common ownership may be conducted under a single license.~~

~~F.~~**E.** Neither the filing of an application for a license, or the renewal thereof, nor the payment of any application or renewal fee, shall authorize a person to engage in or conduct a business until such license has been granted or renewed.

5.04.045 State marijuana license required for any marijuana business.

~~**A.** Businesses that are subject to the requirements of Chapter 314-55 WAC for marijuana businesses shall first obtain a valid business license (UBI Number) issued by the state of Washington under the aforesaid chapter before obtaining a city of Bainbridge Island business license or conducting a marijuana business in the city.~~

~~B.~~**A.** Marijuana businesses subject to the requirements of Chapter 314-55 WAC ~~Applicants~~applying for a city of Bainbridge Island business license must ~~provide the city a copy of the~~have obtained a marijuana business license issued by the Washington State Liquor Control Board pursuant to ~~WAC~~Chapter 314-~~03~~55 WAC prior to ~~issuance~~approval of ~~a~~the city business license. For annual renewals of the city business license for operation of a marijuana business, the business must ~~provide a copy~~continue to hold a valid marijuana license issued by the Washington State Liquor Control Board pursuant to Chapter 314-55 WAC to receive the city's approval of the business' city business license renewal application.

~~**C.** In addition to the standard business license fee, an application fora marijuana business license shall be accompanied by a one-hour fee, pursuant to the fees adopted under BIMC 1.28.035, to cover the city's additional relevant costs, including but not limited to coordination with the state, and research regarding required land use and distance separations.~~

~~D~~B. No person shall be deemed to have any entitlement or vested right to licensing under this chapter by virtue of having received any prior license or permit from the city, including, by way of example, any zoning permit, medical marijuana license, wholesale food manufacturer's license, or any other license. In order to lawfully engage in the business of producing, processing or selling recreational marijuana in the city, a person must qualify for and obtain a license in accordance with this chapter and Chapter 314-55 WAC.

~~E~~C. Prior to the city's issuance of the business license herein, the applicant shall obtain other required permits related to the operation of the business, including, without limitation, any development approvals or building permits required by this code, the building code and the zoning code and by BIMC 18.09.030.K.

~~F~~D. Upon receipt of a completed business license application, the city may circulate the application to all departments of the city to determine whether the application is in full compliance with all applicable laws, rules and regulations. By way of illustration and not limitation, these departments may include the city of Bainbridge Island department of community development, the Bainbridge Island fire department, and the Bainbridge Island police department.

~~G~~E. The city may, prior to issuance of the license, perform an inspection of the proposed licensed premises to determine compliance with any applicable requirements of this section or other provisions of the Bainbridge Island Municipal Code.

5.04.050 License – Nontransferable.

The business license issued under this chapter shall be personal and nontransferable and shall at all times be posted in the place of business for which it is issued. Where a licensee's place of business is changed, the licensee must notify the Business Licensing Service regarding issuance of~~shall return the license to the director and~~ a new license ~~shall be issued~~for the new place of business~~ without charge~~. A change of business location may require submission of a new business license application and payment of the respective fees. The city will be informed of the change of location and will review the new location before issuance of a new license. No licensee shall allow another person to operate a business under, or display, the license, nor shall another person operate under or display the license.

5.04.055 Standards of conduct.

Every licensee under this chapter shall:

A. Permit reasonable inspections of the business premises by governmental authorities for the purpose of enforcing the provisions of this chapter;

B. Comply with all federal, state, and city statutes, laws, ordinances, and regulations relating to the business premises and the conduct of the business thereon;

C. Refrain from unfair or deceptive acts or practices, or consumer fraud, in the conduct of the business and avoid maintaining a public nuisance on the business premises;

D. Refrain from operating the business after expiration of a license or during the period that the license may be suspended or revoked.

5.04.060 License – Suspension, denial or revocation.

A. A business license may be suspended, denied, or revoked by the city without notice for any of the following causes:

1. The licensee or any of its officers, directors, agents, or employees while acting within the scope of their duties has violated or failed to keep the building, structure, or equipment of the licensed premises in compliance with applicable health, building, fire, or safety laws, ordinances, or regulations;

2. The licensee or any of its officers, directors, agents, or employees while acting within the scope of their duties has violated or failed to comply with the standards of conduct specified in this chapter;

3. The license was procured by fraud or false representation of fact;

4. The licensee or any of its officers, directors, agents, or employees has been convicted of a crime involving the business;

5. The license was issued through mistake or inadvertence.

B. A business license may be revoked on 20 days' written notice to the licensee where the licensee fails to pay the annual license fee applicable business and occupation tax, together with any penalties due thereon, within six months after the fee or tax is due and owing. ~~The licensee shall have the right to full~~After revocation, reinstatement of the business license requires submitting a new application through the Business Licensing Service, ~~if, within 10 days of such revocation, the licensee pays~~and also requires payment of all past amounts due and owing.

C. Upon suspension, denial or revocation of a license, the director shall, by certified mail, give written notice of such action to the applicant or licensee, including a written report summarizing the complaints, objections, and/or information received and considered by the director and further stating the reason for the action. Notice mailed to the mailing address on the application or most recent renewal shall be deemed received three days after mailing. Appeal of the director's decision shall follow the appeal procedures set forth in this chapter.

5.04.070 License – Multiple locations.

If business is transacted by one person at two or more separate locations within the city, a separate license shall be obtained and displayed in each location at which business is transacted.

5.04.075 License – Multiple businesses at the same location

A. Multiple business activities under common ownership and conducted at the same physical location may be conducted under a single license.

B. Except as provided in subsection A of this section, if more than one business is operated at the same location, each person operating a separate business must obtain and display their own license for their respective business at that location

5.04.080 Exempt activities.

The following activities shall be exempt from the licensing provisions of this chapter:

A. The exercise of governmental functions performed by any instrumentality of the United States, the state of Washington, or any political subdivision thereof;

B. Farmers or gardeners selling their own farm products raised and grown exclusively upon lands owned or occupied by them;

C. Garage sales conducted on residential premises in compliance with this code;

D. The mere delivery of goods or services to the customer or client by businesses where the sale occurred on business premises outside of the city, and was the only event occurring within the city except that the performance of contracting or subcontracting services is not an exempt activity; or

E. Any business activity which is owned and operated solely by a person under the age of 18, and which does not generate a gross income of more than $2,500 per year.

5.04.090 Payment of license fees.

A. There shall be a license fee imposed for the privilege of doing business as set by resolution of the city council.

B. Payment of the fee imposed by this chapter shall be due on or before the commencement of business and ~~renewed on or before the last day of February of each successive year~~for renewal of the license on or before the expiration date of the license.

C. On or before the due date, every person required to pay a license fee or a tax as set forth by this chapter shall file a license renewal with the Business Licensing Service, or, for taxes, ~~with the city~~a written return with the city upon such form and including such information as the director shall require, together with the payment of the amount of the ~~fee~~tax.

D. Nonprofit activities carried on by religious, charitable, educational, benevolent, fraternal, or social organizations which have been determined by the Internal Revenue Service of the United States to be exempt from the payment of income tax shall be exempt from the license fee.

5.04.190 License – Fee additional to others.

The license imposed and levied by this chapter shall be in addition to any license fee or tax imposed or levied under any law or other ordinance of the city, except as otherwise expressly provided.

5.04.200 License fee – Collection.

The license fee imposed by this chapter, and all penalties assessed thereon by the city, shall constitute a debt to the city, and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies. Any judgment entered in favor of the city shall include an award to the city of all court and collection costs including attorneys' fees. Amounts delinquent more than 90 days may be assigned to a third party for collection, in which case the amount of any collection charges shall be in addition to all other amounts owed. Amounts due shall not be considered paid until the city has received good funds for the full amount due or has discharged the amount due and not paid.

5.04.210 Over or underpayment of fees.

In the event that any person makes an overpayment, and within two years of the date of such overpayment makes application to the city for a refund or credit, the person's claim shall be allowed and a refund made by the city upon determination by the director that no other sums are owed by the person to the city. If a person determines that the fees have been underpaid and without notice by any party pays the amount due to the city, the amount underpaid and corrected by the person shall not be subject to a city penalty.

5.04.220 Appeal procedure.

A person who has had a license suspended, denied, or revoked or who has been aggrieved by the amount of the license fee determined to be due to the city by the director under the provisions of this chapter may appeal to the city council from such determination by filing a written notice of appeal with the city clerk within 20 days from the date on which such person is given notice of the license fee. The city council or a committee of the city council shall, as soon as practicable, fix a time and place for the hearing for such appeal. Notice of the hearing shall be given to the appellant by certified mail at least five days prior to the date of the hearing. The licensee may appear at the hearing and be heard in opposition to such denial, suspension or revocation or to the fee imposed. The decision of the city council or its committee shall be announced at the conclusion of the hearing and shall be final, subject only to a writ of certiorari being filed with the Kitsap County superior court within 14 days following the date of the decision of the city council or a committee of the city council.

5.04.230 License – Confidentiality of applications.

The applications made to the city pursuant to this chapter are subject to confidentiality governed by RCW 19.02.115, and shall not be made public, ~~and shall~~or be subject to inspection except as allowed or ~~only that emergency telephone numbers shall not be made public except where~~required by law.

5.04.240 Duties of the director.

A. The director shall keep full and accurate records of all funds received under the provisions of this chapter. Upon receipt of any license fee or penalties collected under the provisions of this chapter, the director shall deposit the amounts collected into the current expense fund of the city.

B. In order to carry out the provisions of this chapter, the director shall have the power to adopt, publish and enforce rules and regulations consistent with this chapter.

~~5.04.250 Civil penalty.~~

~~In the event that any person fails to pay the license fee imposed by this chapter within 15 days of the due date, a civil penalty shall be imposed in the amount of 10 percent of the delinquent license fee plus any previously assessed and unpaid penalties under this chapter. For the purposes of calculating the penalty, each month that the amounts owed under this chapter are due and unpaid shall be considered a separate violation subject to penalty. Civil penalties shall be limited to not more than amount of the full license fee for each year for which a license is required and shall not commence until the business has been notified of the need for a license and failed to get one within thirty days. A fraction of a month shall be deemed a full month. In the event that a penalty has been wrongfully collected, the director shall refund the penalty.~~

5.04.260 Violation – Penalty.

A. It shall be a violation of this chapter:

1. For a person required to obtain a business license under this chapter to fail or refuse to secure the business license or to fail to pay the fee imposed;

2. For a person to make any false representation in connection with application for a business license under this chapter;

3. For a person to evade payment of the fee or any part thereof;

4. For a person to fail to appear and/or refuse to testify in response to a subpoena issued hereto;

5. For a person to testify falsely upon any investigation of the correctness of a return, or upon the heading of any appeal; or

6. For a person to in any manner hinder or delay the city or any of its officers in carrying out the provisions of this chapter.

B. It shall be unlawful for any person to conduct business within the city limits when not in compliance with this chapter.

C. A person violating any of the provisions of this chapter, upon conviction thereof, shall be punished by a fine of not more than $500.00 or by imprisonment for not more than six months, or by both such fine and imprisonment. Each such person is guilty of a separate offense for each and every day during the portion of which any violation of any provision of this chapter is committed, continued or permitted by any such person and he is punishable accordingly.

5.04.270 Successor liability.

A. Whenever any person required to be licensed by this chapter quits business, or sells out, exchanges, or otherwise disposes of his/her business or stock of goods, any outstanding license fees or penalty payable to the city shall immediately become due and payable, and such person shall, within 30 days, file the required forms and pay the fees due. Any person who becomes a successor to such person shall become liable for the full amount of the prior owner's license fees and penalties due and owing and shall withhold from the purchase price a sum sufficient to pay any amount due from the seller until such time as the seller shall produce a receipt from the city clerk showing payment in full of any amount due or a certificate that no license fees are due. The payment of the fees by the successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater than the purchase price, the amount of the difference shall become a debt due such successor from the seller. The successor's liability shall be limited to the purchase price or the fair market value of the business if no cash transaction took place.

B. No successor shall be liable for any license fees due from the person from whom he/she has acquired a business or stock of goods if he/she gives written notice to the city clerk or director of such acquisition, and no assessment is issued by the director within six months of receipt of such notice against the former operation of the business and a copy of the assessment mailed to the successor.

~~C. Each person's account will remain on an active status and be subject to all license fees and penalties until such time as the director is notified in writing that the person has discontinued business activity within the city.~~

5.04.280 Limitations on license.

Notwithstanding any provisions to the contrary, a license issued under this chapter shall not be issued to any person who uses or occupies or proposes to use or occupy any real property or otherwise conducts or proposes to conduct any business in violation of the provisions of an ordinance of the city of Bainbridge Island, specifically including the city's zoning laws, or of the laws of the state of Washington. The granting of a business license shall in no way be construed as permission or acquiescence in a prohibited activity or other violation. Because the issuance of a license under this chapter specifically denies the applicant authority to violate any law or regulation, the city shall not be held liable for the actions of any licensed business by virtue of having issued a license to conduct business.

Section 2. Section 5.12.010 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

5.12.010 License – Required.

It is unlawful for any person, firm or corporation to open, carry on, or maintain any business on which premises pool or billiard tables, foosball games and shuffleboards are maintained within the city without first obtaining a license therefor, in accordance with the provisions of this chapter. <u>This license is in addition to any business license that may be required under Chapter 5.04 BIMC.</u>

Section 3. Section 5.16.020 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

5.16.020 License – Required.

No person, firm or corporation shall open up, conduct, manage, operate or maintain a cabaret without having a license to do so issued by the city clerk in accordance with the provisions of this chapter. <u>This license is in addition to any business license that may be required under Chapter 5.04 BIMC.</u>

Section 4. Section 5.24.020 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

5.24.020 License – Required.

It is unlawful for any person, firm or corporation to operate within the city any game of skill without first obtaining a license therefor, in accordance with the provisions of this chapter. <u>This license is in addition to any business license that may be required under chapter 5.04 BIMC.</u>

Section 5. Section 5.28.020 of the Bainbridge Island Municipal Code is hereby amended to read as follows:

5.28.020 License – Required.

It is unlawful for any person, firm or corporation to operate within the city, any coin-operated music box, commonly known as a jukebox, without first obtaining a license therefor in accordance with the provisions of this chapter. <u>This license is in addition to any business license that may be required under Chapter 5.04 BIMC.</u>

Section 6. This ordinance shall take effect and be in force on July 12, 2018.

PASSED by the City Council this ___ day of ___, 2018.

APPROVED by the Mayor this ___ day of ___, 2018.

/s/____________________________________
Kol Medina, Mayor

ATTEST/AUTHENTICATE:

/s/____________________________________
Christine Brown, City Clerk

FILED WITH THE CITY CLERK	June 8, 2018
PASSED BY THE CITY COUNCIL	2018
PUBLISHED:	2018
EFFECTIVE DATE:	2018
ORDINANCE NO:	2018-21

MRSC
Local Government Success

Is Your City Ready for the New Business Licensing Requirements?

April 17, 2018 by Toni Nelson
Category: Revenues , Licensing and Regulation

There are 281 incorporated cities and towns in Washington State and of those, 230 have business license requirements and 46 have adopted local business and occupation (B&O) tax regulations.

EHB 2005, which was passed last year by the legislature, is intended to simplify the administration of municipal general business licenses for the applicant and improve the business climate. The legislation required three distinct actions by those cities and towns with either business licenses requirements and/or local B&O tax regulations. These legislative actions are detailed in this blog post.

Business License Cities and Towns

EHB 2005 required cities and towns with business license regulations to establish a workgroup that would create a model business license with a minimum threshold and a definition of "engaging in business" by July 2018. The model business license created by the workgroup will be adopted by all cities who have business licensing regulations by January 1, 2019.

The City Business License workgroup has been meeting since last August to draft language for a model business license ordinance that includes both of the legislative requirements of defining the meaning of "engaging in business" and setting a minimum threshold. The results of this work have been released in draft form by the Association of Washington Cities (AWC) to all of its members earlier this month and it is **important** for cities to review and provide feedback on this draft.

The draft model business license language addresses:

- General business licenses, not regulatory licenses or other local B&O taxes;
- A new uniform definition of engaging in business; and

- Registration with no fee for businesses without a location in the city/town under a specified threshold. The current draft proposal sets this minimum threshold of $1,000 per year

EHB 2005 also requires all cities and towns with business licenses to administer their business licensing through the state's business license system (BLS) by **2027** or through the FileLocal system by **2020.** Information on each system is as follows

- The BLS currently has over 70 cities/towns that use their system (BLS City Partners) and is in the process of onboarding 24 additional cities per the 2018-2019 Local Business Licensing Partnership Plan.
- The FileLocal system administers licenses and/or all local taxes and has 5 city partners (Seattle, Tacoma, Bellevue, Everett, and Lake Forest Park). It is adding several new cities during calendar year 2018.

B&O Tax Cities

EHB 2005 required that a task force on local B&O tax service apportionment under RCW 35.102.130 be established in order to report to the legislature by October 2018. A task force was formed and consists of 3 city representatives, 3 business representatives, and 1 member from the Department of Revenue who serves as a non-voting chair.

The task force must prepare a report with recommendations to simplify the 2-factor service income formula in RCW 35.102.130 using a market-based model and information typically available in business.

The task force has been meeting monthly since August 2017 and has included tax apportionment models in other states as part of its analysis for reporting back to the legislature by October 31, 2018.

Business License Deadlines

Due to the fact that 82% of cities and towns in Washington State have a business license requirement of some form, the focus of this blog is to bring attention to some of the deadlines associated with these new business licensing requirements.

Review of draft model ordinance: The deadline to review the draft model ordinance developed by the AWC and the City Business License workgroup is fast approaching. If it is appropriate for your jurisdiction, providing feedback to AWC on this draft prior to the end of April will be important. The City Business License workgroup will finalize the draft model at its meeting on May 10th and this model will be presented at AWC's annual conference in Yakima, June 26—29th.

Based on results of the feedback received, the model ordinance will be finalized and AWC will distribute it to cities and towns in July. AWC will conduct outreach during the months of July—October to assist cities and towns with the new legislative requirements.

The Department of Revenue (DOR) will be providing Business License workshops for current BLS partner cities and those cities named in the 2018-2019 partnership plan to discuss EHB 2005; the rollout of the Department's Tax and Licensing System Replacement (TLSR); the partner planning for 2018—2021; and to offer a demonstration of the Automated Tax and Licensing Administration System (ATLAS) during the month of June. As new partner cities are rolled into the BLS, there will be additional workshops and webinars provided.

Adoption of the new model business license ordinance: January 1, 2019, is the deadline for cities to adopt the new model ordinance, with one exception: For those BLS partner cities, the model business license ordinance will need to be adopted in October in order to meet the 75-day Notice of Changes to business license fees required by the BLS. This equates to **October 17, 2018**, if the city is changing any of its fee structure on January 1, 2019.

Selection of agency to administer business licensing: The legislation requires that all cities must use one of two systems for its business licensing administration. Due to the volume and complexities of establishing a centralized business licensing system under the BLS, the legislation provides for a phased enrollment between January 1, 2018, and December 31, 2021. If FileLocal is the option selected, it must be made by July 1, 2020.

A city or town that imposes a general business license requirement but has not partnered with the BLS by January 1, 2018, may continue to issue and renew its general business licenses until it partners with either the BLS or the FileLocal systems, but it **must adopt the new model business license ordinance by January 1, 2019, in order to do so.**

Questions? Comments?

If you have questions about the New Business Licensing Requirements, please feel free to contact me at tnelson@mrsc.org or (206) 625-0916 x109.

If you have questions about other local government issues, please use our Ask MRSC form or call us at **(206) 625-1300** or **(800) 933-6772**.

About Toni Nelson

Toni has over 24 years of experience with Local Government finance and budgeting. Toni's area of expertise include "Cash Basis" accounting and reporting, budgeting, audit prep and the financial issues impacting small local government.
VIEW ALL POSTS BY TONI NELSON

Leave a Comment

Comments

2 comments on Is Your City Ready for the New Business Licensing Requirements?

> "Hi Lisa - it is not to late to comment on the draft model business license ordinance. The committee does not meet again until May 10th and we encourage everyone to comment up until that time. Here is a direct link to the AWC email that was released last month. https://www.magnetmail.net/actions/email_web_version.cfm?ep=4wfWjJpyCFEcPlcbvxIfRJu4W2GsOmzTCB7EyrvyDXz_HJ67dahdOWTT5Y1xLmIKUKnnd-17gwZhkzyOsEBp0wfzF1Lcx4aU4LAbbEA9VU0eaM6Ott-pXc-DkjoYhp9S"

Toni Nelson on May 2, 2018 9:05 AM

"Thanks for this information, Toni. It's the first we've heard about it. Of course now the comment period on the draft is past, but at least we know what's coming."

Lisa Stowe on May 1, 2018 1:19 PM

City of Bainbridge Island
City Council Agenda Bill

PROCESS INFORMATION	
Subject: 6:30 PM Review Draft Request for Proposals for 2019 Lodging Tax Advisory Committee (Pg. 61)	Date: 6/12/2018
Agenda Item: NEW BUSINESS	Bill No.: 18-100
Proposed By: Councilmembers Matt Tirman and Rasham Nasser	Referrals(s):

BUDGET INFORMATION		
Department: Executive	Fund: Civic Improvement Fund	
Expenditure Req: $260,000	Budgeted?	Budget Amend. Req?

REFERRALS/REVIEW		
:	Recommendation:	
City Manager:	Legal: Yes	Finance:

DESCRIPTION/BACKGROUND

The City of Bainbridge Island annually solicits proposals for eligible projects to receive funding from the City's Civic Improvement Fund. The City Council appoints members to the Lodging Tax Advisory Committee (LTAC), which reviews project proposals and provides the City Council with recommendations on project funding.

For 2019, the City expects to provide $260,000 in funding for eligible projects related to tourism marketing, marketing and operations of special events or festivals, the operation of tourism related facilities, and capital expenses for a tourism related facility.

