

# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

202510038

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	River & Flood / 907550 (Flood Hazard Reduction)
Contract or Grant Administrator:	Julie Anderson, River & Flood Manager
Contractor's / Agency Name:	Washington State Department of Commerce
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input type="radio"/> No <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval?    Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, grantor agency contract number(s): <u>DR-25-62223-007</u> CFDA#: <u>ALN 14.228</u>	
Is this contract grant funded? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): <u>TBD</u>	
Is this contract the result of a RFP or Bid process?    Contract Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____    Cost Center: <u>19082369</u>	
Is this agreement excluded from E-Verify?    No <input checked="" type="radio"/> Yes <input type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>600,000</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ <u>600,000</u>	Council approval required for; all property leases, all Interlocal agreements, <b>contracts or bid awards exceeding \$75,000</b> , and <b>grants exceeding \$40,000</b> and and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope:	
Attached is the CDBG elevation match grant agreement which will be used to reimburse the 5% match obligation required of the homeowners participating in the two FEMA HMGP elevation grants (HMGP 4635-01 and HMGP 4635-02, once it is awarded). The total 5% match for the two grants is \$313,263, leaving a balance of \$286,737 to be used for project overruns.	
Term of Contract: Not to Exceed	Expiration Date: 11/15/2028

Contract Routing:	1. Prepared by: <u>Julie Anderson</u>	Date: <u>9/19/2025</u>
	2. Attorney signoff: <u>Jesse Corkern</u>	Date: <u>10/7/2025</u>
	3. AS Finance reviewed: <u>bbennett</u>	Date: <u>10/6/2025</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Executive contract review: <u>jlogan</u>	Date: <u>2025.10.28</u>
	7. Council approved, if necessary: <u>AB2025-727</u>	Date: <u>10/21/25</u>
	8. Executive signed: <u>ssidhu</u>	Date: <u>2025.10.23</u>
	9. Original to Council: _____	Date: _____

**WHATCOM COUNTY  
PUBLIC WORKS DEPARTMENT**

**Elizabeth Kosa  
DIRECTOR**



**RIVER AND FLOOD**  
322 N. Commercial Street, Suite 120  
Bellingham, WA 98225-4042  
Phone: (360) 778-6230  
[www.whatcomcounty.us](http://www.whatcomcounty.us)

## **M E M O R A N D U M**

**TO:** Satpal Sidhu, Whatcom County Executive, and the Honorable Members of the Whatcom County Council, collectively serving in their capacity as the Whatcom County Flood Control Zone District Board of Supervisors

**THROUGH:** Elizabeth Kosa, Public Works Director *ek*

**FROM:** Julie Anderson, River and Flood Manager *JMA*  
Gary Stoyka, Natural Resources Program Manager *gs*

**DATE:** September 19, 2025

**RE:** CDBG DR-26-64211-007 Grant Agreement with Washington State Department of Commerce for reimbursement of the 5% match paid by homeowners participating in the FEMA HMGP-DR-4635-01 and 4635-02 elevation grants

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Enclosed is a Community Development Block Grant (CDBG) FEMA Match Elevation Program agreement between Whatcom County Flood Control Zone District (FCZD) and the Washington State Department of Commerce for your review and signature.

▪ **Proposed Action**

Review and sign the CDBG DR-26-64211-007 FEMA Match Elevation Program Agreement (Agreement) for the reimbursement of the 5% match paid by homeowners participating in the FEMA HMGP-DR-4635-01 and DR-4635-02 elevation grants.

▪ **Background and Purpose**

In response to the November 2021 flooding, the FCZD applied for and was awarded two FEMA HMGP grants to elevate homes in areas that experienced the most significant flood damage in Whatcom County. The DR-4635-01 grant is currently being spent on elevating the first 11 structures, and the DR-4635-02 grant is awaiting final award to elevate another 16 structures. The HMGP elevation grants reimburse 95% of the budgeted construction cost for each elevation project. The remaining 5% is paid by the homeowner as the match. In June of this year, the FCZD was awarded the CDBG FEMA Match Elevation Program grant, the primary intent of which is to reimburse homeowners for the 5% match, and the remaining balance is to be used for cost overruns.

▪ **Funding Amount and Source**

The proposed CDBG DR-26-64211-007 FEMA Match Elevation Program Agreement provides \$600,000 of Federal funding by the U.S. Department of Housing and Urban Development (HUD),



which is funded at 100%. The FCZD will have no net obligation, since the grant funds will be passed-through to the homeowners.

Please contact Julie Anderson at extension 6258 if you have any questions or concerns regarding the terms of this agreement.

Encl.



