



INVESTING IN WASHINGTON'S ECONOMIC FUTURE

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CITY OF KELSO

JUN 6 2015

CITY MANAGER'S  
OFFICE

June 22, 2015

Steve Taylor  
City Manager  
City of Kelso  
203 South Pacific  
Kelso, WA 98626

Dear Mr. Taylor:

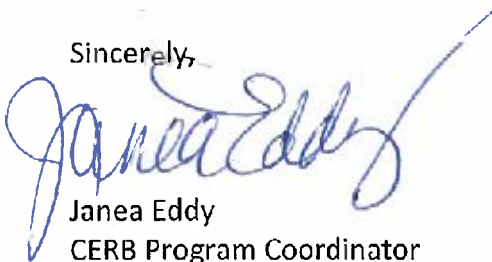
Enclosed are two copies of contract #S15-790A0-068 for the City of Kelso CERB loan. Both copies of the contract must be signed by the same person and **returned to our office by July 27, 2015.**

All contract documents are reviewed by the CERB Chair prior to executing the contract. Once executed, our office will send you an original copy of the contract for your records.

Please be aware that any expenses incurred prior to **(March 19, 2015)** cannot be reimbursed by CERB for eligible costs. In the event a final contract is not executed, no CERB funds will be disbursed.

If you have any questions, please contact me at 360.725-3151 or [Janea.eddy@commerce.wa.gov](mailto:Janea.eddy@commerce.wa.gov).

Sincerely,



Janea Eddy  
CERB Program Coordinator



RECEIVED  
JUN 19 2015  
Department of Commerce

**Capital Agreement with**

City of Kelso

through the

Community Economic Revitalization Board

**For**

Anchor Point Industrial Park Master Plan

**Start date:**      Date of last signature



**Department of Commerce**

Innovation is in our nature.

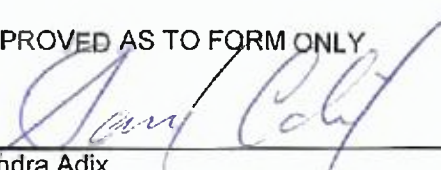
Washington State Department of Commerce  
[www.commerce.wa.gov](http://www.commerce.wa.gov)

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**Washington State Department of Commerce  
Community Economic Revitalization Board**

<b>1. Contractor</b> City of Kelso 203 South Pacific Kelso, WA 98626		<b>2. Contractor Doing Business As</b>  N/A		
<b>3. Contractor Representative</b> Steve Taylor City Manager 360.577.3300 staylor@kelso.gov		<b>4. CERB Representative</b> Janea Eddy CERB Program Coordinator 360.725.3151 360.664.3029 fax Janea.Eddy@commerce.wa.gov <span style="float: right;">P.O. Box 42525 Olympia, WA 98504-2525</span>		
<b>5. Contract Amount</b> \$50,000	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>		<b>7. Start Date</b> Date of Last Signature	<b>8. End Date</b> Two years from the date of Last Signature
<b>9. Federal Funds (as applicable)</b> N/A		<b>10. Federal Agency</b> N/A		<b>CFDA Number:</b> N/A
<b>10. Tax ID #</b> 91-6001252	<b>11. SWV #</b> SWV0002996-00	<b>12. UBI #</b>	<b>13. DUNS #</b>	
<b>14. Contract Purpose</b> A master plan study to evaluate the potential development of the Anchor Point Industrial Park, as a heavy industrial marine terminal.				
<ul style="list-style-type: none"> <li>• CERB, defined as Community Economic Revitalization Board, and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Attachment "A" – Scope of Work, Attachment "B" – Budget, Attachment "C" – Signed Certification Page of Application Form, Attachment "D" – Initial Offer of Financial Aid, Attachment "E" – Pre-Contract Requirements, Attachment "F" – Planning Study Minimum Requirements.</li> <li>• This Contract shall be approved by the Contractor through its governing body and signed by the official representative of that body and returned to CERB by <b>July 7, 2015</b>.</li> </ul>				
<b>FOR THE CONTRACTOR</b>   _____  _____  Date		<b>FOR CERB</b>  _____ Steve R. Anderson, Chair Community Economic Revitalization Board  _____ Date  APPROVED AS TO FORM ONLY  _____ Sandra Adix Assistant Attorney General 06/18/2015 _____ Date		

PROJECT SPECIAL TERMS AND CONDITIONS  
CAPITAL-RELATED  
STATE FUNDS

**1. BILLING PROCEDURES AND PAYMENT**

CERB will reimburse Contractor upon receipt and acceptance of properly completed state voucher form and a recap of expenditures form, which shall be submitted to the Representative of CERB not more often than monthly.