The City plans to issue a Request for Proposals (RFP) in July, 2018, for project activities in 2019. The Lodging Tax Advisory Committee will meet in September and October to review proposals and provide a funding recommendation for City Council consideration.

A draft of the proposed 2019 RFP is provided for Council review and discussion.

As part of the planning for this upcoming funding cycle, the Council will be asked to consider whether City staff should prepare a proposal for a City of Bainbridge Island project to submit to the Lodging Tax Advisory Committee for funding consideration. If so, this proposal would be submitted to the LTAC for consideration, and would be evaluated for funding alongside other submitted proposals.

RECOMMENDED ACTION/MOTION
I move to forward this Request for Proposals for 2019 Lodging Tax Projects to the Consent Agenda for approval on June 26, 2018.

ATTACHMENTS:

Description	Type
DRAFT - 2019 LTAC RFP	Backup Material
LTAC Fund Balance - 1 June 2018	Backup Material

CITY OF BAINBRIDGE ISLAND

CITY OF BAINBRIDGE ISLAND

REQUEST FOR PROPOSALS
2019 LODGING TAX / TOURISM FUND (CIVIC IMPROVEMENT FUND)

The City of Bainbridge Island is seeking proposals for projects to receive funding under the Civic Improvement Fund, which is established through Chapter 67.28 of the Revised Code of Washington ("RCW") and Section 3.65.040 of the Bainbridge Island Municipal Code. Proposals must be for tourism marketing projects, marketing and operations of special events or festivals, the operation of eligible tourism-related facilities,[1] or capital expenses for an eligible tourism-related facility.[2]

For 2019, there are approximately $260,000 in Civic Improvement funds (also known as Lodging Tax funds) available for distribution to support selected projects. The City Council has approved funding within a wide range, to encourage innovative projects of all sizes that recognize and promote the exciting – and expanding – tourism trends and opportunities happening on Bainbridge Island. Applicants may seek a minimum award of $2,000 and a maximum award of $130,000 (to reflect 50% of total available funds).

Funds must be used for: tourism marketing; marketing and operations of special events and festivals designed to attract tourists; operations and capital expenditures of tourism-related facilities owned or operated by a municipality or a public facilities district; or operations of tourism-related facilities owned or operated by nonprofit organizations. The City does not make multi-year commitments with Lodging Tax funds; however, service providers are not limited nor are applicants prohibited from making repeat annual requests of a similar nature.

Successful applicants will be required to enter into a professional services agreement with the City to provide the services or products outlined in their proposals. Payment by the City will be made only when documentation of delivery of contracted services or products is provided to the City. The City will not provide payment in advance of delivery of goods or services.

All project activities must be identified in promotional and other business materials as having been funded by the City of Bainbridge Island Civic Improvement Fund.

---

[1] To be eligible for *operating* expenses, the tourism-related facility must be owned or operated by a municipality, or a public facilities district, or a nonprofit recognized by the Internal Revenue Service under 26 U.S.C. Sec. 501(c)(3) or 26 U.S.C. Sec. 501(c)(6). See, RCW 67.28.1816.

[2] To be eligible for *capital* expenses, the tourism-related facility must be owned or operated by a municipality or a public facilities district. See, RCW 67.28.1816.

Project and Applicant Eligibility

- Applicants seeking funding for capital expenditures for a tourism-related facility must be a municipality or a public facilities district created under Chapters 35.57 and 36.100 RCW.
- Applicants seeking funding for operating expenditures for a tourism-related facility must a municipality or a public facilities district, or be recognized by the Internal Revenue Service as a nonprofit under 26 U.S.C. Sec. 501(c)(3) or 26 U.S.C. Sec. 501(c)(6).
- Applicants, other than municipalities or a public facilities district, must be registered with the Washington Secretary of State as a Washington State Corporation.
- Individual persons are not eligible for funding.
- For-profit, private businesses are not eligible for funding.
- Proposals must comply with federal, state, and City of Bainbridge Island laws and requirements.
- Funding may be used for expenses incurred during January 1 – December 31, 2019. Funding requests for goods or services to be provided in 2018 or beyond calendar year 2019 will not be considered.
- Proposals from organizations with a board member, officer, or staff member serving on the Lodging Tax Advisory Committee are not eligible for funding and will not be considered.
- Proposals involving special events, signs, building or construction, impacts to public property, or other activities that require permits under City code or state or federal law must demonstrate that the applicant has researched the appropriate permit regulations, confirmed the viability of the proposed activities, and incorporated permit fees in the project budget.

Policy Background

Bainbridge Island Municipal Code – Section 3.65.040 Civic Improvement Fund

Revised Code of Washington (RCW) Chapter 67.28 RCW **– PUBLIC STADIUM, CONVENTION, ARTS, AND TOURISM FACILITIES**

Definition of Terms

(Per RCW 67.28.080)

"Operation" includes, but is not limited to, operation, management, and marketing.

"Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.

"Tourism promotion" means activities, operations, and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists.

"Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor that is: (a)(i) Owned by a public entity; (ii) owned by a nonprofit organization described under section 501(c)(3) of the federal internal revenue code of 1986, as amended; or (iii) owned by a nonprofit organization described under section 501(c)(6) of the federal internal revenue code of 1986, as amended, a business organization, destination marketing organization, main street organization, lodging association, or chamber of commerce and (b) used to support tourism, performing arts, or to accommodate tourist activities.

Application Requirements

- Each proposal must **ADDRESS AND REFERENCE** the questions listed on the attached LTAC 2019 Proposal Form **IN THE ORDER IN WHICH THEY APPEAR**.

- Proposal must be presented in minimum 11-point font and may not exceed ten pages in total length (including the Cover Sheet).

- The City will only accept proposals in electronic format. **Proposals must be submitted as a single document that includes a Cover Sheet and any attachments, preferably using a pdf format.** Submit the proposal via email to:

  cityadmin@bainbridgewa.gov

- Proposals are due **no later than 4:00 pm, Friday, September 14, 2018**. Late proposals will not be accepted. Applicants are solely responsible for ensuring that proposals are submitted and received on time.

- Each selected Service Provider (i.e., Lodging Tax funding recipient) will be required to submit to the City a final report on project results by January 17, 2020. **Per RCW 67.28.1816, and the reporting guidelines provided by the Washington State Joint Legislative Audit and Review Committee (JLARC), final reports must include the following information related to the activity:**

  The projected and actual data for each of the following categories:

  - *a) Overall attendance for the activity;*
  - *b) The number of people who traveled more than 50 miles to attend the activity;*
  - *c) The number of people from outside the state or outside the country who attended the activity;*
  - *d) The number of people who attended the activity and paid for overnight lodging;*
  - *e) The number of people who attended the activity without paying for overnight lodging, and*
  - *(f) Total number of paid lodging nights (one lodging night = one or more persons occupying one room for one night).*

Additional information is available via JLARC's "Instructions For Reporting Lodging Tax Expenditures" document. See also the City's Lodging Tax Advisory Committee webpage to view JLARC data from prior years.

Review Process

Lodging Tax Advisory Committee (LTAC)
(Appointed by the City Council on June XX, 2018)

Matt Tirman, Chair	City Councilmember
Rasham Nasser, Vice-chair, non-voting	City Councilmember
TBD	Eligible lodging business representative
TBD	Eligible lodging business representative
TBD	Eligible recipient organization representative
TBD	Eligible recipient organization representative

Proposals will be provided to the City's Lodging Tax Advisory Committee (LTAC) for review and comment. Applicants will have an opportunity to meet with the LTAC to provide additional information about their proposals, at a time and date to be identified by the committee. Applicant participation in this LTAC briefing is not mandatory, but is strongly encouraged. The format for this briefing will be determined by the committee and applicants will be notified in advance of any particulars related to presentation materials, format, and time allowed.

All meetings of the LTAC will be open to the public, and advance notification of LTAC meetings will be provided by the City Clerk.

The LTAC will provide its recommendation for 2019 awards to the City Council for a final funding decision. The committee recommendation will include a list of candidate projects and recommended amounts of funding, which the City Council will consider for final approval.

Selection Criteria

The LTAC will use the following criteria in evaluating project proposals. Other relevant factors, such as availability of funds, may also guide the decision process.

Lodging Fund Project Evaluation – Basic Criteria
A. Encourages tourism from visitors traveling more than 50 miles, and from visitors traveling from outside Washington state or outside the country.
B. Expected impact on increase in overnight stays in paid accommodations on the island.
C. Expected increase in tourism. Tourism means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.
D. Potential to draw visitors to the Island and increase overnight stays during the off-season, October 1 until Memorial Day.
E. The applicant's demonstrated history of organizational and project success, including but not limited to previous LTAC-funded projects.
F. The project reflects partnerships with other organizations and businesses, to encourage cooperative tourism marketing and minimize duplication of services.
G. The project goals and/or results can be objectively assessed.
H. The project will leverage award funds with additional matching funds or donated in-kind goods or services.

CITY OF BAINBRIDGE ISLAND
2019 LODGING/TOURISM FUND PROPOSAL
COVER SHEET

Project Name:

____

Name of Applicant Organization:

____

Applicant Organization IRS Chapter 501(c)(3) or 501(c)(6) Status and Tax ID Number:

____

Date of Incorporation as a Washington State Corporation and UBI Number:

____

Primary Contact:

____

Mailing Address:

____

____

Email(s): ____

Day phone: ___________________________ Cell phone: ______________________________

Please indicate the type of project described in your proposal:

√	**Project Type**
☐	Tourism marketing
☐	Marketing and operations of special events and festivals designed to attract tourists
☐	Supporting the operations of a tourism-related facility owned or operated by a nonprofit organization*
☐	Supporting the operations and/or capital expenditures of a tourism-related facility owned or operated by a municipality or a public facilities district*

*If the proposal requests funds for a tourism-related facility, please indicate the legal owner of that facility:

____

LODGING/TOURISM FUND APPLICATION

Applicant Information

Please respond to each of these questions in the order listed. If the proposal includes multiple partners, please include the requested information for each organization.

1. Describe the applicant organization's mission, history, and areas of expertise. Describe the applicant's experience in tourism promotion on Bainbridge Island and its demonstrated ability to complete the proposed project.

   Alternate question for event or facility funding:

   Describe the event or facility proposed including its purpose, history, and budget. Include past attendance history if applicable, and estimate the number of tourists drawn to the event or facility/year. Please estimate total attendance and the number of tourists estimated to attend for 2019. How has the activity been promoted in the past (if applicable) and what promotion is planned for 2019?

2. If appropriate, please identify any project partners and briefly describe the involvement of each. Please note that the maximum award of $130,000 will apply to any single project, even if proposed by a team of partners.

3. If appropriate, please list each project and amount of funding awarded and utilized from the Lodging Tax (Civic Improvement) Fund within the last five years (2014-2018).

4. If any previous projects by the applicant were funded through the Lodging Tax (Civic Improvement) Fund and were not completed and/or if reports were not submitted to the City as requested, please explain:

LODGING/TOURISM FUND APPLICATION

Project Information

1. **Describe the proposed project.**
    a. **Scope:** Identify the Project's main objectives and how each will be achieved. Be as specific as possible about the proposed services, measurable impacts, distribution method, and costs.
    b. **Budget:** Include a detailed budget for the proposed project with itemized expenses and income. Include the amount requested from the Lodging Tax Fund and identify other sources of funding anticipated or obtained, including matching funds, as well as any in-kind contributions necessary to complete the project.
    c. **Schedule:** Provide a project timeline that identifies major milestones.

If applicable, please describe the project's scalability. How would the project scope and budget be adjusted should the full amount of the LTAC funding request not be awarded? Please provide specifics.

2. **Provide a brief narrative statement to address each of the selection criteria:**
    a. Expected impact on increased tourism in 2019. Please provide specific estimates of how the project will impact the number of people traveling fifty miles or more to Bainbridge Island for the activity, or who will travel from another country or state outside of Washington State to attend the activity. If appropriate, compare/contrast this impact to the actual or estimated number of tourists at your event/facility in 2017 and estimates for 2018.
    b. Expected impact on, or increase in, overnight stays on the island. Please include actual or estimated numbers of tourists who will stay overnight in paid accommodations in Bainbridge Island lodging establishments in 2019 as a result of the proposed activities. Please include the basis for any estimates.
    c. Projected economic impact on Bainbridge Island businesses, facilities, events, and amenities, including sales of overnight lodging, meals, tours, gifts, and souvenirs (helpful data may be found on the Washington State Department of Commerce website).
    d. The project's potential to draw visitors to the Island and increase overnight stays during the off-season, i.e., October 1 until Memorial Day.
    e. The applicant's demonstrated history of organizational and project success.
    f. Describe any partnerships with other organizations and businesses in the proposed project – including efforts to minimize duplication of services where appropriate and encourage cooperative marketing.
    g. Describe the degree to which the project goals and/or results can be objectively assessed.
    h. Describe the degree to which the project will leverage award funds with additional matching funds or donated in-kind goods or services.

LODGING/TOURISM FUND APPLICATION

Supporting Documentation

1. Provide your organization's 2017 income/expense summary.

2. Provide your organization's 2018 budget and an estimate of actual 2018 revenue and expenses.

3. Letters of Partnership – Include letters from any partnering organizations committing to joint sponsorship of the application and specifying their intended activities.

UPDATE on

CIVIC IMPROVEMENT FUND (LTAC) BALANCE:

As of June 1, 2018

	Amount
Balance as of Jan 1, 2018	$294,950
2017 Project Awards	($273,00)
Estimated 2017 Revenue	$ 240,000
Estimated Balance as of 12/31/18:	**$261,950**

City of Bainbridge Island
City Council Agenda Bill

PROCESS INFORMATION	
Subject: 6:40 PM Professional Services Agreement for City Hall HVAC System Software Upgrade, AB 18-104 – Public Works (Pg. 74)	Date: 6/12/2018
Agenda Item: NEW BUSINESS	Bill No.: 18-104
Proposed By: Public Works Director Barry Loveless	Referrals(s):

BUDGET INFORMATION		
Department: Public Works	Fund: 2018 City Hall HVAC Software Upgrade @ $127,875 ($51,376 of the $127,875 is granted funded)	
Expenditure Req: $104,173.00.	Budgeted?	Budget Amend. Req?

REFERRALS/REVIEW		
:	Recommendation:	
City Manager:	Legal: Yes	Finance:

DESCRIPTION/BACKGROUND

City Hall was built in 2000 and is in need of HVAC system software upgrades. The proposed work includes removing and replacing necessary controllers, thermostats, software, and main control system, as well as installing four new occupancy sensors. All materials and programming are included in the proposal. The installation of new wire and new thermostats will be performed by a separate electrical contractor.

In 2016, the City received a federal grant from the Department of Energy through the Washington State Department of Commerce in the amount of $100,000. Approximately half of the grant funding was used to upgrade the City's street lights to LED. The Department of Commerce has authorized the remaining $51,376 to be repurposed for the HVAC Software Upgrade project.

In accordance with RCW 39.04.270, the City solicited requests for proposals through the area newspapers, *Daily Journal of Commerce*, and the City's bids & awards webpage and listserv. The Public Works Department has reviewed the proposals and contractor's qualifications and recommends that the City Council award this contract to Johnson Controls, Inc., in the amount of $104,173.00.

RECOMMENDED ACTION/MOTION

I move to forward the Agreement for Professional Services for the City Hall HVAC System Software Upgrade in the amount of $104,173 for approval with the June 26, 2018, Consent Agenda.

ATTACHMENTS:

	Description	Type
🗋	Request for Proposal	Backup Material
🗋	Grant	Backup Material
🗋	Agreement for Professional Services with Johnson Controls, Inc.	Backup Material

CITY OF
BAINBRIDGE ISLAND

REQUEST FOR PROPOSALS

CITY HALL
HVAC SOFTWARE UPGRADE

APRIL 2018

1. INTRODUCTION

In accordance with RCW 39.04.270, the City of Bainbridge Island is soliciting requests for proposals to upgrade the HVAC software and controls at the City Hall site, as described in the scope of work attached as Exhibit A.

2. PROPOSAL SUBMISSION

Proposals shall be submitted no later than 9:00 am on May 4, 2018, to the City Clerk, City Hall, 280 Madison Ave North, Bainbridge Island, WA 98110. The City of Bainbridge Island shall assume no responsibility for delay in U.S. mail services, independent courier services, or any other circumstances resulting in late proposals. Late proposals will not be accepted. The City will not accept proposals submitted by email or facsimile transmission. The proposals will be opened at 9:30 am on May 4, 2018, at City Hall.

3. SCOPE OF WORK

The project is located at the City of Bainbridge Island City Hall in Kitsap County, Washington. The City is requesting proposals for the purchase and installation of software and control systems equipment, programming, and integration into the existing HVAC system.

The detailed scope of work for the HVAC software upgrade is in the attached Exhibit A.

4. PROPOSALS AT A MINIMUM SHALL CONTAIN THE FOLLOWING:

- Section 1-Project Team and Experience

  Provide names, with their resumes, of all members of the team. Each team member's experience, background, and special skills shall be included.

  Provide the details of experience and past performance of the company on comparable projects. This item should cover, at a minimum, the substantive nature of comparable projects. Companies are required to give sufficient information of their experience to permit the City to understand and verify the exact nature of the contributions made by the company to the projects listed.

- Section 2-Client References

  Provide the name, title, locations, telephone number, and email of persons who can substantiate the company's referenced experience.

- Section 3-Scope of Work
  Describe in a narrative form the company's approach and technical plan for accomplishing the work described in the attached scope of work. The company shall include information (cut sheets, specifications and operations manuals) about the proposed HVAC software and controls that would be installed. Provide a proposed schedule to complete the scope work. Describe the company's overall capabilities and provide assurances that it can meet its commitment to successfully complete these services.

- Section 4-Cost Schedule
  Provide a completed cost schedule in the form shown in Exhibit B to perform the software/controls purchase and installation, programing, testing and integration.

5. SELECTION CRITERIA

The company with the highest number of points based on the table below shall enter into a contract for the scope of work based on the company's costs. Evaluation criteria and relative weights are as follows:

Criterion	**Maximum Points**
Overall Experience	20
HVAC Software and Controls Product	50
Project Understanding	20
Schedule	20
Total Costs	40
Total Possible Points	150
40 points will be awarded to the company with the lowest total cost, not including applicable sales and use taxes. Points will be given to other proposers in proportion to the ratio of their cost to the lowest total cost.	

Factors integral to the evaluation process include:

Qualifications:

A. The company's ability, capacity, and skill to perform the work necessary. The company shall have experience and capabilities for municipal HVAC building software and integration disciplines.
B. Company's prior performance. The company shall demonstrate that they have been involved in HVAC software and controls upgrades and service work for a minimum of ten (10) years in municipal facilities similar in size and complexity to the City of Bainbridge Island's City Hall.
C. Sufficiency of company's financial resources to fulfill the contract.

HVAC Software and Controls.
The company's proposed HVAC software and controls will be compatible with the existing City components, provide electrical efficiencies and meet operational needs.

Familiarity with Bainbridge Island HVAC System.
The company's knowledge and understanding of the City's HVAC software and controls systems and other applicable factors as the City determines necessary or appropriate.

Project Schedule.
Proposed schedule shall be satisfactory to City.

Cost.
The labor rates and materials markup listed in Exhibit B shall be paid for actual quantities supplied in accordance with specific projects as negotiated and shall be good for one year.

6. PREVAILING WAGE RATES (Davis Bacon Act)

This is a Public Works contract, federally funded project and is subject to Labor and Industries prevailing wage rates. The Davis-Bacon Act U.S.C. 276a-276a-5, and related federal acts provide that all laborers and mechanics employed in the performance or work or services shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. Certified payroll and statement of intent/affidavits are required for this project. Under WAC 296-127-025, the Contractor will be required to pay the higher of the state and federal prevailing wage rates for the work to be performed.

Current state prevailing wage rates can be found at http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp. Current federal prevailing wage rates can be found at: https://www.wdol.gov/Index.aspx.

EXHIBIT A
SCOPE OF WORK

The project is located at the City of Bainbridge Island City Hall in Kitsap County, Washington. The City is looking to upgrade the City Hall Johnson Controls building management system (BMS) or Metasys, N2 technology that manages a cooling tower, boiler, twenty-one heat pumps and exhaust fans for approximately 24,000 square feet. The City has replaced five heat pumps at City Hall within the last four years and the controllers for the new heat pumps do not communicate with the existing BMS. The original heat pumps periodically lose communication between the controller and the BMS and the inside/outside air economizers are not controlled effectively. The purpose of the City Hall HVAC software upgrade is to reduce electrical peak demand and consumption through improved scheduling, occupancy sensors, and effective economizing outside air while allowing the reliability of the new components.

The City will separately contract with a licensed electrical contractor for the installation of new thermostats and occupancy sensors. The Contractor shall design, inspect, and coordinate with the licensed electrical contractor throughout the project.

Bid Item 1: Safety Plan

The Contractor shall follow all laws to provide safety to employees and surrounding public. The Contractor shall submit for the City to review and approve a safety plan that details fall protection, personal protection equipment, lock out tag out procedures, work zone safety, etc.

Measurement: All work to complete the safety plan will be paid in a lump sum payment.

Payment: “Safety Plan” Lump Sum

Bid Item 2: HVAC Software

The Contractor shall purchase and install the current Metasys version 9.0 or approved equal. The Contractor shall program and integrate all system components to a central computer in City Hall and the ability to login remotely. The software shall have the ability to troubleshoot problems, modify schedules, and show trending information. The Contractor shall provide a submittal to the City for approval.

Measurement: The items of work for one BMS installed and integrated with all components by the Contractor’s crew onsite will be paid as a lump sum payment.

Payment: “HVAC Software” Lump Sum

Bid Item 3: Control Hub

The Contractor shall purchase and install the current version LN series controller or approved equal. The Contractor shall program and integrate all system components to the central control hub of all City Hall

HVAC components. The components include: boiler, cooling tower, heat pumps, exhaust fans, occupancy sensors, thermostats, and all sensors. The Contractor shall provide a submittal to the City for approval.