**Federal General Grant with**

Whatcom County Flood Control Zone District

**through**

Community Development Block Grant – Disaster Recovery (CDBG-DR)

Grant Number: 26-64211-007

**For**

**FEMA Match Elevation Program**

**Dated:** Upon Final Signature



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## Face Sheet

Grant Number: 26-64211-007

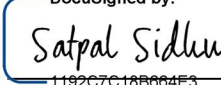

Project Name: **FEMA Match Elevation Program**

### Community Development Block Grant – Disaster Recovery Local Government Division

Research & Development: ☐ Yes ☒ No

☒ Subrecipient

☐ Contractor

<b>1. Grantee</b> Whatcom County Flood Control Zone District 322 N Commercial Street Bellingham, WA 98225		<b>2. Grantee Doing Business As</b> (as applicable) Whatcom County	
<b>3. Grantee Representative</b> Julie Anderson, River & Flood Manager (360) 778-6258 jmanders@co.whatcom.wa.us		<b>4. Commerce Representative</b> Vignesh Vattigunta, Project Manager PO Box 42525/1011 Plum St SE, Olympia, WA 98504-2525 (360) 725-3010   vignesh.vattigunta@commerce.wa.gov	
<b>5. Grant Amount</b> \$600,000	<b>6. Funding Source</b> Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/>	<b>7. Start Date</b> Upon Final Signature	<b>8. End Date</b> 11/15/2028
<b>9. Federal Funds</b> (as applicable) \$600,000	<b>Federal Agency:</b> U.S. Department of Housing and Urban Development (HUD)		
		<b>ALN:</b> 14.228	<b>Indirect Rate:</b> N/A
<b>10. Tax ID #</b> On File	<b>11. SWV #</b> SWV0002425-52	<b>12. UBI #</b> 600-358-208	<b>13. UEI #</b> V4VJKSKP3BA7
<b>14. Grant Purpose</b> For disaster recovery activities responding to FEMA Disaster Declaration #4635 as further described in Exhibit A – Scope of Work and Budget.			
COMMERCE, defined as the Washington 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 Grant Agreement on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant Agreement are governed by this Grant Agreement and the following other documents incorporated by reference: Grantee Terms and Conditions including Attachment “A” – Scope of Work and Budget, Attachment “B” - CDBG-Disaster Recovery Requirements for Federal Awards, Attachment “C” – Contract Addendum for Housing Activities.			
<b>FOR GRANTEE</b> DocuSigned by:  1192C7C18B664E3... Satpal Sidhu, County Executive Whatcom County 10/23/2025   2:32 PM PDT Date		<b>FOR COMMERCE</b> DocuSigned by:  80312B64805C458... Mark K. Barkley, Assistant Director Local Government Division 10/27/2025   4:17 PM PDT Date  <b>TEMPLATE APPROVED AS TO FORM ONLY</b> Lisa Koperski ASSISTANT ATTORNEY GENERAL Date 05-01-2025	



## **Special Terms and Conditions**

### **1. RECITALS**

WHEREAS, pursuant to Public Laws (P.L.) 117-43, 117-180, and the Federal Register (FR) Notices Volume 87, No. 100 (FR 31636) dated May 24, 2022 and FR Volume 88, No. 11 (FR 3198) dated January 18, 2023, 3198, the U.S. Department of Housing and Urban Development (HUD) has awarded Washington State \$30,823,000 in Community Development Block Grant (CDBG) Disaster Recovery (CDBG-DR) funds for FEMA Disaster No. 4635 to activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) and described in the Washington State Department of Commerce (COMMERCE's) Action Plan (Action Plan); and

WHEREAS, COMMERCE has authority to administer this program through signing federal award grant agreement numbers B-21-DF-53-0001 and B-22-DF-53-0001 with HUD for the federal funds appropriated to the State of Washington for storm damage caused by an atmospheric river for 27 days from November 5 through December 2, 2021, where Western Washington experienced storms triggering high winds, rainfall, flooding, and landslides; and

WHEREAS, COMMERCE wishes to engage the GRANTEE as defined on the face sheet (Face Sheet) to assist COMMERCE in utilizing such CDBG-DR funds to carry out part of COMMERCE's obligations under the federal award by committing the amount on the Face Sheet pursuant to the terms set forth in this Grant Agreement (Grant Agreement); and

WHEREAS, the CDBG-DR funds made available for use by the GRANTEE under this Grant Agreement constitute a subaward of the COMMERCE's federal award, the use of which must be in accordance with requirements imposed by federal statutes, regulations, and the terms and conditions of COMMERCE's federal award.;

GRANTEE and COMMERCE are individually a "party" and, collectively, the "parties."

NOW, THEREFORE, in consideration of the need for recovery from disaster(s) DR-4635 and the premises and mutual covenants described herein, the parties mutually agree to the terms described in this Grant Agreement.

### **2. ACKNOWLEDGEMENT OF FEDERAL FUNDING**

Federal Award Date: 05/24/2022

Federal Award Identification Number (FAIN): B-21-DF-53-0001

Federal Awarding Agency: U.S. Department of Housing and Urban Development

Total amount of federal funds obligated to this Subrecipient for this program: \$600,000

Assistance Listing Number: 14.228 Community Development Block Grant/ State's program

Awarding official: Joe Nguyen, Director (360) 725-4021

Unless otherwise specifically authorized herein, the budget period start and end dates shall be the same as the start and end dates on the Face Sheet.