The Contractor must submit to CERB a properly completed A-19 form, with all necessary backup documentation. The request must be signed by an official of the Contractor's organization who has the signature authority to submit such requests.

The request for reimbursement must include backup documentation to substantiate the payment being requested. The Contractor must include documentation of material receipts for eligible goods and services. For eligible administrative costs of Contractor staff, the Contractor must include payroll records for reimbursing for salaries and benefits.

All requests for reimbursement shall describe and document, to CERB's satisfaction, a description of the work performed, the progress of the project, and reimbursable costs. Requests for reimbursement shall include the contract reference number S15-790A0-068.

Payment shall be considered timely if made by CERB within thirty (30) calendar days after receipt of properly completed and documented requests for reimbursement. Payment shall be sent to the address designated by the Contractor.

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

No payments in advance or in anticipation of the scope of work to be completed under this contract shall be made by CERB.

Total funds disbursed shall not exceed actual amounts required for the project described or the amount of the CERB award, whichever is the lesser. All funds other than CERB's must be disbursed prior to CERB funds, except where required on a matching basis by other federal or state programs. If a combination loan and grant is approved, under no circumstances will payment be made from the grant portion prior to disbursement of funds from the loan portion. CERB will not recognize any requests for project costs overruns. No payments will be made except as expressly provided herein.

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

**Duplication of Billed Costs**

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

**Disallowed Costs**

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

**Access to Work and Records**

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

**2. CONTRACT MANAGEMENT**

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

The Representatives for CERB and the Contractor and their respective contact information, are identified on the Face Sheet of this Contract.

PROJECT SPECIAL TERMS AND CONDITIONS  
CAPITAL-RELATED  
STATE FUNDS

3. CONTRACT PERIOD

- A. The effective date of this Contract is the date of last signature.
- B. Costs to be reimbursed by CERB under this Contract are those eligible costs incurred during the performance of the Contract work specified in Attachment "A" on or after March 19, 2015, the date of the Initial Offer of Financial Aid, as specified in Attachment "D."

4. HISTORICAL OR CULTURAL ARTIFACTS, HUMAN REMAINS

Certain capital construction projects may be subject to the requirements of Washington State Executive Order 05-05 "Archaeological and Cultural Resources", effective November 10, 2005. To the extent that Executive Order 05-05 may apply to a project approved by CERB, the Contractor will cooperate with CERB to undertake necessary compliance under the Order. In the event that historical or cultural artifacts are discovered at the Project site during construction or rehabilitation, the Contractor shall immediately stop construction, make a reasonable effort to protect the area from further disturbance, notify the local or Tribal historical preservation office, as appropriate, and the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. In the event that human remains or suspected human remains are discovered at the Project site during construction or rehabilitation Contractor shall immediately stop construction and shall immediately cease any activity which may cause further disturbance, make a reasonable effort to protect the area from further disturbance, and report the presence and location of the remains to the coroner and local law enforcement in the most expeditious manner possible.

5. INSURANCE

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect CERB should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this 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, CERB, and its agents, officers, and employees as additional insured under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give CERB thirty (30) calendar days advance notice of any insurance cancellation or modification.

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

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

**Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Agreement activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

**Automobile Liability.** In the event that performance pursuant to this Agreement involves the use of vehicles, owned or operated by the Contractor or its Subcontractor, 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.

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

**PROJECT SPECIAL TERMS AND CONDITIONS  
CAPITAL-RELATED  
STATE FUNDS**

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

- A. The amount of fidelity coverage secured pursuant to this 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 CERB as beneficiary.
- B. 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 Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.
- C. The Contractor shall provide, at CERB'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 CERB will be provided thirty (30) days advance written notice of cancellation.

**SELF-INSURED CONTRACTORS ONLY**

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

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

**Employers Liability ("Stop Gap") Insurance**

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident of \$1,000,000 each employee for bodily injury or disease.

**Additional Provisions:**

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

**Unemployment and Industrial Insurance.** The Contractor shall be in full compliance with all state unemployment and industrial insurance laws while performing work under this contract. CERB will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Contractor, or any subcontractor or employee of the Contractor, which might arise under the industrial insurance laws during performance of this contract.

**Protection of Project Property, Contractor's Assumption of Risk.**

The Contractor shall continuously maintain adequate protection of all the project work from damage and shall protect the property from injury or loss arising in connection with this contract. The entire work of the Contractor shall be at the sole risk of the Contractor. The Contractor may elect to secure fire, extended coverage and vandalism insurance or all-risk insurance to cover the project work during the course of construction.