Measurement: The items of work for one LN series controller or approved equal installed and integrated into system will be paid as a lump sum.

Payment: "Control Hub" Lump Sum

Bid Item 4: Boiler & Cooling Tower Controls

The Contractor shall purchase and install two LN series controllers or approved equal for the boiler and cooling tower integrated into the control hub and software system. The Contractor shall provide a submittal to the City for approval.

Measurement: The items of work for two LN series controller or approved equal installed and integrated into system will be paid as a lump sum.

Payment: "Boiler & Cooling Tower Controls" Lump Sum

Bid Item 5: Heat Pump Controls

The Contractor shall purchase five heat pump controllers compatible with the LN series controllers and Metasys version 9.0. The heat pump controllers shall be integrated into the system and be fully functional. The Contractor shall provide a submittal to the City for approval.

Measurement: The items of work will be measured by one heat pump controller installed and integrated with all components by the Contractor's crew onsite.

Payment: "Heat Pump Controls" Each

Bid Item 6: Thermostat Housing Replacement

The Contractor shall purchase and install twenty-one new thermostat housing covers to the existing Johnson Controls thermostats. The Contractor shall provide a submittal to the City for approval.

Measurement: The items of work will be measured by one Johnson Controls thermostat covers installed with all components by the Contractor's crew onsite.

Payment: "Thermostat Housing Replacement" Each

Bid Item 7: Thermostat Controls Upgrade

The Contractor shall purchase, design, and inspect seven new primary thermostats and fifteen new secondary thermostats to be installed and integrated to the BMS. The thermostats shall be setup to average the primary and secondary thermostats to control the heat pumps for multiple rooms. The Contractor shall provide a plan and product submittal to the City for the purpose of bidding the electrical work with a licensed electrical contractor.

Measurement: The items of work will be measured by one primary or secondary thermostat with all components by the Contractor's crew onsite.

Payment: "Thermostat Controls Upgrade" Each

Bid Item 8: Occupancy Sensors

The Contractor shall purchase, design, and work with the City's contracted electrician to install occupancy sensors in four locations within City Hall. The occupancy sensors shall be programed to an alternate setting when the space is unoccupied. The Contractor shall provide a plan and product submittal for the City to bid through a public works contract with a licensed electrician.

Measurement: The items of work will be measured by one occupancy sensor purchased, designed, and integrated with all components by the Contractor's crew onsite.

Payment: "Occupancy Sensors" Each

Bid Item 9: Programming, Integration, Startup, & Testing

The Contractor shall program and integrate all existing and new components to be fully functional to manufactures parameters and operating effectively. The Contractor shall coordinate with the City contact and City hired electrician for startup of the equipment and testing. The Contractor shall provide the City with redline asbuilts of all the HVAC components and new controls equipment. In addition, the Contractor shall provide the City with a complete operations and maintenance manual of the software and controls, and the Contractor shall provide eight hours of training to staff.

The City is responsible for obtaining all building permits and the City hired electrician for obtaining an electrical permit.

Measurement: The items of work will be for all administrative, overhead, permitting, programming, integration, startup, testing and training in order to complete the work paid as a lump sum.

Payment: "Programming, Integration, Startup & Testing" Lump Sum.

The project must be completed by October 31, 2018.

EXHIBIT B

PROPOSAL

Item #	Items of Work / Materials to be Furnished	Est. Quantity	Unit	Unit Bid Price*	Total Price
Bid Items include Washington State Sales Tax at 9.0%					
1	Safety Plan	1	LS		
2	HVAC Software	1	LS		
3	Controls Hub	1	LS		
4	Boiler & Cooling Tower Controls	1	LS		
5	Heat Pump Controls	5	EA		
6	Thermostat Housing Replacement	21	EA		
7	Thermostat Controls Upgrade	22	EA		
8	Occupancy Sensors	4	EA		
9	Programming, Integration, Startup, & Testing	1	LS		
Subtotal Items that do not include Washington State Sales Tax					**$**
Washington State Sales Tax @ 9.0%					**$**
Grand Total (Subtotal and Sales Tax)					**$**

Signature of Authorized Official / Date — Print – Name / Company Name

* Note: Include Washington State Retail Sales Taxes in the unit bid prices for all work for building, repairing, or improving streets, roads, etc.; including: non-motorized facilities, related storm drainage, and power for street lighting. See Section 1-07.2 for additional information.

EXHIBIT C

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is entered into between the City of Bainbridge Island, a Washington State municipal corporation ("City"), and [Name of Consultant], [a Washington State corporation] ("Consultant").

WHEREAS, the City needs professional services in connection with [summary of work to be done and location]; and

WHEREAS, the Consultant has the expertise and experience to provide said services and is willing to do so in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises, and agreements set forth herein, it is agreed by and between the City and the Consultant as follows:

1. SERVICES BY CONSULTANT

The Consultant shall provide the professional services as defined in this Agreement and as necessary to accomplish the scope of services attached hereto as **Attachment A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor, and related equipment to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. TERM AND TERMINATION OF AGREEMENT

A. This Agreement shall become effective upon execution by both parties and shall continue in full force and effect until [Month and Day, 20__], unless sooner terminated by either party as provided below.

B. This Agreement may be terminated by either party without cause upon thirty (30) days' written notice to the other party. In the event of termination, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to the City, and the Consultant shall be entitled to just and equitable compensation at the rate set forth in Section 3 for any satisfactory work completed prior to the date of termination.

3. PAYMENT

A. The City shall pay the Consultant for such services: (check one)

[ ] Hourly, plus actual expenses, in accordance with **Attachment A**, but not more than a total of [write out the total payment for services] ($______);
[ ] Fixed Sum: a total amount of $______________;
[ ] Other: $_______, for all services performed and incurred under this Agreement, to be billed monthly in equal amounts.

B. The Consultant shall submit, in a format acceptable to the City, monthly invoices for services performed in a previous calendar month. Each project and each task within a project shall be the subject of a separate invoice. The Consultant shall maintain time and expense records and provide them to the City upon request.

C. The City shall pay all invoices by mailing a City check within sixty (60) days of receipt of a proper invoice from the Consultant.

D. If the services rendered do not meet the requirements of this Agreement, the Consultant shall correct or modify the work to comply with this Agreement. The City may withhold payment for such work until it meets the requirements of this Agreement.

4. INSPECTION AND AUDIT

The Consultant shall maintain all books, records, documents, and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts, and records if necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

5. INDEPENDENT CONTRACTOR

A. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants, and agrees that the Consultant’s status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Consultant shall make no claim of City employment nor shall the Consultant claim any related employment benefits, social security, and/or retirement benefits.

B. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.

C. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

D. The Consultant shall obtain a business license and, if applicable, pay business and occupation taxes pursuant to Title 5 of the Bainbridge Island Municipal Code.

6. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

A. The Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, sexual orientation, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. The Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

C. Violation of this Section 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension by the City, in whole or in part, and may result in ineligibility for further work for the City.

7. OWNERSHIP OF WORK PRODUCT

All data, materials, reports, memoranda, and other documents developed under this Agreement, whether finished or not, shall become the property of the City and shall be forwarded to the City in hard copy and in digital format that is compatible with the City's computer software programs.

8. GENERAL ADMINISTRATION AND MANAGEMENT

The City Manager of the City, or designee, shall be the City's representative, and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices, under this Agreement.

9. HOLD HARMLESS AND INDEMNIFICATION

A. The Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

B. Should a court of competent jurisdiction determine that this Agreement 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 Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend hereunder, shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

C. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to void, nullify, and/or invalidate any of these covenants of indemnification.

D. Nothing contained in this Agreement shall be construed to create a liability or a right of indemnification in any third party.

10. INSURANCE

The Consultant shall maintain insurance as follows:

[X] Commercial General Liability as described in **Attachment B**.
[X] Professional Liability as described in **Attachment B**.
[X] Automobile Liability as described in **Attachment B**.
[X] Workers' Compensation as described in **Attachment B**.
[ ] None.

11. SUBLETTING OR ASSIGNING CONTRACT

This Agreement, or any interest herein or claim hereunder, shall not be assigned or transferred in whole or in part by the Consultant to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of the Consultant as stated herein.

12. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by both parties.

13. SEVERABILITY

A. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

14. FAIR MEANING

The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

15. NONWAIVER

A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

16. NOTICES

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To the City:	City of Bainbridge Island 280 Madison Avenue North Bainbridge Island, WA 98110 Attention: City Manager
To the Consultant:	[Business name/address/contact person]

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

17. SURVIVAL

Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

19. VENUE

The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Kitsap County, Washington.

20. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the later of the signature dates included below.

[Business Name]	CITY OF BAINBRIDGE ISLAND
Date:______________________________	Date:______________________________
By:______________________________	By:______________________________
Name______________________________	Douglas Schulze, City Manager
Title______________________________	
Tax I.D. #__________________________	
City Bus. Lic. #______________________	

ATTACHMENT A
SCOPE OF SERVICES

ATTACHMENT B
INSURANCE REQUIREMENTS

A. Insurance Term

The Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

B. No Limitation

The Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The Consultant shall obtain insurance of the types and coverage described below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.

2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap liability, independent contractors, and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession.

D. Minimum Amounts of Insurance

The Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than

$1,000,000 each occurrence, $2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim and $1,000,000 policy aggregate limit, as applicable.

E. Other Insurance Provision

The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage

Before commencing work and services, the Consultant shall provide to the person identified in Section 8 of the Agreement a Certificate of Insurance evidencing the required insurance. The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work. The City reserves the right to request and receive a certified copy of all required insurance policies.

H. Notice of Cancellation

The Consultant shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to the Consultant to correct the breach, immediately terminate this Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

J. City Full Availability of Consultant Limits

If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the

Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

Department of Commerce
Innovation is in our nature.

Grant Agreement between:

The City of Bainbridge Island

and

The Washington State Department of Commerce
Energy Policy Unit
EECBG – Smaller Cities & Counties/Credit Enhancement Program
American Recovery and Reinvestment Act of 2009

For:

Project Name: Bainbridge Island Energy Challenge Credit Enhancement
Agreement Number: **F11-52112-007**

Washington State Department of Commerce
www.commerce.wa.gov

Table of Contents

AGREEMENT FACE SHEET

Agreement Number: F11-52112-007
Energy Policy Unit
ARRA EECBG/Smaller Cities & Counties/Credit Enhancement Program
Federal USDOE Agreement No. DE-EE0000849

<table>
<tr><td colspan="2">1. Grantee
City of Bainbridge Island
280 Madison Ave. N,
Bainbridge Island, WA 98110</td><td colspan="3">2. Grantee Doing Business As (optional)
N/A</td></tr>
<tr><td colspan="2">3. Grantee Representative

Kelly Dickson
Special Projects Planner
Office - (206) 842-2545
Fax - (206) 780-8600
kdickson @ci.bainbridge-isl.wa.us</td><td colspan="2">4. COMMERCE Representative
PROGRAM
Patti Miller-Crowley
Energy Policy Specialist
PO Box 42525
Olympia, WA 98504
Office - 360.725-3122
Fax 360.586.0049
patti.miller-crowley@commerce.wa.gov</td><td>CONTRACT
Judy Hartman
Energy Policy Specialist
PO Box 42525
Olympia, WA 98504
Office - 360-725-3115
Judy.hartman@commerce.wa.gov</td></tr>
<tr><td>5. Agreement Amount
$100,000</td><td colspan="2">6. Funding Source
Federal:☒ State:☐ Other:☐</td><td>7. Start Date
Date of last signature below</td><td>8. End Date
Twenty (20) years from date of last signature below</td></tr>
<tr><td colspan="2">9. Federal Funds (as applicable):</td><td colspan="2">Federal Agency
US Department of Energy</td><td>CFDA Number
81.128</td></tr>
<tr><td>10. Tax ID #
91-6001663</td><td colspan="2">11. SWV #
0019249-00</td><td>12. UBI #
189002241</td><td>13. DUNS #
023277767</td></tr>
<tr><td colspan="5">14. Agreement Purpose
COMMERCE and Grantee have entered into this Agreement to establish Credit Enhancement(s) to promote leveraging of private funds through a revolving loan fund to make residential and commercial loans for under the American Recovery and Reinvestment Act of 2009.</td></tr>
<tr><td colspan="5">COMMERCE, defined as the WA State Department of Commerce, and the Grantee, as defined above, acknowledge and accept the terms of this grant Agreement and attachments and have executed this Agreement on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following other documents incorporated by reference: Special Terms and Conditions; General Terms and Condition; Attachment A: Statement of Work; Attachment B: Estimated Budget; Attachment C: Additional Provisions under the ARRA of 2009; Attachment D: Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Attachment E: Programmatic Agreement between the US Department of Energy, the WA State Department of Commerce and the WA State Historic Preservation Office Regarding EECBG, and WAP Undertakings; and Attachment F: US Department of Energy NEPA Guidance, NEPA Template for Categorical Exemptions, and Environmental Checklist.</td></tr>
<tr><td colspan="2">FOR GRANTEE:
Interim
Brenda Bauer, City Manager

Date 9.2.10</td><td colspan="3">FOR COMMERCE:

Tony Usibelli, Director, WA State Energy Policy Division
9-16-10
Date

APPROVED AS TO FORM ONLY:

Sandra Adix, Assistant Attorney General
08-27-2010
Date</td></tr>
</table>

PART 1. SPECIAL TERMS AND CONDITIONS

1.1. AUTHORITY

COMMERCE has awarded the Grantee an Energy Efficiency Conservation Block Grant (EECBG) for an approved grant to loan project authorized in Title V, Subtitle E of the Energy Independence and Security Act (EISA), signed into Public Law 110-140 on December 19, 2007United States Department of Energy, CFDA Number 81.128, Title: Energy Efficiency and Conservation Block Grant Program (EECBG) -; and the American Recovery and Reinvestment Act of 2009

1.2. DEFINITIONS

As used throughout this Energy Efficiency & Conservation Block Grant (EECBG) agreement, the following terms shall have the meaning set forth below:

"Agreement" shall mean this EECBG grant agreement under the American Recovery and Reinvestment Act of 2009 (American Recovery & Reinvestment Act).

"Borrower" shall mean the recipient or recipients of loans created under the EECBG Lending Program administered by the Lender and/or Grantee.

"COMMERCE" shall mean the Washington State Department of Commerce, and who is a Party to the Agreement and a recipient of the United States Department of Energy grant under the American Recovery & Reinvestment Act.

"Credit Enhancement" shall mean the financial mechanism described in the EECBG Lending Program and which is used by the Lender or/and Grantee to lower the Lender's risk, or reduce the Borrower's costs for undertaking a loan to pay for the Energy Efficiency Improvement Project costs. Credit enhancements mechanisms include but are not limited to the following:

a. Loan Loss Reserve: Grantee and Lender may use grant funds awarded by this Agreement to establish an account from which the Lender may be reimbursed for losses incurred through Borrower loan defaults.

b. Interest Rate Buy-down: Grantee may use grant funds awarded by this Agreement to purchase points in order to reduce the interest rate on loans offered by Lender to Borrower.

c. Blended Interest Rate Loan: The Lender may employ a joint loan funding structure by combining Lender funds with grant funds awarded by this Agreement and thus create a blended interest rate for the Borrower, provided that the grant funds awarded by this Agreement portion does not exceed fifty percent (50%) of any given awarded loan made to Borrower.

d. Other Credit Enhancement Mechanisms: Any other credit enhancement mechanism must be approved in writing by COMMERCE, prior to execution of this Agreement.

"Debt Service Reserve Accounts" shall mean, collectively, the accounts established by the Lender for each loan made pursuant to the EECBG Lending Program, into which grant funds shall be deposited to provide additional security for the payment of debt service on the loan(s).

"EECBG Lending Program" shall mean the program that Grantee and Lender will plan, design, and implement by employing one or more Credit Enhancement mechanisms in order to leverage lending funds for Energy Efficiency Improvement Project costs. The EECBG Lending Program shall be described in Attachment A: Scope of Work.

"Energy Contractor" shall mean any firm or person employed to oversee or provide the energy efficiency construction or repair work and/or services financed through the EECBG Lending Program.

"Energy Efficiency Improvement Project" shall mean the installation, repair, retrofit, or rehabilitation work or services provided by the Energy Contractor.

"Grantee" shall mean the grant recipient identified on the Agreement Face Sheet performing service(s) under this Agreement and who is a Party to the Agreement, and shall include all employees and agents of the Grantee.

"Grantee-Lender Agreement" shall mean the agreement between the Grantee and the Lender, to administer the EECBG Lending Program by providing financing and credit enhancement for Energy Efficiency Improvement Projects.

"Lender" shall mean the financial institution or institutions with which the Grantee contracts to develop and implement an EECBG Lending Program.

"Program Deposit Account" shall mean the account established with the Lender in the name of the Grantee into which the Grantee shall deposit grant funds, to be held until disbursed into Individual Debt Service Reserve Accounts.

"Program Services Agreement" shall mean the agreement between the Grantee and the Energy Contractor, for the performance of the energy efficiency construction or repair work and/or services financed through the EECBG Credit Enhancement grant.

"Project" shall mean all activities indentified in Attachment A: Scope of Work, which include but are not limited to the development and implementation of the EECBG Lending Programs, and whose purpose is to leverage funding for Energy Efficiency Improvement Projects.

1.3. ROLES AND RESPONSIBILITIES

COMMERCE's roles and responsibilities include but are not limited to the following:

A. COMMERCE will report to Washington Legislature and to United States Department of Energy on the EECBG program progress.

B. COMMERCE will manage this Agreement and disburse awarded grant funds in accordance with this Agreement.

C. COMMERCE will review and approve any and all agreements between Grantee and Lender and the EECBG Lending Program(s) that result from this Agreement.

D. COMMERCE will provide the form, format, and timing associated with reporting requirements as described in Section 1.15.

The Grantee's roles and responsibilities include but are not limited to the following:

A. Grantee has the ultimate responsibility for the overall performance of the EECBG Lending Program, ensuring that the performance measures and the additional funding leverage described in Attachment A: Scope of Work are met.

B. Grantee will market the EECBG Lending Program to the public and potential Borrowers.

C. Grantee will enter into one or more agreements with one or more Lenders to develop and implement an EECBG Lending Program designed to leverage funding for energy efficiency services and projects, as described in Section 1.12.

D. Grantee must require the Lender to leverage grant funds through one or more approved Credit Enhancement mechanisms to leverage financing for energy efficiency projects with Borrowers.

E. Grantee will ensure that Lender, Borrower, and Energy Contractor comply with all federal and state laws, including but not limited to requirements of the American Recovery & Reinvestment Act.

F. Grantee will ensure that Energy Contractors are bonded and licensed, and certified or approved to perform the work being contracted.

G. Grantee will collect and ensure that all reporting information is timely and accurately submitted to COMMERCE, as described in Section 1.15.

1.4. PURPOSE

COMMERCE and Grantee have entered into this Agreement to undertake a Project that furthers the goals and objectives of EECBG program under the American Recovery & Reinvestment Act. The long-term goal of the EECBG grant is to attain a ten (10) to one (1) Lender funds leverage ratio by providing affordable financing for Borrowers to undertake Energy Efficiency Improvement Projects. The Project will be undertaken by the Grantee and will include the activities described in Attachment A: Scope of Work. The Project must be undertaken in accordance with the Special Terms and Conditions and the General Terms and Conditions included in this Agreement, and with all applicable federal, state, and local laws and ordinances, including but not limited to those specifically enumerated in Attachment C: Additional Provisions under the American Recovery and Reinvestment Act of 2009.

1.5. ACKNOWLEDGEMENT & DISCLAIMER IN ALL PUBLICATIONS

The Grantee is encouraged to publish or otherwise make publicly available the results of the work conducted under the award. The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Agreement, shall contain the following acknowledgement & disclaimer statements:

> Acknowledgement: "This project was supported by Grant No. DE-EE0000849 awarded by US Department of Energy. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of Energy. Grant funds are administered by the State Energy Office, Washington State Department of Commerce."
>
> and
>
> Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

COMMERCE, as a recipient of American Recovery & Reinvestment Act funds, is legally obligated to meet accountability and reporting requirements under the American Recovery & Reinvestment Act. The state of Washington or the federal funding source may also identify additional requirements or other changes in requirements. Such requirements may be in statute, regulation, policy, or procedure. COMMERCE is responsible for incorporating these requirements into the performance of this Agreement. Although all requirements have not yet been identified, additional reporting requirements should be expected, to include, but not limited to, performance outcomes such as created or retained jobs.

1.6. ORDER OF PRECEDENCE

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

A. Applicable federal and state of Washington statutes, regulations, and guidance;

B. Special Terms and Conditions including all the attachments to this Agreement;

C. General Terms and Conditions.

1.7. GRANT AMOUNT

COMMERCE shall pay to the Grantee a grant amount not to exceed **$100,000** for the performance of all things necessary for, or incidental to, the services as set forth in this Agreement and any task identified in Attachment A: Scope of Work.

1.8. TIME OF PERFORMANCE

Term of Agreement

The **term of this Agreement shall be from the date of contract execution plus twenty (20) years,** unless terminated sooner as provided herein. At end of this Agreement, the Grantee will return the unspent portion of the disbursed EECBG grant funds to COMMERCE. COMMERCE, at its discretion and upon Unites States Department of Energy approval, will decide how to utilize the returned funds. For the purpose of this Agreement, **unspent funds** shall mean any remaining funds not deposited in the Program Deposit Account(s).

No later than **December 31, 2011**, the Grantee and the Lender must have implemented the EECBG Lending Program(s) and met all the milestones and performance measures described in Attachment A: Scope of Work. Failure to meet milestones and performance measures may result in the revocation of EECBG funds.

Executed Grantee-Lender Agreements

No later than **ninety (90) days** after the execution of this Agreement, the Grantee must have executed the Grantee-Lender Agreements and Program Services Agreement (as described in Section 1.12) and have met all the grant disbursement requirements (as described in Section 1.9). This will enable COMMERCE to disburse to the Grantee the entire amount of the grant awarded under this Agreement, as identified in Section 1.7.

Yearly Performance Reports

No later than **September 30, 2010, and September 30 of each year thereafter for the entire term of this Agreement**, the Grantee must submit a Performance Report of the EECBG Lending Program to COMMERCE, as described in Section 1.15.

EECBG Lending Program Formal Reviews

At ten (10) years and fifteen (15) years from the date of the execution of this Agreement, COMMERCE will perform a detailed EECBG Lending Program review and, depending of the performance of the EECBG Lending Program, discuss reallocation of EECBG grant funds. The Grantee agrees that Grantee is ultimately responsible for the overall performance of the EECBG Lending Program and the leverage of additional funds for making loans to Borrowers.

Compliance with National Environmental Policy Act and Section 106 of the National Historic Preservation Act of 1966

Grantee will ensure that no Energy Efficiency Improvement Project activities begin until the Borrower complies with all provisions of Section 106 of the National Historic Preservation Act of 1966 and the National Environmental Policy Act, as described in Section 1.16 and Section 1.17 respectively.

Failure to meet Time of Performance within the time frames described in this section shall constitute default under this Agreement, and as a result, this Agreement may be terminated.

1.9. DISBURSEMENTS OF GRANT PROCEEDS

The availability of funds in the EECBG program is made available through the American Recovery & Reinvestment Act. If funding or appropriation is not available at the time the Grantee submits a request for a grant disbursement, the issuance of a warrant will be delayed or suspended until such time funds become available. Therefore, subject to availability of funds, warrants shall be issued to the Grantee for payment of allowable expenses incurred by the Grantee while undertaking and administering approved project activities in accordance with Attachment A: Scope of Work and Attachment B: Estimated Budget. In no case the total EECBG grant shall exceed one hundred percent (100%) of the grant amount as indicated in Section 1.7.

Only allowable expenses incurred by Grantee after **the execution date of this agreement,** are eligible for reimbursement.

Allowable expenses under this Agreement include incurred costs for:

A. The Project activities described in Attachment A: Scope of Work and included in Attachment B: Estimated Budget.

B. Administrative or operational activities undertaken by Grantee or its subcontractors to develop, market, and implement the EECE Lending Program, which can amount to no more than ten percent (10%) of the grant amount as listed in Section 1.7. The allowed administrative and operational costs must be identified in Attachment II: Estimated Budget.

COMMERCE and Grantee may adjust amounts in the Attachment B: Estimated Budget category line items, except the administrative and operational costs, by ten percent (10%) or less without a formal contract amendment by written mutual agreement by both parties. Written approval shall be through the following method:

A. Written request to COMMERCE from the Grantee by email of the proposed variation;

B. Review of the request by COMMERCE; and

C. Written determination (approval/rejection) by the COMMERCE contract representative to the Grantee.

In no case shall grant funds be disbursed for EECBG Lending Program activities listed in the Attachment A: Scope of Work until the Grantee has met the following conditions:

A. Grantee has provided evidence of insurance to COMMERCE (as described in Section 1.18);

B. Grantee has executed the Grantee-Lender Agreement(s) and complied with all the requirements described in Section 1.12, and Grantee has provided COMMERCE with copy of such agreement and the Program Services Agreement for COMMERCE'S approval.

The disbursement of grant proceeds shall be initiated by the Grantee on a Washington State A19 Invoice Voucher form, which will be provided by COMMERCE upon Grantee's request. Disbursement requests must be supported by a copy of the **executed Grantee-Lender Agreement(s)** and Program Services Agreement (as described in Section 1.12). Disbursements for administrative or operational costs, as described in this section, may be reimbursed to the Grantee before a Grantee-Lender Agreement is executed, if they are already incurred by the Grantee and are evidenced by back-up documentation, such as invoices, receipts, statements, or computer printouts.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed Washington State A19 Invoices. Payment shall be sent to the address designated by the Grantee.

In the event that the Grantee receives reimbursement for costs that are later determined by COMMERCE to be ineligible, these funds shall be repaid to COMMERCE by payment to the Department of Commerce, or its successor, within thirty (30) days of written notification to the Grantee.

COMMERCE may, in its sole discretion, terminate this Agreement or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Agreement.

Duplication of Billed Costs

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

Disallowed Costs

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Lender, Borrower, or Energy Contractors.

1.10. FISCAL MANAGEMENT

Grantee shall have a budgeting, accounting, and reporting system that meet the standards of Washington State Chapter 43.88 RCW – Fiscal Management, and United Stated Department of Energy CFR Title 10 Part 600 – Financial Assistance Rules, demonstrating good internal control policies, procedures, and practices.

Grantee must segregate the obligations and expenditures related to funding under the American Recovery & Reinvestment Act. Financial and accounting systems should be revised as necessary to segregate, track, and maintain these funds apart and separate from other revenue streams. No part of the funds from the American Recovery & Reinvestment Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for American Recovery & Reinvestment Act projects.

1.11. PROGRAM DEPOSIT ACCOUNT(S)

The Grantee must deposit the grant funds disbursed by COMMERCE and identified in Attachment B: Estimated Budget, in a deposit account with the Lender.

The Program Deposit Account will be used to administer the EECBG Lending Program employing the Credit Enhancement described in Attachment I: Scope of Work. If EECBG Lending Program described in Attachment A: Scope of Work identifies more than one Credit Enhancement mechanism to be employed by a single Lender, then the Grantee shall open a separate dedicated Program Deposit Account for each Credit Enhancement mechanism. The Grantee may move funds from one Program Deposit Account to another Program Deposit Account upon prior written approval from COMMERCE.

The Grantee acknowledges that if the Grantee is a state or local government entity, the grant funds disbursed under this Agreement may not be placed on deposit with a nonprofit financial institution, such as a credit union, or into a for-profit financial institution that is not a member of the Washington Public Deposit Protection Program (WPDPP).

If the Lender is a credit union or a financial institution that is not a WPDDP member, the Grantee may chose to place the EECBG funds into one or more Loan Loss Reserve accounts or any other types of accounts necessary for the administration of the EECBG Credit Enhancement(s) described in Attachment A: Scope of Work. Accordingly, any reference in this Agreement to the "Program Deposit Account(s)" shall mean the "Loan Loss Reserve Account(s)" or the account(s) necessary for the administration of the Credit Enhancement(s) described in Attachment A: Scope of Work.

All allowable deposit and withdrawal activities in and from the Program Deposit Account(s) must be identified and described in the Grantee-Lender Agreement(s).

Financial and accounting systems should be revised as necessary to segregate, track, and maintain all the Program Deposit Accounts apart and separate from each other and from other accounts. No part of the Program Deposit Account(s) shall be commingled with any other funds or used for a purpose other than that of making payments allowable under this Agreement and under the Grantee-Lender Agreement(s).

All interest earnings proceeds, if any, from the Program Deposit Account(s) may be used by Grantee to provide additional EECBG funds to the EECBG Lending Program or to pay for Grantee's administrative or operational costs that are in addition to the ten percent (10%) of the grant amount, as described in Section 1.9.

COMMERCE reserves the right to request the Grantee to provide copies of monthly and/or annual statements identifying all the activities in the Program Deposit Account(s).

The Grantee-Lender Agreement(s) must include a provision stating the rules for operating and maintaining the Program Deposit Account(s).

1.12. GRANTEE-LENDER AGREEMENT

No later than ninety (90) days after Agreement execution, Grantee will draft and execute the Grantee-Lender Agreement and the Program Services Agreement, that will outline in detail the development and implementation of the EECBG Lending Program.

A. At a minimum, the Grantee-Lender Agreement will include provisions or descriptions for the following:

   1. Credit Enhancement Mechanism: The Grantee-Lender Agreement must describe in detail the financial mechanism used by the Lender to reduce risk and create credit enhancement for Borrowers.

2. Program Deposit Account(s): The Grantee-Lender Agreement must include a provision stating the rules for setting, operating, and maintaining the Program Deposit Account(s), as described in Section 1.11.

3. Risk Sharing: The Grantee-Lender Agreement must describe the plan for the Grantee and Lender to share the risk in mitigating Borrower loan defaults or loan losses.

4. Dispute Resolution: The Grantee-Lender Agreement must include a provision by which disputes between the Grantee and Lender are resolved.

5. Underwriting Procedures and Selection of Borrower: The Grantee-Lender Agreement must describe the underwriting procedures and selection process undertaken by Lender in order to select and award loans to Borrowers.

6. Insurance Requirements: The Grantee-Lender Agreement must include a provision requiring, at a minimum, evidence of Lender's Bankers Blanket Bond Fidelity insurance.

B. At a minimum, the Program Services Agreement will include provisions or descriptions for the following:

1. Time of Performance: The Program Services Agreement must include a detailed timeline outlining, at a minimum, the development, marketing, implementing, monitoring, and performance measuring of the EECBG Lending Program and the implementation of the Energy Efficiency Improvement Projects.
2. Marketing and Outreach: The Program Services Agreement must describe the activities to market and advertise the loan program resulting from the implementation of the EECBG Lending Program.
3. Dispute Resolution: The Program Services Agreement must include a provision by which disputes between the parties are resolved.
4. Preliminary Energy Audit: The Program Services Agreement must require that all Energy Efficiency Improvement Projects undergo a preliminary Energy Audit that outlines the steps necessary to improve energy efficiency and that estimate the energy savings resulting from the completion of the Energy Efficiency Improvement Project, as described in Section 1.14.
5. Environmental and Cultural Resources Review Process: The Program Services Agreement must include a provision requiring the Energy Contractor to ensure that all Borrowers comply with the National Environmental Policy Act and Section 106 of the National Historic Preservation Act, as described in Section 1.16 and Section 1.17 respectively.
6. Selecting and Monitoring the Energy Contractor: The Program Services Agreement must describe the selection process for the Energy Contractor and the process followed by the Grantee to ensure Energy Contractor's compliance with performance standards and licensing, as described in Section 1.20. The Program Services Agreement must also include a provision requiring compliance with all codes requirements, as described in Section 1.21.
7. Performance and Accountability Measures: The Program Services Agreement must indicate a preliminary estimate of energy savings and describe the process to measure the success of the EECBG Lending Program. The performance measures must be specific, measurable, and time limited.

8. Job Creation and Retention: The Program Services Agreement must indicate a preliminary estimate and describe the process to measure actual job creation and retention as a result of the implementation of the EECBG Lending Program.

C. Other Federal and State Requirements: The Program Services Agreement must include provisions for the following:

1. American Recovery and Reinvestment Act of 2009 Requirements: The Program Services Agreement must include provisions for all requirements of the Recovery Act, as described in Attachment C. Grantee shall ensure that all Borrowers, Energy Contractors, and any subcontractors hired as a result of this Agreement are in compliance with all federal and state laws, including compliance with all requirements of the Recovery Act.

2. Nondiscrimination Provision (as described in Section 1.19);

3. Performance Standards and Licensing (as described in Section 1.20);

4. Code Requirements (as described in Section 1.21);

5. Prevailing Wage Law (as described in Section 1.22);

6. Work Hours and Safety Standards (as described in Section 1.23);

7. Federal and State Requirements (as described in Section 1.24);

8. Record Keeping and Access to Records (as described in Section 1.25).

1.13. FINAL AMENDMENT AND CERTIFIED PROJECT COMPLETION REPORT

The Grantee shall initiate a Project Completion Amendment (Final Amendment) by submitting a Certified Project Completion Report when activities identified in Attachment A: Scope of Work are complete or in twenty (20) years from the execution of this Agreement, whichever comes first. COMMERCE will supply the Grantee with the Certified Project Completion Report forms upon request.

In the Certified Project Completion Report, the Grantee will provide the following information to the COMMERCE:

A. A certified statement of the actual dollar amounts spent in completing the Project as identified in Attachment A: Scope of Work and budgeted for in Attachment B: Estimate Budget;

B. A summary of all activities in the Program Deposit Account(s);

C. Evidence documenting compliance with financial audit requirements, as described in Section 1.35.

At the end of this Agreement, if there are funds, including interest earned, remaining in the Program Deposit Account(s), these funds will be utilized consistent with the Energy Efficiency & Conservation Block Grant purpose, subject to approval by COMMERCE.

1.14. PRELIMINARY ENERGY AUDITS

To create energy savings, the Grantee must ensure that a preliminary energy audit will be performed and recorded prior to any loans being made to Borrower for energy efficiency improvements to a property. The energy audit findings will be used as a benchmark for future energy audits that may be required to measure obtained energy savings.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s) and/or Program Services Agreement, as described in Section 1.12.

1.15. REPORTS

The Grantee, at such times and on such forms as COMMERCE and/or the United States Department of Energy may require, must furnish energy audit reports and submit quarterly, and/or yearly progress reports, the Certified Project Completion Report, and other reports as may be requested.

No later than **September 30, 2010, and September 30 of each year thereafter for the entire term of this Agreement**, the Grantee must submit a Performance Report of the EECBG Lending Program to COMMERCE. The Performance Report must be accompanied by a statement summarizing the activities in the Program Deposit Account(s). The form and format of the Performance Report will be provided by COMMERCE.

All grantees, sub-recipients and their partners, contractors, and/or vendors are responsible for reporting pursuant to **Section 1512** of the American Recovery & Reinvestment Act (as described in Attachment C). COMMERCE, as a prime recipient of American Recovery & Reinvestment Act funds, must comply with the American Recovery & Reinvestment Act's extensive reporting requirements, including quarterly financial and programmatic reporting. COMMERCE will require quarterly reports from the Grantee in order to fulfill its obligation. All sub-recipient receiving American Recovery & Reinvestment Act funds may expect that a standard form(s) and/or reporting mechanism will be made available to help streamline the process. The Grantee agrees to provide to COMMERCE all reports, documentation, or other information, as may be required to meet reporting obligations under the American Recovery & Reinvestment Act. The Grantee's receipt of funds is contingent on meeting the Section 1512 reporting requirements, which is subject to change without notice.

Additional instructions and guidance regarding the required reporting will be provided as they become available. For planning purposes, however, Grantee should be aware of the current American Recovery & Reinvestment Act section 1512(c) requirements.

Sub-recipient (Grantee and Lender) Reports

Not later than **five (5) days after the end of each calendar quarter** (January 5, April 5, July 5, and October 5 throughout the Agreement period), the Grantee must submit a report to COMMERCE that contains, but is not limited to, the following:

A. Financial data;

B. Sub-recipient (and if applicable, vendor) full-time employees: jobs created or retained reported as single number; jobs directly funded by American Recovery & Reinvestment Act;

C. Project activity milestones (based on Attachment A: Scope of Work);

D. Energy savings on a per dollar invested basis;

E. Energy saved (kwh, therms, gallons, BTUs, etc.);

F. Renewable energy capacity installed;

G. Greenhouse gas emissions reduced;

H. Other funds leveraged;

I. Data related to vendors paid more than $25,000 in a single purchase;

J. Key metrics that will vary by project type per United States Department of Energy guidance.

Failure to file periodic reports as requested in this section may result in termination of this Agreement.

1.16. HISTORICAL AND CULTURAL ARTIFACTS

The Grantee acknowledges that all Energy Efficiency Improvement Projects funded by this Agreement are subject to Section 106 of the National Historic Preservation Act of 1966, unless an exemption has been obtained under a programmatic agreement. Grantee acknowledges receipt of the "Programmatic Agreement between the United States Department of Energy, the Washington State Department of Commerce and the Washington State Historic Preservation Office Regarding EECBG, and WAP Undertakings," dated February 5, 2010, as included in Attachment D: Programmatic Agreement between the United States Department of Energy, the Washington State Department of Commerce and the Washington State Historic Preservation Office Regarding EECBG, and WAP Undertakings.

Grantee agrees that Grantee 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 State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of Grantee's Project or the Energy Efficiency Improvement Projects funded under this Agreement.

If historical or cultural artifacts are discovered during any construction work resulting from this Agreement, the Grantee must ensure that Borrower shall immediately stop construction, and implement reasonable measures to protect the discovery site from further disturbance, take reasonable steps to ensure confidentiality of the discovery site, restrict access to the site, and notify the concerned tribe's cultural staff or committee and the state's historical preservation officer at the Washington State Department of Archaeology and Historic Preservation (DAHP). If human remains are uncovered, Grantee must ensure that Borrower reports the presence and location of the remains to the coroner and local enforcement immediately, then contact both DAHP and the concerned Tribe's cultural staff or committee.

The Grantee shall require this provision to be contained in all contracts between Borrower and Energy Contractor for work or services related to or resulting from Attachment A: Scope of Work. In no case shall any construction or repair activities begin until all provisions of Section 106 of the National Historic Preservation Act of 1966 have been complied with.

In addition to the requirements set forth in this Agreement, the Grantee must ensure that Borrower complies with Revised Code of Washington (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 Washington Administrative Code (WAC) 25-48 regarding Archaeological Excavation and Removal Permits.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s) and/or Program Services Agreement, as described in Section 1.12.

1.17. NATIONAL ENVIRONMENTAL POLICY ACT

The Grantee acknowledges that all Energy Efficiency Improvement Projects funded by this Agreement are subject to National Environmental Policy Act (NEPA) requirements, unless a categorical exemption has been obtained. The Grantee acknowledges receipt of United States Department of Energy NEPA guidance, dated May 27, 2010, as included in Attachment VII: United States Department of Energy NEPA Guidance, NEPA Template for Categorical Exemptions, and Environmental Checklist.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s) and/or Program Services Agreement, as described in Section 1.12.

1.18. INSURANCE

The Grantee must provide insurance coverage as set out in this section. The intent of the required insurance is to protect COMMERCE, should there be any claims, suits, actions, costs, damages, or expenses arising from any loss, or negligent or intentional act, or omission of the Grantee or its Lender, or agents of either, while performing under the terms of this Agreement.

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

The Grantee shall submit to COMMERCE, within fifteen (15) calendar days of the Agreement execution date, a certificate of insurance that outlines the coverage and limits defined in this insurance section. During the term of this Agreement, the Grantee shall submit renewal certificates not less than thirty (30) calendar days prior to the expiration of each policy required under this section.

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

A. Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Agreement activity but no less than $1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that its Lender provide adequate insurance coverage for the activities arising out of the Grantee-Lender Agreement(s), as described in Section 1.12.

B. Automobile Liability. In the event that performance pursuant to this Agreement involves the use of vehicles, owned or operated by the Grantee or its Lender, automobile liability insurance shall be required. The minimum limit for automobile liability is $1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

C. Professional Liability, Errors and Omissions Insurance. The Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain minimum limits of no less than $1,000,000 per occurrence to cover all activities by the Grantee and licensed staff employed or under contract to the Grantee. The State of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.

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

   a. The amount of fidelity coverage secured pursuant to this Agreement shall be $100,000 or the highest of planned reimbursement for the Agreement period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.

   b. The Lender or any subcontractors that receive $10,000 or more per year in funding through this Agreement shall secure fidelity insurance as noted above. Fidelity insurance secured by Lender and subcontractors pursuant to this paragraph shall name the Grantee as beneficiary.

   c. The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

Additional Provisions

The above insurance policy shall include the following provisions:

A. Additional Insured. The State of Washington, COMMERCE, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella, and property insurance policies. All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

B. Identification. The policy must reference COMMERCE's Agreement number and the State agency name.

C. Insurance Carrier Rating. All insurance and bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by COMMERCE's Risk Manager, or the Risk Manager for the State of Washington, before the Agreement is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

D. Excess Coverage. By requiring insurance herein, COMMERCE does not represent that coverage and limits will be adequate to protect Grantee and such coverage and limits shall not limit Grantee's liability under the indemnities and reimbursements granted to COMMERCE in this Agreement.

Local Government Grantees that Participate in a Self-Insurance Program

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

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

1.19. NONDISCRIMINATION PROVISION

During the performance of all work and services resulting from this Agreement, the Grantee shall comply with all federal and state nondiscrimination laws, including, but not limited to Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq., the Americans with Disabilities Act (ADA).

In the event of the Grantee's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this Agreement may be rescinded, canceled, or terminated in whole or in part, and the Grantee may be declared ineligible for further contracts with COMMERCE. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s) and/or Performance Services Agreement, as described in Section 1.12.

1.20. PERFORMANCE STANDARDS AND LICENSING

The Grantee shall comply with all applicable local, state, and federal licensing and accrediting requirements/standards, and any other standard or criteria established by COMMERCE to assure quality of services necessary for the performance of all work and services resulting from this Agreement and additional requirements contained in all documents incorporated by reference in the Agreement.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s) and/or Performance Services Agreement, as described in Section 1.12.

1.21. CODE REQUIREMENTS

The Grantee must ensure that all construction and rehabilitation projects resulting from this Agreement 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.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s) and/or Performance Services Agreement, as described in Section 1.12.

1.22. PREVAILING WAGE LAW, DAVIS-BACON ACT

The Grantee must ensure that all laborers and mechanics contracting for work on a construction project funded through this Agreement shall comply with prevailing wage laws by paying the federal prevailing wages as specified below.

Section 1606 of the American Recovery & Reinvestment Act requires that all laborers and mechanics employed as a result of this Agreement on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery & Reinvestment Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of the chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CRF 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses found in 29 CFR 5.5 (a) are incorporated in any resultant covered contracts that are in excess of $2,000 for construction, alternation or repair (including painting and decorating).

The Davis-Bacon Act, 40 U.S.C. 276a-276a-5, and related federal acts provide that all laborers and mechanics employed in the performance or work or services resulting from this Agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. Individual homeowners receiving loans under a revolving loan fund program are not required to comply with Davis-Bacon Act.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s) and/or Performance Services Agreement, as described in Section 1.12.

1.23. WORK HOURS AND SAFETY STANDARDS

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

The Grantee shall include these requirements in the Grantee-Lender Agreement(s) and/or Performance Services Agreement, as described in Section 1.12.