The Contractor shall take all necessary precautions for the safety of employees working on the project, and shall comply with all applicable provisions of federal, state and local safety laws and building codes to prevent accidents or injuries to persons, on, about, or adjacent to the premises where the work is being performed.



**PROJECT SPECIAL TERMS AND CONDITIONS  
CAPITAL-RELATED  
STATE FUNDS**

**6. ORDER OF PRECEDENCE**

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

- Applicable federal and state of Washington statutes and regulations
- Project Special Terms and Conditions
- Program Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Attachment C – Signed Certification Page of Application Form
- Attachment D – Initial Offer of Financial Aid
- Attachment E – Pre-Contract Requirements

**7. REIMBURSEMENT**

CERB shall reimburse Contractor in an amount not to exceed **\$50,000** for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Contractor's reimbursement shall be in accordance with the terms of this agreement.

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

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

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

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

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

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

Twenty five percent (25%) of matching funds for the public project must be spent prior to drawing Board funds. Subsequently, matching funds must be spent in concert with the CERB award, dollar for dollar (\$1 CERB award to \$1 matching funds) until the CERB award or matching funds are exhausted.

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

**PROGRAM SPECIAL TERMS AND CONDITIONS  
CAPITAL-RELATED  
STATE FUNDS**

**1. DEFINITIONS**

- A. "Initial Offer of Financial Aid" shall mean the written offer of financial assistance offered by CERB and accepted by the Contractor.
- B. "Project" shall mean the project approved for funding by CERB, as described in Attachment "A" – Scope of Work.
- C. "Project Completion Report" shall mean the report provided by CERB to the Contractor to be submitted upon the completion of the CERB-funded project.

**2. COPYRIGHT PROVISIONS**

Notwithstanding the provisions of General Term and Condition 13, COPYRIGHT PROVISIONS, of this contract, the Contractor has ownership rights in all data and blueprints that the Contractor produces under this contract, subject to the CERB right to royalty free use of these materials.

**3. INTEREST ON CERB FUNDS**

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

**4. NOTICE**

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

- a) Notice to CERB:  
Washington State Department of Commerce  
Community Economic Revitalization Board (CERB)  
1011 Plum St SE  
P.O. Box 42525  
Olympia, WA 98504-2525
- b) Notice to Contractor:  
Steve Taylor  
City Manager  
203 South Pacific Avenue  
Kelso, WA 98626

or to such other official or addresses the Contractor shall have furnished to CERB in writing.

**5. PERFORMANCE REPORTING**

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

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

**PROGRAM SPECIAL TERMS AND CONDITIONS  
CAPITAL-RELATED  
STATE FUNDS**

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

- Number and types of businesses assisted by the project
- Private sector employment and private investment activity resulting from the project
- Wages and health benefits associated with the private sector employment
- Amount of state funds and total capital invested in the project
- Local fund match and local participation in the project
- Transportation infrastructure available for the completed project

**6. PROJECT COMPLETION**

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

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

**7. PROJECT PERFORMANCE**

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

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

**8. RESTRICTIONS ON CONVERSION OF FACILITY TO OTHER USES**

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

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

**9. SUBCONTRACTING**

Notwithstanding the provisions of General Term and Condition 37, SUBCONTRACTING, of this contract, the term "Contracting" shall not refer to subcontracting of the actual planning project

**GENERAL TERMS AND CONDITIONS  
CAPITAL-RELATED  
STATE FUNDS**

**1. DEFINITIONS**

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

- A. "Authorized Representative" shall mean the Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- C. "The Board" shall mean the Community Economic Revitalization Board, as authorized under RCW 43.160.
- 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. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

**2. ALLOWABLE COSTS**

Costs allowable under this Contract are actual expenditures up to the maximum amount stated on the Contract Declarations Page or Amendment Face Sheet.

**3. ALL WRITINGS CONTAINED HEREIN**

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

**4. AMENDMENTS**

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

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

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

**6. APPROVAL**

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

**7. ASSIGNMENT**

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

**8. ATTORNEYS' FEES**

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

**GENERAL TERMS AND CONDITIONS  
CAPITAL-RELATED  
STATE FUNDS**

**9. AUDIT**

**A. General Requirements**

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

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

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

The Board reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors 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 Contractor must respond to the Board requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

**B. State Funds Requirements**

Contractors expending \$100,000 or more in total state funds in a fiscal year must have a financial audit as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS). The Schedule of State Financial Assistance must be included. The schedule includes:

Grantor agency name  
State program name  
BARS account number  
Grantor  
Agency contract number  
Contract award amount including amendments (total grant award)  
Current year expenditures

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

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

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

**C. Documentation Requirements**

The Contractor 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 Contractor's fiscal year(s) to:

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

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

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

**10. CODE REQUIREMENTS**

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

**GENERAL TERMS AND CONDITIONS  
CAPITAL-RELATED  
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**11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

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

**12. CONFORMANCE**

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

**13. COPYRIGHT PROVISIONS**

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

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

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

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

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**14. DISALLOWED COSTS**

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

**15. DISPUTES**

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

The request for a dispute hearing must:

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

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

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

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

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

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

**16. DUPLICATE PAYMENT**

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

**17. ETHICS/CONFLICTS OF INTEREST**

In performing under this Contract, the Contractor 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.