1.24. FEDERAL AND STATE REQUIREMENTS

In performing under this Agreement, the Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state and federal governments. The Grantee also assures compliance with all applicable provisions of the American Recovery & Reinvestment Act as enacted and as hereafter amended. The Grantee shall include these requirements in the Grantee-Lender Agreement(s) and/or Program Services Agreement.

1.25. RECORDING KEEPING AND ACCESS TO RECORDS

These terms supersede the terms in Section 1.57. Records Maintenance in General Terms and Conditions.

COMMERCE, the COMMERCE agents, and duly authorized officials of the state and federal governments shall have full access and the right to examine, copy, excerpt, or transcribe any pertinent documents, papers, records, and books of the Grantee and of persons, firms, or organizations with which the Grantee may contract, involving transactions related to this Project and this Agreement.

The Grantee agrees to retain these records for a period of **twenty-six (26) years** from the date of Agreement execution. This includes but is not limited to financial reports. If any litigation, claim or audit is started before the expiration of the twenty-six (26) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

The Grantee shall include these requirements in the Grantee-Lender Agreement(s), as described in Section 1.12.

1.26. AMENDMENTS, MODIFICATIONS, AND WAIVERS

These terms supersede the terms in Section 1.30. Amendments in General Terms and Conditions and Section 2.41. Waiver.

The Grantee may request an amendment of this Agreement for the purpose of modifying the Attachment A: Scope of Work or for extending the time of performance as provided for in Section 1.8. Any revision to the scope of work must be approved by COMMERCE. No modification or amendment resulting in an extension of time shall take effect until a request has been received and approved by COMMERCE.

No conditions or provisions of this Agreement may be waived unless approved by COMMERCE in writing. No waiver of any default or breach by any party shall be implied from any failure to take action upon such default or breach, if the default of breach persists or repeats.

1.27. TERMINATION FOR CONVENIENCE

These terms supersede the terms in Section 1.66. Termination for Convenience in General Terms and Conditions.

COMMERCE may terminate this Agreement in the event that federal or state funds are no longer available to COMMERCE, or are not appropriated for the purpose of meeting COMMERCE's obligations under this Agreement. COMMERCE shall notify the Grantee in writing of its determination to terminate and the reason for such termination. The effective date of the termination will be determined by the COMMERCE. If this Agreement is so terminated, COMMERCE shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination. Nothing in this section shall affect Grantee's obligations to repay the unused balance of the grant or the unspent funds as defined in Section 1.8.

PART 2. GENERAL TERMS AND CONDITIONS

1.28. DEFINITIONS

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

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

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

C. "COMMERCE" shall mean the Department of Commerce, or its successor agency.

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

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

F. "Subgrantee" shall mean one not in the employment of the grantee, who is performing all or part of those services under this Agreement under a separate contract with the Grantee. The terms "subgrantee" and "subgrantees" mean subgrantee(s) in any tier.

1.29. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. 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 hereto.

1.30. AMENDMENTS

This Agreement 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.

1.31. AMERICANS WITH DISABILITIES ACT (ADA)

The Grantee 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.

1.32. APPROVAL

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

1.33. ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

1.34. ATTORNEYS' FEES

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

1.35. AUDIT

A. General Requirements

Grantees are to procure audit services from the State Auditor's Office based on the following guidelines under the Single Audit Act.

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

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

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

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

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

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

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

Grantor agency name
Federal agency
Federal program name

Other identifying agreement numbers
Catalog of Federal Domestic Assistance (CFDA) number
Grantor agreement number
Total award amount including amendments (total grant award)
Beginning balance
Current year revenues
Current year expenditures
Ending balance
Program total

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

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

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

C. Documentation Requirements

The Grantee must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Grantee's fiscal year(s) to:

Department of Commerce
ATTN: Audit Review and Resolution Office
906 Columbia Street SW, Fifth Floor
PO Box 48300
Olympia WA 98504-8300

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

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

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

A. Grantee, defined as the primary participant and it principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

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

2) Have not within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;

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 (1)(b) of this section; and

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

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

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

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

LOWER TIER COVERED TRANSACTIONS

1) The lower tier grantee certifies, by signing this Agreement 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.

2) Where the lower tier grantee is unable to certify to any of the statements in this Agreement, such grantee shall attach an explanation to this Agreement.

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

1.37. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

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

1) All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;

2) All material produced by the Grantee that is designated as "confidential" by COMMERCE; and

3) All Personal Information in the possession of the Grantee 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 Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Agreement and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee 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 Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Agreement whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE 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.

1.38. CONFORMANCE

If any provision of this Agreement 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.

1.39. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE 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 Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE 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 Agreement, but that incorporate pre-existing materials not produced under the Agreement, the Grantee hereby grants to COMMERCE 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 Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Agreement, 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 Agreement. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Agreement. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

1.40. DISALLOWED COSTS

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

1.41. DISPUTES

Consistent with RCW 43.17.320-.340, the parties shall make every effort to resolve disputes arising out of or relating to this Agreement through discussion and negotiation. Should discussion and negotiation fail to resolve a dispute arising under this Agreement, the parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the director of each party and a third party mutually agreed upon by the director of each party. The team shall attempt, by majority vote, to resolve the dispute. If the dispute cannot be resolved in this fashion, either party may request assistance from the Governor pursuant to RCW 43.17.330.

1.42. DUPLICATE PAYMENT

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

1.43. ETHICS/CONFLICTS OF INTEREST

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

1.44. GOVERNING LAW AND VENUE

This Agreement 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.

1.45. INDEMNIFICATION

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

The Grantee's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the State or its agents, agencies, employees and officers. Subcontracts shall include a comprehensive indemnification clause holding harmless the Grantee, COMMERCE, the state of Washington, its officers, employees and authorized agents.

The Grantee 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.

1.46. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Agreement. The Grantee and its employees or agents performing under this Agreement are not employees or agents of COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE, nor will the Grantee 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 Grantee.

1.47. INDUSTRIAL INSURANCE COVERAGE

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Agreement, 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 Grantee.

1.48. LAWS

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

United States Laws, Regulations and Circulars (Federal)

A. American Recovery and Reinvestment Act (American Recovery & Reinvestment Act) of 2009

B. Audits

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

C. Labor and Safety Standards

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082. Drug-Free Workplace Act of 1988, 41 USC 701 et seq.Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq., Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

D. Laws against Discrimination

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Office of Management and Budget Circulars

Notwithstanding the fact that LENDER is a private for profit entity, it must comply with the following federal requirements:

- Uniform Administrative requirements for Grants and Other Local Agreements with Institutions of Higher Education, Hospitals and Other NonProfit Organizations, OMB Circular 110;
- Cost Principles for Nonprofit Organizations, OMB Circular A-122; and
- Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations.

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A 87, 2 CFR, Part 225.

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

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

F. Other

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

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

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

Internal Revenue Service Rules, August 31, 1990.

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

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

G. Privacy

Privacy Act of 1974, 5 U.S.C. 552a.

H. Washington State Laws and Regulations

1) Affirmative action, RCW 41.06.020 (11).

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

3) Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.

4) Discrimination-human rights commission, Chapter 49.60 RCW.

5) Ethics in public service, Chapter 42.52 RCW.

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

7) Open public meetings act, Chapter 42.30 RCW.

8) Public records act, Chapter 42.56 RCW.

9) State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

1.49. LICENSING, ACCREDITATION AND REGISTRATION

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

1.50. 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 Agreement.

1.51. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Agreement, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further Agreements with COMMERCE. The Grantee 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.

1.52. POLITICAL ACTIVITIES

Political activity of Grantee employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.
No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

1.53. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

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

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

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

A. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.

B. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

C. Minimum procedural requirements, as follows:

1) Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.

2) Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.

3) Positive efforts shall be made to use small and minority-owned businesses.

4) The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Grantee, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.

5) Contracts shall be made only with reasonable subgrantees who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.

6) Some form of price or cost analysis should be performed in connection with every procurement action.

7) Procurement records and files for purchases shall include all of the following:

a) Grantee selection or rejection.

b) The basis for the cost or price.

c) Justification for lack of competitive bids if offers are not obtained.

d) A system for Agreement administration to ensure Grantee conformance with terms, conditions and specifications of this Agreement, and to ensure adequate and timely follow-up of all purchases.

D. Grantee and Subgrantee must receive prior approval from COMMERCE for using funds from this Agreement to enter into a sole source Agreement or an Agreement where only one bid or proposal is received when value of this Agreement is expected to exceed $5,000.

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

1.54. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Grant 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 Grant provided, however, that the 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.

1.55. PUBLICITY

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

1.56. RECAPTURE

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

1.57. RECORDS MAINTENANCE

The Grantee shall maintain all books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Grantee shall retain such records for a period of six years following the date of final payment. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

1.58. REGISTRATION WITH DEPARTMENT OF REVENUE

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

1.59. RIGHT OF INSPECTION

At no additional cost all records relating to the Grantee's performance under this Agreement shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, 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 Agreement. The Grantee shall provide access to its facilities for this purpose.

1.60. 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 Agreement and prior to normal completion, COMMERCE may terminate the Agreement under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Agreement may be amended to reflect the new funding limitations and conditions.

1.61. SEVERABILITY

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

1.62. SUBCONTRACTING

The Grantee may only subcontract work contemplated under this Agreement if it obtains the prior written approval of COMMERCE.

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

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

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

1.63. SURVIVAL

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

1.64. TAXES

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

1.65. TERMINATION FOR CAUSE / SUSPENSION

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

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

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

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

1.66. TERMINATION FOR CONVENIENCE

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

1.67. TERMINATION PROCEDURES

After receipt of a notice of termination, except as otherwise directed by COMMERCE, the Grantee shall:

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

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

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

D. Preserve and transfer any materials, Agreement deliverables and/or COMMERCE property in the Grantee's possession as directed by COMMERCE.

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

The rights and remedies of COMMERCE under this section are in addition to any other rights and remedies provided under this Agreement or otherwise provided under law.

1.68. 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 Agreement unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

ATTACHMENT A:
STATEMENT OF WORK

ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT
SMALLER CITIES AND COUNTIES
Grant Recipient: **City of Bainbridge Island**
Contact Name: **Kelly Dickson**
Contact address, Email, Phone: **280 Madison Avenue North, Bainbridge Island, WA 98110**
(206) 780-3725

Project Summary:
This project will capitalize a loan loss reserve (or other credit enhancement(s) subject to advance approval by COMMERCE) to support the leverage of additional funds through a revolving loan program to make energy efficiency upgrades to residences. The project also includes Positive Energy home reports and electric vehicle charging station(s) that are capitalized through a separate contract.

SCOPE OF WORK

Activity/Tasks/Deliverables	Description	Start Date	End Date
Activity 1	Create a credit enhancement mechanism to provide eligible residents with access to affordable financing for energy efficiency upgrades to their homes. The City of Bainbridge Island is partnering with Kitsap County, Puget Sound Energy, and a local financial institution in developing an energy efficiency financing/loan loss reserve program.	2/1/2010	4/1/2012
Task 1.1	**Prepare metrics for evaluation and performance monitoring, including**: • Estimating average loan of $6600, 15 residential loans projected • Energy savings • Financial savings • Leveraged funding • Jobs created • Emissions reduced	2/1/2010	3/1/2010
Task 1.2	Issue RFP for financial institutes to create financing mechanism (if necessary)	3/1/10	4/30/10
Task 1.3	Work with chosen financial institute to create energy efficiency financing/loan loss reserve program plan, including specific terms, criteria and qualifications. This shall be documented in a Grantee-Lender Agreement.	5/1/10	7/1/10
Performance Measure & Milestone Deadline	**Grantee-Lender and Program Service Agreement submitted to and approved by Commerce**		**Within 90 days of execution of this agreement**

Task 1.4	Conduct outreach to community through City website and *Bainbridge Island Energy Challenge* outreach program	6/1/2010	4/1/2012
Deliverables	Quarterly Progress Report to DOC	10/5/10	7/5/2012
Task 1.5	Financing institution begins accepting and processing loan applications.	9/1/2010	4/1/2012
Task 1.6	Evaluate energy efficiency financing/loan loss program on a quarterly basis using performance measures from Task 1.1. Adjust credit enhancement strategy as necessary based upon loan uptake record. Credit enhancements other than loan loss reserve will require advance approval by COMMERCE.	12/1/2010	4/1/2012
Performance Measure & Milestone Deadline	**Credit enhancement (loan loss reserve or other) has generated $100,000 in loans/private residential expenditures for energy efficiency improvements**		**12/31/2011**
Deliverables	Annual reports to DOC.		Through term of contract
Deliverable 1.4	Final completion report to DOC		At 20 years from execution or upon completion of project

ATTACHMENT B:
ESTIMATED BUDGET

Agreement Number: **F10-52110-029**
Project Name: **Whatcom County Smaller Cities Credit Enhancement**

GRANT TITLE:	**EECBG - Energy Efficiency & Conservation Block Grant Program**
Fed. Grant No.	DE-EE0000849
COM Point of Contact	Patti Miller-Crowley
Funding TYPE	**ARRA** X **EECBG Grant** X

PROJECT NAME:	Bainbridge Island Energy Challenge Credit Enhancement
COM Agreement No.	**F10-52110-016**
Applicant Name	City of Bainbridge Island
Address	280 Madison Avenue North
	Bainbridge Island, WA 98110
Sub-reciepient POC	ATTN: Kelly Dickson, 206.780-3725

		GRANT	MATCH		
Categories	**OBJ**	**EECBG**	**Fed**	**Kitsap EECBG**	**Total Costs**
Salaries and Wages	**A**				0.00
Benefits	**B**				0.00
Contractual	**C**				0.00
Goods And Services	**E**				0.00
(Supplies/Commodities)					
Travel	**G**				0.00
Capital Outlay	**JH**				0.00
***Equipment-Capitalized**	**J (Other)**				0.00
****Other - Loan Loss Reserve**		$100,000.00		$250,000.00	$350,000.00
Total Direct Costs		**$100,000.00**		**$250,000.00**	**$350,000.00**
*****(opt) Admin. Support Costs**					
Method 1 - as % of direct costs OR	0.0%			0.00	0
Method 2 - as a hard cost entry					0
Total Admin Costs					0
Total All Costs		**$ 100,000**		**250,000.00**	69000
Percentage (Total Contract)		**29%**		**71%**	100.00%

TOTAL MATCH	$ 250,000.00		71%

ATTACHMENT C:
ADDITIONAL PROVISIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Public Law 111-5

1. **American Recovery and Reinvestment Act of 2009 Reporting Requirements; Section 1512(c) of the American Recovery & Reinvestment Act**

Grantee acknowledges and agrees that the American Recovery and Reinvestment Act of 2009, hereinafter "American Recovery & Reinvestment Act" places great emphasis on accountability and transparency in the use of taxpayer dollars. Among other things, it creates a new Recovery Accountability and Transparency Board and a new website -- Recovery.gov -- to provide information to the public, including access to detailed information on grants and contracts made with American Recovery & Reinvestment Act funds.

COMMERCE, as a recipient of American Recovery & Reinvestment Act funds, must comply with the American Recovery & Reinvestment Act's extensive reporting requirements, including quarterly financial and programmatic reporting due within 10 calendar days after the end of each calendar quarter. COMMERCE will require periodic reports from its sub-recipients in order to fulfill its reporting obligations. Grantees receiving American Recovery & Reinvestment Act funds may expect that a standard form(s) and/or reporting mechanism will be made available at a future date.

Grantee agrees to provide to COMMERCE all reports, documentation, or other information, as may be required by COMMERCE to meet reporting obligations under the American Recovery & Reinvestment Act. Grantee's receipt of funds is contingent on Grantee meeting the reporting requirement of Section 1512.

Additional instructions and guidance regarding the required reporting will be provided as they become available. For planning purposes, however, Grantees receiving American Recovery & Reinvestment Act funds should be aware that American Recovery & Reinvestment Act section 1512(c) provides:

Recipient Reports- Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains—

(1) The total amount of recovery funds received from that agency;

(2) The amount of recovery funds received that were expended or obligated to projects or activities; and

(3) A detailed list of all projects or activities for which recovery funds were expended or obligated, including:

(a) The name of the project or activity;

(b) A description of the project or activity;

(c) An evaluation of the completion status of the project or activity;

(d) An estimate of the number of jobs created and the number of jobs retained by the project or activity; and

(e) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

(4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

2. **Section 1512 of the American Recovery & Reinvestment Act: Registration with Central Lender Registration (CCR)**

   Recipients of funds under the American Recovery & Reinvestment Act shall register with the Central Lender Registration (CCR) database at www.ccr.gov. This ensures consistent reporting of data about each entity and thereby makes data more useful to the public. In order to register in CCR, a valid Data Universal Numbering System (DUNS) Number is required and should be inserted in Box # 13 of the Face Sheet of this Agreement.

3. **Section 1602 of the American Recovery & Reinvestment Act: Preference for Quick-Start Activities (if applicable)**

   Section 1602 of the American Recovery & Reinvestment Act provides:

   In using funds made available in this Act for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of this Act. Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit.

3. **Section 1604 of the American Recovery & Reinvestment Act: Limit on Funds**

   Section 1604 of the American Recovery & Reinvestment Act provides:

   None of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

4. **Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery & Reinvestment Act**

   Section 1605 of the American Recovery & Reinvestment Act provides:

   Use of American Iron, Steel, and Manufactured Goods.

   (a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a **public building** or **public work** unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

   (b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that:

   (1) applying subsection (a) would be inconsistent with the public interest;
   (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
   (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

   (c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.

   (d) This section shall be applied in a manner consistent with United States obligations under international agreements.

   Grantee shall comply with Section 1605 of the American Recovery & Reinvestment Act unless compliance has been waived by the Federal Agency providing the funds and when compliance with the American Recovery & Reinvestment Act does not conflict with an international trade agreement.

   Grantee shall provide COMMERCE with information and applicable supporting data as may be required by COMMERCE, to support any request for waiver of compliance with Section 1605 of the American Recovery & Reinvestment Act.

Contracts for the procurement of goods and services in the amount of $528,000 or more and for constructions services in the amount of $7,443,000 or more are covered by an international trade agreement and are therefore not subject to Section 1605.

If this Agreement involves an award of American Recovery & Reinvestment Act funds for construction, alteration, maintenance of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international trade agreements, the following provision applies:

(a) Definitions. As used in this award term and condition:

"Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been:

(1) Processed into a specific form and shape; or
(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and "public work" means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference.

(1) This award term and condition implements Section 1605 of the American Recovery & Reinvestment Act of 2009 by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this term and condition.

(2) This requirement does not apply to the material excepted by Federal Government.

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this term and condition if the Federal Government determines that:

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the American Recovery & Reinvestment Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the American Recovery & Reinvestment Act.

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after American Recovery & Reinvestment Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the American Recovery & Reinvestment Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the American Recovery & Reinvestment Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of Measure	Quantity	Cost (Dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	______	______	______
Domestic steel, iron, or manufactured good			
Item 2:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed.]
[Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]
[*Include all delivery costs to the construction site.]

5. Wage Rate Requirements under Section 1606 of the American Recovery & Reinvestment Act – Davis-Bacon Act

All laborers and mechanics employed by grantees and subgrantees on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery & Reinvestment Act, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (Davis-Bacon Act). With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See U.S. Department of Labor, Wage and Hour Division website at http://www.dol.gov/esa/whd/contracts/dbra.htm . Wage determinations can be found at http://www.wdol.gov.

The Grantee shall include this provision and require this provision to be contained in all subcontracts for work performed under this Agreement.

The work performed by this Agreement may also be subject to the State's prevailing wage laws, Chapter 39.12 RCW. The Grantee is advised to consult with the Washington State Department of Labor and Industries to determine the prevailing wages that must be paid.

6. Non-supplanting of State and Local Funds

Grantees must use federal funds to supplement existing State and local funds for program activities and must not replace (supplant) State or local funds that they have appropriated or allocated for the same purpose. Potential supplanting will be the subject of monitoring and audit. Violations may result in a range of penalties, including suspension of current and future funds under this program, suspension or debarment from federal grants, recoupment of monies provided under a grant, and civil and/or criminal penalties. For additional guidance regarding supplanting, refer to the information provided at http://www.ojp.usdoj.gov/recovery/supplantingguidance.htm.

7. Protection of Whistleblowers

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery & Reinvestment Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct,) a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- Gross mismanagement of an agency agreement, contract or grant relating to covered funds;
- Gross waste of covered funds;
- Substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- Abuse of authority related to the implementation or use of covered funds; or

- Violation of law, rule, or regulation related to an agency agreement (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Any employer receiving covered funds shall post notice of the rights and remedies provided under this section. The recommended written notice is attached as "Know Your Rights under the American Recovery & Reinvestment Act." The Grantee shall require this provision in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services listed in Attachment A: Scope of Work.

Any employer receiving ARRA funds shall post notice of the rights and remedies provided under this section.

8. Listing American Recovery & Reinvestment Act Jobs with the Washington State Employment Security Department

This Agreement is funded with federal stimulus funds (under the American Recovery & Reinvestment Act), which has strict reporting requirements for funds spent and jobs created or retained. All job openings created by the Grantee for this project must be listed with the WorkSource system (an affiliate of the Employment Security Department) before hiring; all hiring decisions also must be reported to WorkSource. In addition, all Subgrantees hired by the Grantee also must be required to list jobs and report hiring results to WorkSource. Existing Grantee or Subgrantee employees who are retained using funds from this project also must be reported to WorkSource.

WorkSource will pre-screen and refer qualified job candidates for the Grantee's or Subgrantee's consideration. The Grantee and Subgrantee also have the discretion to use other, additional recruitment systems and retain the right to make all hiring decisions.

To begin the listing and reporting process, contact the Employment Security Department ARRA Business Unit at 877-453-5906 (toll-free), 360-438-4849, or ARRA@esd.wa.gov.

INSTRUCTIONS ON HOW TO LIST AMERICAN RECOVERY & REINVESTMENT ACT JOBS WITH THE EMPLOYMENT SECURITY DEPARTMENT WORKSOURCE SYSTEM

How to list ARRA jobs with the Employment Security (ESD) WorkSource system

To help with the increased transparency and accountability that are required under the American Recovery & Reinvestment Act (ARRA), ESD's ARRA Business Unit will be the central point of contact for state agencies and their contractors for listing and tracking ARRA-funded jobs.

Step 1: State agencies notify ESD about ARRA-funded contracts
Within 2 days after awarding an ARRA-funded contract, state agencies should provide the following information to Employment Security's ARRA Business Unit:

- Name, phone number and address of contractor
- Title or short description of the contract

Report this information to ESD's ARRA Business Unit at ARRA@esd.wa.gov, 877-453-5906 (toll-free) or 360-438-4849. (Employment Security will use the information to verify that contractors comply with the requirement stated in Step 2.)

Step 2: List ARRA-funded jobs with ESD's WorkSource system
State agencies, contractors and sub-contractors should contact the ARRA Business Unit to begin the process of listing their ARRA-funded jobs with the WorkSource system. The ARRA Business Unit may be reached at 877-453-5906 (toll-free), 360-438-4849 or ARRA@esd.wa.gov.

> **Here's what we'll do with the information:** The ARRA Business Unit will relay the information to a business outreach lead at a WorkSource office in the employer's community. The business outreach lead will contact the employer to obtain the information necessary to list the job/s (create a "job order"), and to discuss the employer's recruitment needs and the services available through WorkSource.
>
> The WorkSource business outreach lead will search the agency's database for qualified applicants (based on job-skill requirements), screen potential applicants, and refer selected candidates to the employer for consideration. (Employers retain the right to use other or additional recruitment systems, and they make all hiring decisions.)

Step 3: Report hiring information
After completing the hiring process, the employer should contact the WorkSource business outreach lead to "close" the job order and provide the following information:

- Job title
- Number of people hired
- Starting wage and hours

This information will be used in reports and status updates to the governor, the federal government and the public.

WorkSource

Frequently asked questions for ARRA employers

Q1. What services can I get when I list jobs with WorkSource?

A. WorkSource staff screens and refers job seekers based on how well their skills meet your job requirements. The screening is done broadly or narrowly, depending on how many people you want to interview.

WorkSource also can help you with free job advertising, pay-rate information, tax credits and information on employment laws and regulations. We're committed to helping your business succeed.

Q2. What screening and assessment of skills does WorkSource conduct?

A. We conduct a variety of screening and assessment. Contact your local WorkSource center to ask what assessment services are provided.

Q3. If the position requires a certain skill level, can WorkSource test applicants for math and reading levels or typing speed?

A. WorkSource staff will pre-screen applicants based on the qualifications that you need. Ask your WorkSource staff person about their ability to assess certain skills required for the position.

Q4. Can we conduct interviews at WorkSource?

A. You can use space at WorkSource for mass application sessions, one-on-one interviews, or even group orientations. Contact your local WorkSource to check availability.

Q5. What is the anticipated hiring time?

A. We recommend you plan ahead (7-10 days), although you may hire when you choose. The job will be listed for you right away.

Q6. What if WorkSource doesn't have job seekers with the skills and abilities that match our needs?

A. WorkSource staff will look first for qualified local applicants. If no one is available, then the search is expanded to include other areas to see if applicants are willing to commute or relocate. During this recession, there is an unprecedented pool of qualified applicants. Our matching system has the unique capabilities to match skilled job seekers with available jobs.

Q7. Is WorkSource able to coordinate job fairs or hiring events?

A. Yes, WorkSource often coordinates large job fairs and targeted hiring events. Your local WorkSource staff can arrange the details such as date, availability of space, and the amount of time they need to help coordinate your hiring event.

Q8. Do I have to list jobs and report hiring information to WorkSource?

A. Yes. Even if you hire someone who already works for you in a different position, report the hire for contract requirements.

Q9. Can I list my job opening with other sources like temp agencies or run a classified ad in the newspaper at the same time?

A. You may recruit as broadly as you like. Just remember that a requirement of your contract is to post contract-funded job openings with your WorkSource business representative and report all hiring information.

Q10. What information is being tracked by WorkSource?

A. WorkSource tracks information about jobs listed, job candidates referred and the job openings filled.

Q11. Who is the information being provided to?

A. Participation and performance information is provided by the Employment Security Department to the U.S. Department of Labor. It also is being reported to the Governor, who is required by the federal Office of Management and Budget to report about jobs preserved and created during the recession.

Q12. How long after placing the job order with WorkSource will it take before I can interview applicants?

A. It could happen the same day if there are interested, qualified job seekers who apply right away. Typically, it may take a few days.

Q13. What if I already have a job candidate (or a list of candidates), why do I have to list my jobs with WorkSource?

You can hire anyone you want, but you need to report it to us. Listing your stimulus-funded jobs with WorkSource enables us to track how many jobs are created and filled. We will relay the information to the governor and the federal government, who are documenting the effects of the stimulus funding.

ATTACHMENT D:
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

U.S. DEPARTMENT OF ENERGY

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

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

(b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (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;

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

(d) 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.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to $10,000 or imprisonment for up to 5 years, or both.

Brenda Bauer 9.2.10

Print Name Date

☐ I am unable to certify to the above statements. My explanation is attached.

ATTACHMENT E:
PROGRAMMATIC AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY, THE WASHINGTON STATE DEPARTMENT OF COMMERCE AND THE WASHINGTON STATE HISTORIC PRESERVATION OFFICE REGARDING EECBG, AND WAP UNDERTAKINGS

This attachment includes the following:

1. Letter dated May 24, 2010, from Tony Usibelli, Director, Washington State Energy Office, Department of Commerce.
2. The Programmatic Agreement between the United States Department of Energy, the Washington State Department of Commerce and the Washington State Historic Preservation Office Regarding EECBG, and WAP Undertakings, dated February 5, 2010.

STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
906 Columbia St SW • PO Box 43173• Olympia, Washington 98504-3173 • (360) 725-3122

DATE: May 24, 2010

TO: EECBG, SEP, & Sub-Award Recipients with projects in unspecified locations/buildings

FROM: Tony Usibelli, Director, Washington State Energy Office

We are providing you with a copy of the Programmatic Agreement between Washington State Department of Commerce, the Department of Archaeology & Historic Preservation and the Department of Energy Northwest. This agreement was developed to more efficiently and effectively fulfill the requirements of Section 106 of the National historic Preservation Act, 16 U.S.C. 470f (NAHP) and its implementing regulations at 36 CFR part 800.

One of Commerce's roles and responsibilities under this agreement is to ensure that the provisions of the Programmatic Agreement apply to sub-awards for the DOE grants we administer. However, some sub-awards, such as yours, will be funding activities not specifically identified by location or will expend federal funds many years into the future. Examples include proposed weatherization for low-income households within a given community or establishing a revolving loan to provide energy efficiency upgrades for commercial and residential buildings.

In these cases this responsibility rests with you as a sub-recipient to ensure Section 106 compliance. Appendix A and Appendix B, Category 1 of the Programmatic Agreement identify undertakings and procedures with no potential to cause effects on historic properties. Appendix B, Category 2 identifies standards that if practiced and reviewed by a Qualified Professional (as set forth in 36 CFR, Part 61, appendix A) will avoid adverse effects on historic properties. Finally Attachment A identifies standard mitigation measures for activities that would cause adverse effect(s). Please call your Program Manager for work that falls under Appendix B, Category 2 or Attachment A.

You may wish to incorporate all or portions of this agreement into contracts of these kind of work/activities that are funded by Energy Efficiency Conservation Block Grant (EECBG) and State Energy Planning (SEP). Likewise you may wish to pre-determine specific activities that will be funded for eligible historic (50+ years old) properties. If you have questions or would like to discuss options further, please contact the Commerce Program Manager for your sub-award.

PROGRAMMATIC AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF ENERGY, THE WASHINGTON STATE DEPARTMENT OF COMMERCE AND
THE WASHINGTON STATE HISTORIC PRESERVATION OFFICE
REGARDING EECBG, SEP AND WAP UNDERTAKINGS
February 5, 2010

WHEREAS, the United States Department of Energy (DOE) administers the following financial assistance programs: ***the Energy Efficiency and Conservation Block Grant Program*** under the Energy Independence and Securities Act of 2007 (EECBG); ***the State Energy Plan*** under the Energy Policy and Conservation Act of 1975 and the State Energy Efficiency Programs Improvement Act of 1990 (SEP); and ***the Weatherization Assistance Program*** (WAP) for Low-Income Persons under Title IV of the Energy Conservation and Production Act, the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and the American Recovery and Reinvestment Act of 2009 (ARRA); collectively referred to as the "Programs";

WHEREAS, the unprecedented levels of funding available to the Programs, due in large measure to ARRA, has created a large volume of projects requiring expedited historic preservation reviews to ensure the timely obligation of funds, that create new jobs, and improve local and state economies;

WHEREAS, the Washington State Historic Preservation Officer (SHPO) and Director of the Washington Department of Archeology and Historic Preservation (DAHP)is experiencing unprecedented numbers of requests for historic preservation review of undertakings funded by all Federal Agencies, including undertakings funded by the Programs;

WHEREAS, the Washington Department of Commerce (Recipient) is receiving financial assistance from DOE to carry out the Programs;

WHEREAS, the projects funded by the Programs are undertakings subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C 470f (NHPA) and its implementing regulations at 36 CFR part 800 and include rehabilitation, energy efficiency retrofits, renewables, and weatherization (undertakings);

WHEREAS, DOE has determined that these undertakings may adversely affect properties that are listed in or eligible for listing in the National Register of Historic Places (National Register) and subject to the requirements of the National Historic Preservation Act (NHPA);

WHEREAS, in accordance with 36 CFR 800.14(b)(4), the Advisory Council on Historic Preservation (the ACHP) has designated this Agreement as a Prototype Programmatic Agreement (PA), which does not require the participation or signature of the ACHP;

WHEREAS, DOE, the ACHP, and the National Conference of State Historic Preservation Officers (NCSHPO) have determined that the requirements of Section 106 can be more effectively and efficiently fulfilled if a programmatic approach is used to stipulate roles and responsibilities, exempt undertakings from Section 106 review, establish tribal protocols, facilitate identification and evaluation of historic properties, establish treatment and mitigation measures, and streamline the resolution of adverse effects;

WHEREAS, by memorandum dated August 28, 2009 (attached as Appendix C), DOE delegated certain tasks necessary for compliance with Section 106 of the NHPA to grantees and sub-grantees of funding from the Programs (Recipients);

WHEREAS, according to the August 28, 2009 memorandum, the Recipients are authorized, to initiate Section 106 compliance in accordance with 36 CFR 800.2 (c)(4);

WHEREAS, the undertakings covered under this PA are not located on Tribal lands and are primarily smaller scale activities and routine projects, without the potential for adversely affecting historic properties, rather than complex undertakings with a greater potential to adversely affect historic properties, which would require completion of the typical Section 106 review process;

WHEREAS, DOE and the ACHP were guided by the principles set forth in the ACHP's Affordable Housing Policy statement, adopted on November 9, 2006, in negotiating this Programmatic Agreement upon which this PA is based;

NOW, THEREFORE, DOE, the Washington Department of Commerce and the Washington SHPO agree that the Programs shall be administered in accordance with the following stipulations to satisfy DOE's Section 106 responsibilities for all individual undertakings of the Programs:

STIPULATIONS

DOE, the Recipient, and the SHPO shall ensure that the following stipulations are carried out:

I. Roles and Responsibilities

A. DOE shall be responsible for providing oversight of the PA, executing PAs with SHPOs, participating in the resolution of disputes between the SHPO and the Recipient, and providing technical assistance and guidance as needed. DOE shall be responsible for government-to-government consultation with Indian tribes, unless the Indian tribe agrees to the delegation of this responsibility to a Recipient.

B. The Recipient shall be responsible for consulting with consulting parties and conducting Section 106 reviews in a timely manner, preparing documentation for the SHPO and DOE, and maintaining records on undertakings. Undertakings that involve properties greater than 45 years old and are not listed on either Appendices A or B shall be submitted to the SHPO for review in accordance with this agreement.

C. Recipient shall ensure that the provisions of this PA apply to its sub-awards.

D. The Recipient is encouraged to use qualified professionals in conducting their Section 106 requirements.
E. The SHPO shall be responsible for reviewing project documentation and participation in consultation as set forth in this PA.
F. The ACHP shall be responsible for providing technical guidance, participating in dispute resolutions if appropriate, and monitoring the effectiveness of this PA.

II. Tribal Review

A. Execution of this PA presumes that DOE will conduct its government-to-government responsibilities with federal recognized Indian tribes or its Section 106 consultation requirements with Native Hawaiian Organizations (NHO) consistent with Federal laws and regulations. The Recipient shall not substitute for DOE in matters related to potential effects on historic properties of cultural and religious significance to Indian tribes, except with the concurrence of the Indian tribe or NHO.
B. DOE acknowledges that Indian tribes possess special expertise in assessing the National Register eligibility of properties with tribal religious and cultural significance, and requires the Recipient to consult with them, as appropriate, in identifying historic properties listed in or eligible for listing in the Area of Potential Effect (APE) of program areas.
C. If the Recipient notifies DOE that an undertaking may result in an adverse effect on cultural resources with tribal religious and cultural significance, DOE shall notify Indian tribes of individual undertakings that may result in an adverse effect on cultural resources with tribal religious and cultural significance and invite them to participate in consultations. Indian tribes and the Recipient may develop a bi-party agreement that outlines their review procedures for undertakings covered in a PA. Such agreements will be submitted to DOE for review and approval, and a copy sent to the ACHP for its records.

III. State Interagency Agreements

The Recipient may review an undertaking in accordance with the terms of an interagency agreement, in lieu of the other terms of this PA, if:

A. The interagency agreement was executed by the Recipient and the SHPO on or before February 5, 2010, and will be executed no later than February 19, 2010;
B. The Recipient and SHPO both agree through execution of this PA that the interagency agreement applies to the undertaking and provides a historic preservation review process that is similar to that provided by the other terms of this PA; and
C. DOE does not object to the use of the interagency agreement to fulfill the requirements of Section 106 of the NHPA for the undertakings.

IV. Exemptions from Section 106 review

A. The Recipient shall not submit to the SHPO undertakings listed in Appendices A or B as they do not have the potential to cause effects on historic properties even when historic properties may be present. The Recipient and the SHPO may agree to modify Appendix A and/or Appendix B, with advance notification of such modifications to the ACHP and DOE. Recipient will maintain file records with verification that undertakings were determined to be exemptions for a period of three (3) years from project completion and make them available for review if requested by DOE or the ACHP.

B. If a property has been determined to be ineligible for inclusion in the National Register within the last five (5) years from the date the Recipient made its application for DOE financial assistance, then no further review is required under this PA.

C. Recipients of any of the Programs may utilize either Appendix A or Appendix B in identifying exempt undertakings, regardless of whether the Exhibit on which the undertaking relates to another federally funded program.

V. Review Procedures for Non-exempt Undertakings

A. ***For undertakings not exempted under Stipulation III or IV, if the Recipient has an executed Section 106 Agreement per 36 CFR part 800 for Community Development Block Grants (CDBG) with the SHPO*** that 1) is still in effect; 2) covers the same undertakings as the DOE grant programs; and 3) is up to date with reporting to the SHPO, **no separate Section 106 review is needed.**

B. Otherwise, the Recipient shall review the undertaking in accordance with Stipulations VI through X below, or consistent with SHPO approved historic preservation protocols. The Recipient and/or sub-grantees may make use of the DAHP EZ 1, EZ 2, and EZ 3 form series to aid in fulfilling its Identification, Evaluation, and Treatment consultation requirements as described in Stipulations VI and VII.

VI. Identification and Evaluation

A. The Recipient shall establish the Area of Potential Effect (APE) for all program undertakings defined in the DOE grant agreement for the State.

B. The Recipient shall complete the identification and evaluation of historic properties utilizing existing information including the National Register, state surveys, and county and local surveys. In addition, the Recipient and SHPO may use or develop protocols with 36 CFR Section 800.4 for the review of consensus determinations of eligibility.

C. The Recipient shall consult with Indian tribes or NHOs to determine if there are historic properties of religious or cultural significance that were not previously identified or considered in surveys or related Section 106 reviews, as appropriate.

D. Archaeology surveys are required only for new ground disturbing project undertakings and shall be limited in scope subject to the concurrence of Indian tribes or NHOs that may attach religious or cultural significance to historic properties in the project area. Project undertakings requiring more than minimal ground disturbance shall be forwarded to the SHPO and THPOs or Indian tribes or NHOs concurrently for review.

E. In order to avoid potential delays, prior to initiating undertakings the SHPO may review the Recipient's scopes of work for above ground surveys and archaeology surveys that are deemed necessary to administer the Recipient's Programs and to implement the terms of this PA.

F. The Recipient shall refer disputes regarding determinations of eligibility to DOE for review and referral to the Keeper of the National Register in accordance with 800.4(c)(2).

VII. Treatment of Historic Properties

A. When the Recipient and the SHPO concur that an undertaking is designed and planned in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68, July 12, 1995 *Federal Register*) (Standards), that undertaking will not be subject to further Section 106 review.

B. The Recipient and SHPO will make best efforts to expedite reviews through a finding of "No Adverse Effect with conditions" when the Recipient and the SHPO concur that plans and specifications or scopes of work can be modified to ensure adherence to the Standards. If the undertaking cannot meet the Standards or would otherwise result in an adverse effect to historic properties, the Recipient will proceed in accordance with Stipulation VIII.

VIII. Resolution of Adverse Effects

A. The Recipient shall consult with the SHPO, and Indian tribes or NHOs as appropriate, to resolve adverse effects. The Recipient will notify DOE of the pending consultation, and DOE will participate through its designated representative.

B. The Recipient may use standard stipulations included in Attachment A of this PA, or as negotiated as part of this PA between the SHPO and the Recipient, or if the project warrants, use of an alternate PA due to the complexity of the project activity.

C. Consultation shall be coordinated to be concluded in 45-days or less to avoid the loss of funding. In the event the consultation extends beyond this period, DOE shall formally invite the ACHP to participate in consultation. The ACHP will consult with DOE regarding the issues and the opportunity to negotiate a Memorandum of Agreement (MOA). The purpose of this MOA is to avoid, minimize, or mitigate the adverse effect of the project on historic properties. Within seven (7) days after notification, the ACHP will enter consultation and provide its recommendation for either concluding the Section 106 review through an MOA or Chairman's comment from the ACHP to the Secretary of DOE within 21 days.

D. In the case of an ACHP Chairman comment, DOE may proceed once DOE provides its response to the ACHP.

IX. Emergency Situation Undertakings

A. When an emergency undertaking is required for historic properties associated with the undertakings, the Recipient shall allow the SHPO five (5) business days to respond, if feasible. Emergencies exist when there is a need to eliminate an imminent threat to health and safety of residents as identified by local or County building inspectors, fire department officials, or other local or County officials.

1. The Recipient shall forward documentation to the SHPO for review immediately upon notification that an emergency exists. Documentation should include a) nature of the emergency; b) the address of the historic property involved; c) photographs showing the current condition of the building; and d) the time-frame allowed by local officials to respond to, or correct, the emergency situation.
2. The Recipient shall consider mitigation measures recommended by the SHPO and implement them, if feasible.

X. Public and Consulting Party Involvement

A. The Recipient shall maintain a list of undertakings and shall make the documentation available to the public. The Recipient shall notify the SHPO if its notified of other consulting parties or public interest in any undertakings covered under the terms of the PA.

B. The Recipient, independently or at the recommendation of the SHPO, may invite interested persons to participate as consulting parties in the consultation process for adverse effects in accordance with Stipulations VI, VII, and VIII.

XI. Administrative Coordination

A. The Recipient, in consultation with the SHPO, may develop procedures allowing for the use of local reviews conducted by Certified Local Governments (CLG) when such procedures avoid the duplication of efforts.

B. The Recipient, in consultation with the SHPO, may determine that an undertaking has already been reviewed under an existing Section 106 effect determination or agreement document, then no further Section 106 review under this PA is required.

C. The SHPO shall provide comments to the Recipient within thirty (30) days, unless otherwise agreed upon by the SHPO and the Recipient, for reviews required under the terms of this PA with the exception of emergency undertakings. In the event that the SHPO fails to comment within the established period, the Recipient can assume the SHPO has concurred, and proceed.

D. The Recipient shall advise sub-grantees in writing of the provisions in Section 110 (k) of the Act and will advise the sub-grantees that Section 106 reviews may be compromised when project undertakings are initiated prematurely.

E. The SHPO and the Recipient shall make every effort to expedite Section 106 reviews for a period of less than the 30-day review when consistent with the terms of the DOE grant agreements and the Recipient intends to utilize the services of qualified professionals.

F. For projects that will require either an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA), nothing contained in this PA shall prevent or limit the Recipient and DOE from utilizing the procedures set forth in 36 CFR 800.8 to coordinate and conduct the historic preservation review in conjunction with the NEPA review.

XII. Discoveries

If historic properties are discovered or unanticipated effects on historic properties located within a project's APE after the undertaking has been initiated, the Recipient will implement the following procedures.

A. The Recipient shall immediately cease all operations for the portion of the undertaking with the potential to affect historic property.

B. The subgrantee shall advise the Recipient of the National Register eligibility of the historic property and the potential of the undertaking to impact its qualifying characteristics and an explanation of whether the SHPO or Indian tribes and NHOs concur with proposed avoidance, treatment plan or mitigation plan;

C. The Recipient or DOE shall notify Indian tribes or NHOs of any discoveries that have the potential to adversely affect sites or buildings of religious or cultural significance to them. After reviewing such discoveries, the Indian tribes or NHOs can request further consultation on the project by notifying DOE, ACHP, and the SHPO in writing.

D. The Recipient or subgrantee shall implement the avoidance, treatment or mitigation plan and advise the Recipient and DOE, if appropriate, of the satisfactory completion of the approved work. Once the approved work is complete the subgrantee may resume the activities that were halted to address the discovery situation.