**18. GOVERNING LAW AND VENUE**

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

**19. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, the Board, 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 Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the State or its agents, agencies, employees and officers.

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Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, the Board, the state of Washington, its officers, employees and authorized agents.

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

**20. INDEPENDENT CAPACITY OF THE CONTRACTOR**

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

**21. INDUSTRIAL INSURANCE COVERAGE**

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

**22. LAWS**

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

**Washington State Laws and Regulations**

- A. Affirmative action, Section 41.06.020 (11) RCW.
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, Section 4.24.264 RCW.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Housing assistance program, Chapter 43.185 RCW
- G. Interlocal cooperation act, Chapter 39.34 RCW.
- H. Noise control, Chapter 70.107 RCW.
- I. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open public meetings act, Chapter 42.30 RCW.
- K. Prevailing wages on public works, Chapter 39.12 RCW.
- L. Public records act, Chapter 42.56 RCW.
- M. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.
- N. Shoreline management act of 1971, Chapter 90.58 RCW.
- O. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- P. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology



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R. State environmental policy, Chapter 43.21C RCW.

S. State Executive Order 05-05 Archeological and Cultural Resources.

**23. LICENSING, ACCREDITATION AND REGISTRATION**

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

**24. LIMITATION OF AUTHORITY**

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

**25. LOCAL PUBLIC TRANSPORTATION COORDINATION**

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

**26. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

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

**27. POLITICAL ACTIVITIES**

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 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.

**28. PREVAILING WAGE LAW**

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

**29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

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

**30. PUBLICITY**

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

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**31. RECAPTURE**

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

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

**32. RECORDS MAINTENANCE**

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

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

**33. REGISTRATION WITH DEPARTMENT OF REVENUE**

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

**34. RIGHT OF INSPECTION**

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

**35. SAVINGS**

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

**36. SEVERABILITY**

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

**37. SUBCONTRACTING**

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

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

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

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

**38. SURVIVAL**

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

**39. TAXES**

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

**40. TERMINATION FOR CAUSE / SUSPENSION**

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

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

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

If the Contract is terminated for cause, the Contractor shall be liable for damages as authorized by law.

**41. TERMINATION FOR CONVENIENCE**

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

**42. TERMINATION PROCEDURES**

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

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C. Upon termination of the Contract, the Board shall pay the Contractor for any reimbursable expenses incurred prior to the date of termination, provided a properly submitted and documented request for reimbursement is timely submitted. The Board may withhold any amount due as the Board reasonably determines is necessary to protect the Board against potential loss or liability resulting from the termination. The Board shall pay any withheld amount to the Contractor if the Board later determines that loss or liability will not occur.

The rights and remedies of the Board under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

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**43. WAIVER**

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

## Scope of Work

Contractor: City of Kelso

Summary: A master plan study to evaluate the potential development of Anchor Point Park, as an industrial marine terminal.

Activities: (All activities will be completed no later than 2 years from contract execution.)

The scope of work includes:

Phase 1: Site Investigation/Preliminary Design

- 1.1 Geotechnical Engineering
- 1.2 Hazardous Materials/Due Diligence
- 1.3 Vehicular Access
- 1.4 Rail Access
- 1.5 Utilities

Phase 2: Economic Study/Final Report

- 2.1 Economic Analysis
- 2.2 Final Report

Deliverables:

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

Progress reports will be submitted on a quarterly schedule to CERB. The following dates establish this reporting schedule:

- October 15, 2015
- January 15, 2016
- April 15, 2016
- July 15, 2016
- October 15, 2016
- January 15, 2017
- April 15, 2017
- July 15, 2017

**Budget**

- A. CERB Award
  - Grant of \$50,000

B. Budget

The budget shall consist of the following elements:

	CERB Award	Other Funds	Total
1. Feasibility Study	\$50,000	\$50,000	\$100,000
TOTAL	\$50,000	\$50,000	\$100,000

Special Budget Provisions:

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

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

**Signed Certification Page of Application Form**