XII Dispute Resolution

A. Should the SHPO object within the time frames outlined in this PA to any project undertakings, the Recipient shall consult further with the SHPO to attempt to remove the basis for the SHPO's objection. In the event that the SHPO's objection is not withdrawn, then the Recipient shall refer the matter to DOE. The Recipient shall forward all documentation relevant to DOE, who will notify and consult with the ACHP.

B. The ACHP will provide its recommendations, if any, within 21days following receipt of relevant documentation. DOE will take into account the ACHP's recommendations or formal comments in reaching a final decision regarding the dispute.

XIII. Reporting and Monitoring

A. DOE, the ACHP, and the SHPO may monitor any undertakings carried out pursuant to this PA. The ACHP may review undertakings, if requested by DOE. DOE shall be entitled to address and make determinations on overall policy or administrative issues related to the implementation of these Programs.

B. The Recipient shall adhere to DOE's established protocols for ARRA reporting program undertakings.

C. DOE will submit annual reports to ACHP and NCSHPO commencing October 15, 2010 summarizing the Programs' undertakings, to include data on number of undertakings, the number of exempt undertakings, and reviews conducted under this PA.

XIV. Amendments

DOE, the SHPO, or the Recipient may request that this PA be amended, whereupon DOE and the SHPO, and the ACHP, if involved, will consult to consider such an amendment. Any such amendments shall be developed and executed among DOE, the Recipient, and the SHPO in the same manner as the original PA, and pertain only to this State PA.

XV. Duration of Agreement

This PA will be valid for three (3) years from the date of execution, as verified with DOE filing the PA with the ACHP.

XVI. Termination of Agreement

DOE, the SHPO, or the Recipient may terminate the PA, provided that the party proposing termination notifies the other signatories and the ACHP in writing explaining the reasons for termination and affording the other signatories at least thirty (30) days to consult and seek alternatives to termination.

Signatories:

Tony Usibelli 4/19/2010

WASHINGTON DEPARTMENT OF COMMERCE · Date

Tony Usibelli, Director, Washington State Energy Office

Dan McConnon 4/21/10

WASHINGTON DEPARTMENT OF COMMERCE Date

Dan McConnon, Assistant Director, Community Services and Housing Division

4/21/10

WASHINGTON STATE HISTORIC PRESERVATION OFFICER Date

Claire Broido Johnson 5/6/10

UNITED STATES DEPARTMENT OF ENERGY Date

OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY

OFFICE OF WEATHERIZATION AND INTERGOVERNMENTAL PROGRAMS

APPENDIX A—WAP AND SEP OR EECBP PROJECTS THAT ARE USING WAP PROCEDURES UNDERTAKINGS EXEMPT FROM SECTION 106 REVIEW

All undertakings will be done in accordance with applicable local building codes or the International Building Code, where applicable. In accordance with 36 CFR 800.3(a)(1), the following undertakings have been determined to have no potential to cause effects on historic properties:

A. Exterior Work

1) Air sealing of the building shell, including caulking, weather-stripping, and other air infiltration control measures on windows and doors, and installing thresholds in a manner that does not harm or obscure historic windows or trim.
2) Thermal insulation, such as non-toxic fiberglass and foil wrapped, in walls, floors, ceilings, attics, and foundations in a manner that does not harm or damage historic fabric.
3) Blown in wall insulation where no holes are drilled through exterior siding.
4) Removable film on windows (if the film is transparent), solar screens, or window louvers, in a manner that does not harm or obscure historic windows or trim.
5) Reflective roof coating in a manner that closely resembles the historic materials and form, or with materials that restore the original feature based on historic evidence, and in a manner that does not alter the roofline, or where not on a primary roof elevation or visible from the public right-of-way.
6) Storm windows or doors, and wood screen doors in a manner that does not harm or obscure historic windows or trim.
7) In-kind replacement or repair of primary windows, doors and door frames that closely resemble existing substrate and framing
8) Repair of minor roof and wall leaks prior to insulating attics or walls, provided repairs closely resemble existing surface composite

B. Interior Work

Special Note: Undertakings to interior spaces where the work will not be visible from the public right of way; no structural alterations are made; no demolition of walls, ceilings or floors occurs; no drop ceilings are added; or no walls are leveled with furring or moved, should be automatically excluded from **SHPO** review. This work includes:

1) Energy efficiency work within the building shell:

a. Thermal insulation in walls, floors, ceilings, attics, crawl spaces, ducts and foundations
b. Blown in wall insulation where no decorative plaster is damaged.
c. Plumbing work, including installation of water heaters
d. Electrical work, including improving lamp efficiency
e. Sealing air leaks using weather stripping, door sweeps, and caulk and sealing major air leaks associated with bypasses, ducts, air conditioning units, etc.

f. Repair or replace water heaters
g. Adding adjustable speed drives such as fans on air handling units, cooling tower fans, and pumps
h. Install insulation on water heater tanks and water heating pipes
i. Install solar water heating systems, provided the structure is not visible from the public right of way
j. Install waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment
k. Repair or replace electric motors and motor controls like variable speed drives
l. Incorporate other lighting technologies such as dimmable ballasts, day lighting controls, and occupant controlled dimming

2) ***Work on heating and cooling systems:***

a. Clean, tune, repair or replace heating systems, including furnaces, oilers, heat pumps, vented space heaters, and wood stoves
b. Clean, tune repair or replace cooling systems, including central air conditioners, window air conditioners, heat pumps, and evaporative coolers
c. Install insulation on ducts and heating pipes
d. Conduct other efficiency improvements on heating and cooling systems, including replacing standing pilot lights with electronic ignition devices and installing vent dampers
e. Modify duct and pipe systems so heating and cooling systems operate efficiently and effectively, including adding return ducts, replace diffusers and registers, replace air filters, install thermostatic radiator controls on steam and hot water heating systems
f. Install programmable thermostats, outdoor reset controls, UL listed energy management systems or building automation systems and other HVAC control systems

3) ***Energy efficiency work affecting the electric base load of the property:***

a. Convert incandescent lighting to more energy efficient lighting, such as, fluorescent, LED, etc.
b. Add reflectors, LED exit signs, efficient HID fixtures, and occupancy (motion) sensors
c. Replace refrigerators and other appliances

4) ***Health and safety measures:***

a. Installing fire, smoke or carbon dioxide detectors / alarms
b. Repair or replace vent systems on fossil-fuel-fired heating systems and water heaters to ensure that combustion gasses exhaust safely to outside

c. Install mechanical ventilation, in a manner not visible from the public right of way, to ensure adequate indoor air quality if house is air-sealed to building airflow standard.

APPENDIX B – SEP AND EECBG UNDETRRTAKINGS EXEMPT FROM SECTION 106 REVIEW

A. Category 1 - No Consultation Required

In addition to the undertakings provided in ***Exhibit A (WAP Undertakings exempt from Section 106 Review),*** DOE and the SHPO have concluded that the following undertakings do not have the potential to cause effects on historic properties per 36 CFR § 800.3(a)(1):

1. General efficiency measures not affecting the exterior of the building:

a. Energy audits and feasibility studies
b. Weatherization of mobile homes and trailers
c. Caulking and weather-stripping around doors and windows in a manner that does not harm or obscure historic windows or trim.
d. Water conservation measures – like low flow faucets, toilets, shower heads, urinals – and distribution device controls
e. Repairing or replacing in kind existing driveways, parking areas, and walkways with materials of similar appearance
f. Excavating to gain access to existing underground utilities to repair or replace them, provided that the work is performed consistent with previous conditions
g. Ventilating crawl spaces
h. Replacement of existing HVAC equipment including pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, heat exchangers that do not require a change to existing ducting, plumbing, electrical, controls or a new location, or if ducting, plumbing, electrical and controls are on the rear of the structure or not visible from any public right of way.
i. Adding or replacing existing building controls systems including HVAC control systems and the replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors like smoke detectors and carbon monoxide detectors (wired or non-wired)
j. New installation of non-hard wired devices including photo-controls, occupancy sensors, carbon dioxide, thermostats, humidity, light meters and other building control sensors, provided the work conforms with applicable state and local permitting requirements
k. Adding variable speed drive motors
l. Insulation of water heater tanks and pipes
m. Furnace or hot water tank replacement that does not require a visible new supply or venting

2. *Insulation measures not affecting the exterior of the building:*

   a. Thermal insulation installation in walls, floors and ceilings (excluding spray foam insulation and insulation installed through holes drilled in siding)
   b. Duct sealing, insulation, repair or replacement in unoccupied areas
   c. Attic insulation with proper ventilation; if under an effective R8 - add additional R-19 up to R-38 (fiberglass bat only)
   d. Band joist insulation - R-11 to R19 as applicable
   e. Water heater tank and pipe insulation

3. *Electric base load measures not affecting the exterior of the building:*

   a. Appliance replacement (upgrade to EnergyStar appliances)
   b. Compact fluorescent light bulbs
   c. Energy efficient light fixtures, including ballasts (Replacement)
   d. LED light fixtures and exit signs (Replacement)
   e. Upgrade exterior lighting (replacement with metal halide bulbs, LEDs, or others) along with ballasts, sensors and energy storage devices not visible from any public right of way.

B. Category 2 - No Consultation Required when SOI Standards are Adhered to and Verified by Qualified Staff, if Applicable

The following undertakings may have effects on historic properties as defined in 36 CFR Part 800.5. However, if the activity or undertakings meet the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68, July 12, 1995 *Federal Register*) (Standards) specified below then, DOE and the SHPO agree that the undertakings will have no adverse effect upon historic properties and DOE/Recipients shall not be required to further consult with the SHPO if reviews are conducted by Qualified Professionals, as defined in the *Secretary of Interior's Professional Qualifications Standards* set forth in 36 CFR Part 61, Appendix A.

Based on the above, the following work will not meet the Criteria of Adverse Effect when it adheres to the recommended approaches in the Standards and does not involve following significant spaces: entrances, entry halls, lobbies, areas for public gathering and circulation. Alternatively, if the following undertakings occur in a significant space, work will have not adverse effect on historic properties as long as it does not damage historic materials or finishes and new wiring, piping, and ductwork are concealed. All building undertakings under this section will be done in accordance with the Standards, or conditions and modifications proposed by the SHPO.

1. Efficiency and repair measures:

a. Painting over previously painted exterior surfaces, provided destructive surface preparation treatments are not used (such as water-blasting, sandblasting and chemical removal)
b. Installation or replacement of downspout extensions, provided that the color of the extensions is historically appropriate for the period and style of the property
c. Repairing or upgrading electrical or plumbing systems and installing mechanical equipment, in a manner that does not permanently change the appearance of the interior or exterior of the building
d. Installation of new HVAC equipment (such as pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, or heat exchangers) in a manner that does not permanently change the appearance of the building.
e. Integrated shingle-style or thin film solar systems on the rear roof of the structure, behind the parapet or not visible from the public right of way.
f. Solar systems (including photovoltaic and solar thermal) not visible from the public right of way and if ground-mounted can be installed without ground disturbance and if roof-mounted will not require new building reinforcement.
g. Wind system additions to existing wind power facilities that will not require ground disturbance and if building mounted will not require building reinforcement.
h. Lead-based paint abatement in accordance with the Standards and Preservation Brief #37
i. Building cleaning in accordance with the Standards and Preservation Briefs #1, #6, and #10
j. Repairing masonry, including re-pointing and rebuilding chimneys in accordance with the Standards and Preservation Brief # 2
k. New lighting controls including photo-sensors and shading elements if not visible from the public right of way
l. New metering devices in a manner that does not permanently change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure and is not visible from the public right of way
m. New water efficient fixtures and fittings in a manner that does not permanently change the appearance of the interior or exterior of the building

2. Installation or repair of roofing, siding, and ventilation:

a. White Roofs, Cool Roofs, Green Roofs, Sod or Grass Roofs not visible from the public right-of-way
b. Rainwater catches and/or gray water systems not viewable from the public right of way
c. Repair or replacement of existing exterior siding provided that new siding matches the existing siding in dimension, profile and texture

d. Flat or shallow pitch roof replacement (shallow pitch is defined as a pitch with a rise-to-run ratio equal to or less than 3" to 12") with no part of the surface of the roof visible from the ground
e. Roof repair or replacement with materials that closely resemble the historic materials and form, or with replacement materials that are close to the original in color, texture, composition and form to restore the original feature based on historic evidence, and in a manner that does not alter the roofline
f. Installing vents (such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit and frieze board vents or combustion appliance flues) if not located on a primary roof elevation or not visible from the public right-of-way
g. Installing foundation vents, if painted or finished to match the existing foundation material.

3. *Windows and doors:*

a. Installing storm windows, storm doors or wood screen doors in a manner that does not harm or obscure historic windows, doors or trim
b. Installing insulated exterior replacement doors where the door openings are not altered and are not visible from the public right-of-way
c. Window or glazing treatments that do not change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure

ATTACHMENT A: STANDARD MITIGATION MEASURES FOR ADVERSE EFFECTS

The Recipient and the SHPO may develop and execute an Agreement that includes one or more of the following Standard Mitigation Measures, as may be modified to a particular activity, with the concurrence of both parties, for undertakings determined to have an adverse effect on listed or eligible historic resources. The ACHP will not be a party to these Agreements. However, the Recipient must submit a copy of each signed Agreement to the SHPO, and the ACHP within 30 days after it is signed by the Recipient and the SHPO.

1. Blanket/Programmatic Mitigation

The Recipient, in consultation with the SHPO and other local historic preservation agencies or non-profit organizations, may agree to implement a blanket or programmatic mitigation measure. If all parties are amenable to this approach, other standard mitigation measures as identified below are encouraged, but not required, to be completed in fulfillment of the Agreement. Examples of blanket/programmatic measures that may undertaken include, but are not limited to: completion of a survey of historic properties; preparation of a National Register of Historic Places nomination of an eligible property or district; preparation of a historic context or preservation planning document; undertaking preservation/rehabilitation of a National Register listed or eligible property; conveyance of a lump-sum donation to a qualified historic preservation agency or organization for undertaking historic preservation activities. As with all mitigation measures in this document, the activity shall be carried out by professionals meeting the National Park Service Professional Qualifications as defined in 36 CFR Part 61. Any mitigation funds will come from the grantee's funds.

2. Recordation

The Recipient shall ensure that the historic property is recorded prior to its alteration in accordance with methods or standards established in consultation with the SHPO. The SHPO shall identify appropriate archive locations for the deposit of recordation materials and the Recipient shall be responsible for submitting required documentation to identified archive locations. The Recipient and the SHPO may mutually agree to waive the recordation requirement in situations where the integrity of the building has been compromised or other representative samples of similar historic resources have been previously recorded.

3. Architectural Salvage

The Recipient, in consultation with the SHPO, shall identify significant architectural features that can be salvaged and appropriate parties to receive the salvaged features. The Recipient shall ensure that any architectural features identified for salvage are salvaged prior to initiation of undertakings and properly stored and curated. When feasible, and determined appropriate in consultation with SHPO, salvaged architectural features shall be reused in other preservation projects.

4. Rehabilitation

The Recipient shall ensure that the treatment of historic properties which the SHPO has determined do not meet the *Standard,* or SHPO approved design guidelines, are carried out in accordance with treatments agreed upon by the Recipient and the SHPO and are incorporated in the final plans and specifications. The final plans and specifications shall be approved by the SHPO prior to initiating the undertaking.

5. New Construction

The Recipient shall ensure that the design of new buildings, or additions, which the SHPO has determined do not meet the *Standards,* or SHPO approved design guidelines, are carried out in accordance plans and specifications reviewed and approved by the SHPO prior to finalization and initiation of the undertaking.

Exhibit C---August 28, 2009 Delegation Memorandum
(next page)

Department of Energy
Washington, DC 20585

August 28, 2009

MEMORANDUM

TO: State Historic Preservation Officers
Tribal Historic Preservation Officers

FROM: Catherine R. Zoi
Assistant Secretary
Energy Efficiency and Renewable Energy

SUBJECT: Memorandum from EERE Regarding Delegation of Authority for Section 106 Review of Undertakings, Assisted by the U. S. Department of Energy, Office of Energy Efficiency and Renewable Energy

The Department of Energy (DOE), through the Office of Energy Efficiency and Renewable Energy (EERE), provides financial assistance to states, U.S. territories, units of local government, and Indian Tribes through the Energy Efficiency and Conservation Block Grant (EECBG) Program, Weatherization Assistance Program (Weatherization), and State Energy Program (SEP). Attached hereto is a one-page summary of the three programs. Additional program information is available at the following links: http://www.eecbg.energy.gov/; http://apps1.eere.energy.gov/wip/weatherization.cfm; http://apps1.eere.energy.gov/state_energy_program/.

Through this memorandum, DOE intends to formalize the role of the States and DOE's award recipients (Applicants) to assist DOE in carrying out its Section 106 compliance responsibilities. In order to streamline DOE's compliance with Section 106 and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800), EERE is authorizing its Applicants under the EECBG, Weatherization, and SEP programs to initiate consultation pursuant to 36 CFR § 800.2(c) (4). Effective immediately, EERE Applicants and their authorized representatives may consult with the State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs) to initiate the review process established under 36 CFR Part 800 and to carry out some of its steps. Specifically, EERE Applicants are authorized to gather information to identify and evaluate historic properties, and to work with consulting parties to assess effects. EERE retains responsibility to document its findings and determinations in order to appropriately conclude Section 106 review.

EERE also remains responsible for initiating government-to-government consultation with federally recognized Indian Tribes. EERE's responsibility to consult on a government-to-government basis with Indian Tribes as sovereign nations is established through specific authorities and is explicitly recognized in 36 CFR Part 800. Accordingly, EERE may not delegate this responsibility to a non-federal party without

Printed with soy ink on recycled paper

ATTACHMENT F:
UNITED STATES DEPARTMENT OF ENERGY NEPA GUIDANCE, NEPA TEMPLATE FOR CATEGORICAL EXEMPTIONS, AND ENVIRONMENTAL CHECKLIST

This attachment includes the following:

1. Letter dated May 27, 2010, from United States Department of Energy, regarding NEPA conditions pertaining to the programs.
2. NEPA template for categorical exemptions.
3. Environmental Checklist, which shall be used for Energy Efficiency Improvement Projects that do not qualify under the NEPA template for categorical exemptions.

May 27, 2010

Washington Department of Commerce
Attn: Ms. Cory Plantenberg
906 Columbia Street SW
P O Box 43173
Olympia, WA 98504-3173

SUBJECT: National Environmental Policy Act (NEPA) Conditions for Award No. DE-EE0000139

Dear Ms Plantenberg:

In accordance with the Special Terms and Conditions Article entitled "NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)," approval is hereby granted for the State of Washington to perform the following previously prohibited project activities under the subject award:

- Energy Efficiency Credit Enhancement Program – activities related to the Washington Credit Enhancement project;
- Energy Efficiency and Renewable Energy Loans and Grants Program – activities related to the Clarke Public Utilities project; and
- Energy Efficiency and Renewable Energy Loans and Grants Program – activities related to work performed with Harold LeMay Enterprises, Inc.

As a result of this authorization, please provide any updates to your Annual Plan, if necessary, to the DOE Project Officer identified in Block 15 of the Assistance Agreement Cover Page, within ten (10) days of receipt of this letter. These updates will be incorporated through an amendment to the agreement. In addition, please continue to work with the Project Officer to address NEPA on the remaining conditioned activities.

If you move forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

Should you have any questions or concerns regarding this approval, please contact the Contract Specialist, Sue Miltenberger (304) 285-4083.

Sincerely,

Jeffrey S. Kooser
Contracting Officer
Acquisitions and Assistance Division

cc T. Fuller, GFO
Award No. DE-EE0000139

3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507

TEMPLATE

By signing below, State of Washington provides assurance that the attached projects to award sub-grants under DE-EE0000849, as detailed in the EECBG Activity Worksheet entitled Competitive sub-grants to cities & counties fall within the categories in Part I below and, moreover, are consistent with the limitations prescribed therein. To assist DOE in satisfying its NEPA obligations, Commerce provides the attached spreadsheet describing the scope of work for each project and a GO EF1 environmental questionnaire that for all projects that fall within the bounded categories. Individual GO-EF1 environmental checklists for each of these projects are on file with the Department of Commerce, along with other documentation necessary to demonstrate compliance with Part II requirements and conditions below.

Part I – Bounded Categories

1. Conducting residential and commercial building energy audits, which Projects include hiring technical consultants for such work.

2. Establishment of financial incentive programs for energy efficiency improvements.

3. Provision of grants to nonprofit organizations and governmental agencies for the purpose of performing energy efficiency retrofits, provided that:

    - Projects Are Limited To: installation of insulation; installation of efficient lighting; heating, venting, and air conditioning (HVAC) and high-efficiency shower/faucet upgrades; weather sealing; the purchase and installation of ENERGY STAR appliances; installation of solar powered appliances with improved efficiency; and replacement of windows and doors.

4. Development and implementation of energy efficiency and conservation programs for buildings and facilities within the jurisdiction of the entity, provided that:

    - Projects Are Limited To: design and operation of the programs; identifying the most effective methods for achieving the maximum participation and efficiency rates; public education, measurement and verification protocols; and identification of energy efficient technologies.

5. Development and implementation of programs to conserve energy used in transportation, provided that:

    - Projects Are Limited To: use of flex time by employers; use of satellite work centers; development and promotion of zoning guidelines or requirements which promote energy efficient development; and synchronization of traffic signals.

6. Development and implementation of building codes and inspection services, and associated training and enforcement of such codes in order to support code compliance and promote building energy efficiency.

7. Projects to increase participation and efficiency rates for material conservation programs.

8. Replacement of traffic signals and street lighting with energy efficient technologies.

9. Development, implementation, and installation on or in any government building of onsite renewable energy technology that generates electricity from renewable resources, provided that:

   - Projects Are Limited To:

     - Solar Electricity/Photovoltaic - appropriately-sized system or unit on existing rooftops and parking shade structures; or a 60 KW system or smaller unit installed on the ground within the boundaries of an existing facility.
     - Wind Turbine - 20 KW or smaller.
     - Solar Thermal - system must be 20 KW or smaller.
     - Solar Thermal Hot Water - such as appropriately sized for small buildings.
     - Ground Source Heat Pump - 5.5-ton capacity or smaller, horizontal/vertical, ground, closed-loop system.
     - Combined Heat and Power System - boilers sized appropriately for the buildings in which they are located.
     - Biomass Thermal - 3 MMBTUs per hour or smaller system with appropriate Best Available Control Technologies (BACT) installed and operated.

Part II - Integral Element Requirements and Other Conditions

State of Washington shall award sub-grants only for Projects that would not:

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE and/or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators);

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases; or

(4) Adversely affect environmentally sensitive resources. Environmentally sensitive resources include, but are not limited to:

(i) Property (e.g., sites, buildings, structures, objects) of historic, archeological, or architectural significance designated by Federal, state, or local governments or property eligible for listing on the National Register of Historic Places;

(ii) Federally-listed threatened or endangered species or their habitat (including critical habitat), Federally- proposed or candidate species or their habitat, or state-listed endangered or threatened species or their habitat;

(iii) Wetlands regulated under the Clean Water Act (33 U.S.C. 1344) and floodplains;

(iv) Areas having a special designation such as Federally- and state-designated wilderness areas, national parks, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, and marine sanctuaries;

(v) Prime agricultural lands;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests.

Waste Stream Conditions

Washington State shall obtain a waste management plan addressing waste generated by a proposed Project prior to awarding a sub-grant for that Project. This waste management plan will describe the Sub-recipient's plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead paint, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed Project. shall make the waste management plan and related documentation available to DOE on DOE's request (for example, during a post-award audit). Washington State shall ensure through specific contract terms that the Sub-recipient complies with all Federal, state and local regulations for waste disposal.

NHPA Conditions

Prior to awarding a sub-grant for a Project, Washington State and the Sub-recipient shall comply with Section 106 of the National Historic Preservation Act (NHPA). If applicable, the Sub-recipient must contact the State Historic Preservation Officer (SHPO), and the Tribal Historic Preservation Officer (THPO). Washington State shall retain sufficient documentation, from the Sub-recipient or other sources, to demonstrate that the Sub-recipient has received required approval(s) from the SHPO or THPO for the Project. Washington State shall deem compliance with Section 106 of the NHPA complete only after it has this documentation. Washington State shall make this documentation available to DOE on DOE's request (for example, during a post-award audit).

Cumulative Impacts, Connected Actions and Extraordinary Circumstances

DOE's CXs are not absolute. CXs do not apply to Projects that involve "extraordinary circumstances," connected actions, or cumulative impacts that may have significant environmental impacts. *See* 10 C.F.R. § 1021.410(b). If DOE grants a CX based on descriptions in the State's RFP for EECBG grants, DOE will base its decision on the lack of such "extraordinary circumstances" and significant impacts. Washington State shall review section 1021.410 and must immediately contact DOE if it identifies a Project that may involve "extraordinary circumstances," cumulative impacts or connected actions that could have significant environmental impacts. Typically, DOE will either subject the sub-grant for the Project to NEPA review or the State will elect not to proceed with awarding the sub-grant.

Part III

On the basis of Washington State's assurances in this Project Activity Worksheet, DOE intends to apply one or more CXs to the State's sub-grants for all Projects described in the State's RFP. However, because DOE has only recently started employing this approach to categorically excluding sub-grants, there may be unforeseen circumstances that make it inappropriate to apply a CX to a Project(s) that meets all the Part I and Part II requirements. DOE does not waive its discretion to decline to apply a CX for EECBG sub-grants.

By signing below, Washington State acknowledges the preceding paragraph, agrees to all conditions in Parts I, II and III, and provides its assurance that all statements in the Project Activity Worksheet and attachments are accurate to the best of its knowledge.

Tony Usibelli

Authorized Signatory Washington State

GO-EF1
(2/06/02)

U.S. DEPARTMENT OF ENERGY
GOLDEN FIELD OFFICE

ENVIRONMENTAL CHECKLIST
(To Be Completed by Potential Recipient)

The Department of Energy (DOE) is required by the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4332(2), 40 CFR parts 1500-1508) and DOE implementing regulations (10 CFR 1021) to consider the environmental effects resulting from federal actions, including providing financial assistance. Please provide the following information to facilitate DOE's environmental review. DOE needs to evaluate the requested information as part of your award negotiation.

Instructions and Handbook: Terms that appear in blue have more detailed information available to assist you in completing the form. Save the form to your local directory. Leave your internet browser open and open the form in Word from the local directory. Click on the blue term and it will automatically open the handbook at the appropriate place. Click on the back button to return to your form. Or, you may click here to open the handbook.

PART I: General Information

Project Title: Competitive Sub-Grants to Cities and Counties

Solicitation Number: DE-FOA-0000849

1. Please describe the intended use of DOE funding in your proposed project. For example, would the funding be applied to the entire project or only support a phase of the project? Describe the activity as specifically as possible, i.e. planning, feasibility study, design, data analysis, education or outreach activities, construction, capital purchase and/or equipment installation or modification. This checklist is for the 40 projects that I have determined fall within the parameters of the template. By signing the attached template, Commerce's agrees to the bounds of the attached template.

2. Does any part of your project require review and/or permitting by any other federal, state, regional, local, environmental, or regulatory agency? ☐ Yes ☐ No
If yes, please provide a list of required reviews and permits in the appropriate item number in Part II.

3. Has any review (e.g., SEPA, NEPA documentation, permits, agency consultations) been completed? ☐ Yes ☐ No
If yes, is a finding or report available and how can a copy be obtained?

4. Is the proposed project part of a larger scope of work? ☐ Yes ☐ No If yes, please describe.

   Do you anticipate requesting additional federal funding for subsequent phases of this project? ☐ Yes ☐ No
   If yes, please describe.

5. Does the scope of your project **only** involve one or more of the following:
   - ☐ Information gathering such as literature surveys, inventories, audits,
   - ☐ Data analysis including computer modeling,
   - ☐ Document preparation such as design, feasibility studies, analytical energy supply and demand studies, or
   - ☐ Information dissemination, including document mailings, publication, distribution, training, conferences, and informational programs.

   If the scope of your project is **limited to** the block(s) checked above, please skip to Part III, otherwise, continue to Part II.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is entered into between the City of Bainbridge Island, a Washington State municipal corporation ("City"), and Johnson Controls, Inc. ("Consultant").

WHEREAS, the City needs professional services in connection with the upgrade of City Hall's HVAC controls system; and

WHEREAS, the Consultant has the expertise and experience to provide said services and is willing to do so in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises, and agreements set forth herein, it is agreed by and between the City and the Consultant as follows:

1. SERVICES BY CONSULTANT

The Consultant shall provide the professional services as defined in this Agreement and as necessary to accomplish the scope of services attached hereto as **Attachment A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor, and related equipment to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. TERM AND TERMINATION OF AGREEMENT

A. This Agreement shall become effective upon execution by both parties and shall continue in full force and effect until December 31, 2018, unless sooner terminated by either party as provided below.

B. This Agreement may be terminated by either party without cause upon thirty (30) days' written notice to the other party. In the event of termination, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to the City, and the Consultant shall be entitled to just and equitable compensation at the rate set forth in Section 3 for any satisfactory work completed prior to the date of termination.

3. PAYMENT

A. The City shall pay the Consultant for such services: (check one)

[ ] Hourly, plus actual expenses, in accordance with **Attachment A**, but not more than a total of [write out the total payment for services] ($______);
[X] Fixed Sum: a total amount of One Hundred Four Thousand One Hundred Seventy-Three Dollars $104,173.00.
[ ] Other: $_______, for all services performed and incurred under this Agreement, to be billed monthly in equal amounts.

B. The Consultant shall submit, in a format acceptable to the City, monthly invoices for services performed in a previous calendar month. Each project and each task within a project shall be the subject of a separate invoice. The Consultant shall maintain time and expense records and provide them to the City upon request.

C. The City shall pay all invoices by mailing a City check within sixty (60) days of receipt of a proper invoice from the Consultant.

D. If the services rendered do not meet the requirements of this Agreement, the Consultant shall correct or modify the work to comply with this Agreement. The City may withhold payment for such work until it meets the requirements of this Agreement.

4. INSPECTION AND AUDIT

The Consultant shall maintain all books, records, documents, and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts, and records if necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

5. INDEPENDENT CONTRACTOR

A. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants, and agrees that the Consultant's status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Consultant shall make no claim of City employment nor shall the Consultant claim any related employment benefits, social security, and/or retirement benefits.

B. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.

C. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

D. The Consultant shall obtain a business license and, if applicable, pay business and occupation taxes pursuant to Title 5 of the Bainbridge Island Municipal Code.

6. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

A. The Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, sexual orientation, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. The Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

C. Violation of this Section 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension by the City, in whole or in part, and may result in ineligibility for further work for the City.

7. OWNERSHIP OF WORK PRODUCT

All data, materials, reports, memoranda, and other documents developed under this Agreement, whether finished or not, shall become the property of the City and shall be forwarded to the City in hard copy and in digital format that is compatible with the City's computer software programs.

8. GENERAL ADMINISTRATION AND MANAGEMENT

The City Manager of the City, or designee, shall be the City's representative, and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices, under this Agreement.

9. HOLD HARMLESS AND INDEMNIFICATION

A. The Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

B. Should a court of competent jurisdiction determine that this Agreement 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 Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend hereunder, shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

C. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to void, nullify, and/or invalidate any of these covenants of indemnification.

D. Nothing contained in this Agreement shall be construed to create a liability or a right of indemnification in any third party.

10. INSURANCE

The Consultant shall maintain insurance as follows:

[X] Commercial General Liability as described in **Attachment B**.
[X] Professional Liability as described in **Attachment B**.
[X] Automobile Liability as described in **Attachment B**.
[X] Workers' Compensation as described in **Attachment B**.
[ ] None.

11. SUBLETTING OR ASSIGNING CONTRACT

This Agreement, or any interest herein or claim hereunder, shall not be assigned or transferred in whole or in part by the Consultant to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of the Consultant as stated herein.

12. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by both parties.

13. SEVERABILITY

A. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

14. FAIR MEANING

The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

15. NONWAIVER

A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

16. NOTICES

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To the City:	City of Bainbridge Island 280 Madison Avenue North Bainbridge Island, WA 98110 Attention: City Manager
To the Consultant:	Johnson Controls, Inc. 22745 29th Drive SE, Suite 100 Bothell, WA 98021 Attention: Josh Morse

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

17. SURVIVAL

Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

19. VENUE

The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Kitsap County, Washington.

20. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the later of the signature dates included below.

JOHNSON CONTROLS, INC.

Date:______________________________

By:______________________________

Name______________________________

Title______________________________

Tax I.D. #__________________________

City Bus. Lic. #______________________

CITY OF BAINBRIDGE ISLAND

Date:______________________________

By:______________________________

Douglas Schulze, City Manager

ATTACHMENT A
SCOPE OF SERVICES

The project is located at the City of Bainbridge Island City Hall in Kitsap County, Washington. The City is looking to upgrade the City Hall Johnson Controls building management system (BMS) or Metasys, N2 technology that manages a cooling tower, boiler, twenty-one heat pumps and exhaust fans for approximately 24,000 square feet. The City has replaced five heat pumps at City Hall within the last four years and the controllers for the new heat pumps do not communicate with the existing BMS. The original heat pumps periodically lose communication between the controller and the BMS and the inside/outside air economizers are not controlled effectively. The purpose of the City Hall HVAC software upgrade is to reduce electrical peak demand and consumption through improved scheduling, occupancy sensors, and effective economizing outside air while allowing the reliability of the new components.

The City will separately contract with a licensed electrical contractor for the installation of new thermostats and occupancy sensors. The Contractor shall design, inspect, and coordinate with the licensed electrical contractor throughout the project.

Bid Item 1: Safety Plan

The Contractor shall follow all laws to provide safety to employees and surrounding public. The Contractor shall submit for the City to review and approve a safety plan that details fall protection, personal protection equipment, lock out tag out procedures, work zone safety, etc.

Measurement: All work to complete the safety plan will be paid in a lump sum payment.

Payment: "Safety Plan" Lump Sum

Bid Item 2: HVAC Software

The Contractor shall purchase and install the current Metasys version 9.0 or approved equal. The Contractor shall program and integrate all system components to a central computer in City Hall and the ability to login remotely. The software shall have the ability to troubleshoot problems, modify schedules, and show trending information. The Contractor shall provide a submittal to the City for approval.

Measurement: The items of work for one BMS installed and integrated with all components by the Contractor's crew onsite will be paid as a lump sum payment.

Payment: "HVAC Software" Lump Sum

Bid Item 3: Control Hub

The Contractor shall purchase and install the current version LN series controller or approved equal. The Contractor shall program and integrate all system components to the central control hub of all City Hall HVAC components. The components include: boiler, cooling tower, heat pumps, exhaust fans, occupancy sensors, thermostats, and all sensors. The Contractor shall provide a submittal to the City for approval.

Measurement: The items of work for one LN series controller or approved equal installed and integrated into system will be paid as a lump sum.

Payment: “Control Hub” Lump Sum

Bid Item 4: Boiler & Cooling Tower Controls

The Contractor shall purchase and install two LN series controllers or approved equal for the boiler and cooling tower integrated into the control hub and software system. The Contractor shall provide a submittal to the City for approval.

Measurement: The items of work for two LN series controller or approved equal installed and integrated into system will be paid as a lump sum.

Payment: “Boiler & Cooling Tower Controls” Lump Sum

Bid Item 5: Heat Pump Controls

The Contractor shall purchase five heat pump controllers compatible with the LN series controllers and Metasys version 9.0. The heat pump controllers shall be integrated into the system and be fully functional. The Contractor shall provide a submittal to the City for approval.

Measurement: The items of work will be measured by one heat pump controller installed and integrated with all components by the Contractor’s crew onsite.

Payment: “Heat Pump Controls” Each

Bid Item 6: Thermostat Housing Replacement

The Contractor shall purchase and install twenty-one new thermostat housing covers to the existing Johnson Controls thermostats. The Contractor shall provide a submittal to the City for approval.

Measurement: The items of work will be measured by one Johnson Controls thermostat covers installed with all components by the Contractor’s crew onsite.

Payment: “Thermostat Housing Replacement” Each

Bid Item 7: Thermostat Controls Upgrade

The Contractor shall purchase, design, and inspect seven new primary thermostats and fifteen new secondary thermostats to be installed and integrated to the BMS. The thermostats shall be setup to average the primary and secondary thermostats to control the heat pumps for multiple rooms. The Contractor shall provide a plan and product submittal to the City for the purpose of bidding the electrical work with a licensed electrical contractor.

Measurement: The items of work will be measured by one primary or secondary thermostat with all components by the Contractor’s crew onsite.

Payment: “Thermostat Controls Upgrade” Each

Bid Item 8: Occupancy Sensors

The Contractor shall purchase, design, and work with the City's contracted electrician to install occupancy sensors in four locations within City Hall. The occupancy sensors shall be programed to an alternate setting when the space is unoccupied. The Contractor shall provide a plan and product submittal for the City to bid through a public works contract with a licensed electrician.

Measurement: The items of work will be measured by one occupancy sensor purchased, designed, and integrated with all components by the Contractor's crew onsite.

Payment: "Occupancy Sensors" Each

Bid Item 9: Programming, Integration, Startup, & Testing

The Contractor shall program and integrate all existing and new components to be fully functional to manufactures parameters and operating effectively. The Contractor shall coordinate with the City contact and City hired electrician for startup of the equipment and testing. The Contractor shall provide the City with redline asbuilts of all the HVAC components and new controls equipment. In addition, the Contractor shall provide the City with a complete operations and maintenance manual of the software and controls, and the Contractor shall provide eight hours of training to staff.

The City is responsible for obtaining all building permits and the City hired electrician for obtaining an electrical permit.

Measurement: The items of work will be for all administrative, overhead, permitting, programming, integration, startup, testing and training in order to complete the work paid as a lump sum.

Payment: "Programming, Integration, Startup & Testing" Lump Sum.

The project must be completed by October 31, 2018.

Item #	Items of Work / Materials to be Furnished	Est. Quantity	Unit	Unit Bid Price*	Total Price
Bid Items include Washington State Sales Tax at 9.0%					
1	Safety Plan	1	LS	**$685**	**$685**
2	HVAC Software	1	LS	**$13,935**	**$13,935**
3	Controls Hub	1	LS	**$10,840**	**$10,840**
4	Boiler & Cooling Tower Controls	1	LS	**$3,680**	**$3,680**
5	Heat Pump Controls	5	EA	**$2,363**	**$11,816**
6	Thermostat Housing Replacement	21	EA	**$249**	**$5,234**
7	Thermostat Controls Upgrade	22	EA	**$1,087**	**$23,902**
8	Occupancy Sensors	4	EA	**$910**	**$3,640**
9	Programming, Integration, Startup, & Testing	1	LS	**$21,840**	**$21,840**
Subtotal Items that do not include Washington State Sales Tax					**$95,572**
Washington State Sales Tax @ 9.0%					**$8,601.48**
Grand Total (Subtotal and Sales Tax)					**$104,173.000**

Signature of Authorized Official / Date   Print – Name / Company Name

* Note: Include Washington State Retail Sales Taxes in the unit bid prices for all work for building, repairing, or improving streets, roads, etc.; including: non-motorized facilities, related storm drainage, and power for street lighting. See Section 1-07.2 for additional information.

ATTACHMENT B
INSURANCE REQUIREMENTS

A. Insurance Term

The Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

B. No Limitation

The Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The Consultant shall obtain insurance of the types and coverage described below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.

2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap liability, independent contractors, and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession.

D. Minimum Amounts of Insurance

The Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim and $1,000,000 policy aggregate limit, as applicable.

E. Other Insurance Provision

The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage

Before commencing work and services, the Consultant shall provide to the person identified in Section 8 of the Agreement a Certificate of Insurance evidencing the required insurance. The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work. The City reserves the right to request and receive a certified copy of all required insurance policies.

H. Notice of Cancellation

The Consultant shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to the Consultant to correct the breach, immediately terminate this Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

J. City Full Availability of Consultant Limits

If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

City of Bainbridge Island
City Council Agenda Bill

PROCESS INFORMATION	
Subject: 6:50 PM Resolution No. 2018-19 Regarding KKOL 50 kW Transmitter, AB 18-101 - Executive (Pg. 184)	Date: 6/12/2018
Agenda Item: NEW BUSINESS	Bill No.: 18-101
Proposed By: Executive	Referrals(s):

BUDGET INFORMATION		
Department: Executive	Fund:	
Expenditure Req:	Budgeted?	Budget Amend. Req?

REFERRALS/REVIEW		
:	Recommendation:	
City Manager:	Legal: Yes	Finance:

DESCRIPTION/BACKGROUND

The Federal Communications Commission ("FCC") has issued a construction permit to Inspiration Medina to install a new 50 kilowatt transmitter at an existing radio station facility located in the Murden Cove area of Bainbridge Island. The new transmitter was initially planned for KKOL (AM) 1300, but the facility is now planned to be used by KPAM.

At the request of the City Council, Resolution No. 2018-19 has been prepared to express the City Council's interest in pursuing legal and available options to protect community interests. Specialized outside legal counsel has been engaged to assist the City in reviewing all related documents on file with the FCC and to pursue options for filing appeals, objections, or complaints related to the new facility.

RECOMMENDED ACTION/MOTION

I move to adopt Resolution No. 2018-19, recognizing community concerns about adverse impacts related to the planned installation of a 50 kilowatt radio transmitter by Inspiration Media on Bainbridge Island.

ATTACHMENTS:

Description	Type
Resolution No. 2018-19	Backup Material

RESOLUTION NO. 2018-19

A RESOLUTION recognizing community concerns about adverse impacts related to the planned installation of a 50 kilowatt radio transmitter by Inspiration Media for KKOL (AM) on Bainbridge Island and directing the City of Bainbridge Island to take available actions to protect the community from the adverse impacts of Electromagnetic Incompatibility.

Whereas, radio station KKOL previously operated on property leased from the Port of Tacoma and was forced to cease operation due to non-renewal of the lease agreement;

Whereas, the U.S. Oil & Refining Company filed a complaint with the Federal Communications Commission ("FCC") in 2007 because the KKOL daytime signal was strong enough at U.S. Oil and Refinery's offloading facility, about half a mile away, to draw arcs as workers unloaded crude oil from tankers; and

Whereas, KKOL's signal at the Port of Tacoma interfered with sensors and the telephone system at U.S. Oil & Refinery's facilities;

Whereas, on March 15, 2018, the FCC approved a construction permit for Inspiration Media to install a new 50 kilowatt transmitter at an existing radio transmitter site near Murden Cove on Bainbridge Island, Washington; and

Whereas, the new transmitter was initially planned for KKOL (AM) 1300, but the facility is now planned to be used by KPAM; and

Whereas, Inspiration Media failed to obtain required land use and building permits from the City of Bainbridge Island prior to initiating clearing and construction activities; and

Whereas, above and beyond concerns regarding local permitting, there exists the potential for Electromagnetic Incompatibility with existing uses in the area of the proposed new transmitter; and

Whereas, the City of Bainbridge Island recognizes that its primary responsibility is to protect the community and citizens of Bainbridge Island.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

The City of Bainbridge Island will pursue available procedural and legal options in an effort to protect the community from the adverse impacts posed by Inspiration Media's new transmitter planned to be located at Murden Cove.

PASSED by the City Council this ___ day of June, 2018.

APPROVED by the Mayor this ____ day of June, 2018.

____
Kol Medina, Mayor

ATTEST/AUTHENTICATE:

____
Christine Brown, City Clerk

FILED WITH THE CITY CLERK:	June 12, 2018
PASSED BY THE CITY COUNCIL:	___________, 2018
RESOLUTION NUMBER:	2018-19