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 Grant Agreement, shall contain the following statements:

"This project was supported by Grant No. B-21-DF-53-0001 awarded by the U.S. Department of Housing and Urban Development. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Housing and Urban Development. Grant funds are administered by the Community Development Block Grant – Disaster Recovery, Washington State Department of Commerce."





### 3. **GRANT 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 Grant Agreement.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant Agreement.

The Representative for the GRANTEE and their contact information are identified on the Face Sheet of this Grant Agreement.

This Grant Agreement and its terms and conditions shall remain in effect during any period that the GRANTEE has control over CDBG-DR funds provided through this Grant Agreement, including program income as defined in 24 CFR 570.489(e).

### 4. **COMPENSATION**

COMMERCE shall pay an amount not to exceed the amount identified on the Face Sheet of this Grant Agreement for the performance of all things necessary for or incidental to the performance of work as set forth in Attachment A – Scope of Work and Budget.

GRANTEE shall receive reimbursement for travel and other expenses as authorized in advance by COMMERCE as reimbursable. GRANTEE shall receive compensation for travel expenses at current state travel reimbursement rates.

### 5. **STATE PUBLIC WORKS**

For work done at the cost of the State, GRANTEE must comply with public works statutes RCW 39.04 and RCW 39.10, apprenticeship requirements, and the State and local building codes, as applicable. If GRANTEE has questions about compliance, GRANTEE will need to visit the [Washington State Department of Labor & Industries Public Works Projects website](#) for more information.

### 6. **SITE CONTROL**

GRANTEES who receive grants for construction, purchase or renovation of facilities must provide written evidence of and maintain site control, either through outright ownership of the subject property or a long-term lease, for a minimum of 24 months after the later of: (1) final grant payment; or (2) the date when the facility is made usable to the public or project beneficiaries as described in the scope of work, including GRANTEE having secured all required licenses, certifications, and/or permits. GRANTEES must provide written evidence of continuing site control as may be requested by COMMERCE.

### 7. **DOCUMENTATION AND SECURITY**

The provisions of this Section shall apply to projects performed by nonprofit organizations and public benefit corporations. The provisions may also apply to Tribes, depending on the location of the scope of work. Additionally, COMMERCE reserves the right to require that projects performed by other entity types comply with this Section. Scopes of work for which the grant award specify that funding is to be used for planning or pre-construction expenses only are exempt from this Section.

**A. Deed of Trust.** This Grant Agreement shall be evidenced by a promissory note and secured by a deed of trust or other appropriate security instrument in favor of COMMERCE (the Deed of Trust). The Deed of Trust shall be recorded in the County where the property is located, and the original returned to COMMERCE after recordation within 90 calendar days of Grant Agreement execution. The Deed of Trust must be recorded before COMMERCE will reimburse the GRANTEE for any capital costs. The amount secured by the Deed of Trust shall be the amount of the Grant Agreement as set forth on the Face Sheet.

**B. Term of Deed of Trust.** The Deed of Trust shall remain in full force and effect for a minimum period of 24 months following the later of: (1) final payment of state funds to the GRANTEE under this Grant Agreement; or (2) the date when the facility improved or acquired with grant funds; the scope of work is made usable to the public or project beneficiaries. Upon satisfaction of the term requirement and all



other Grant Agreement terms and conditions, COMMERCE shall, upon written request of the GRANTEE, take appropriate action to reconvey the Deed of Trust.

- C. Title Insurance. The GRANTEE shall purchase an extended coverage lender's policy of title insurance insuring the lien position of the Deed of Trust in an amount not less than the amount of the grant.
- D. Covenant. If the scope of work will be partially funded by a loan and the term of said loan is less than the term of the deed of trust, COMMERCE may require that GRANTEE record or cause to be recorded a covenant in a superior lien position ahead of the lender's security instrument that restricts use of the facility or property for the purpose(s) stated elsewhere in this Grant Agreement for at least the term of the deed of trust.
- E. Subordination. COMMERCE may agree to subordinate its Deed of Trust upon request from a private or public lender. Any such request shall be submitted to COMMERCE in writing, and COMMERCE shall respond to the request in writing within 30 calendar days of receiving the request.
- F. Deed of Trust on Leased Property. COMMERCE may require, at its sole discretion, a Deed of Trust on the fee interest of the real property where the scope of work is located, if the scope of work is on leased property

## 8. **BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES**

When all or part of the grant is used to fund the acquisition of real property, before funds are disbursed, the GRANTEE shall procure and provide to COMMERCE evidence establishing the value of the real property eligible for reimbursement under this Grant Agreement as follows:

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

## 9. **EXPENDITURES ELIGIBLE FOR REIMBURSEMENT**

Payments to the GRANTEE shall be made on a reimbursement basis only. The GRANTEE may be reimbursed, at the rate set forth elsewhere in this Grant Agreement, for work associated with the scope of work. Unless authorized by the Washington State Legislature, only those Project costs incurred after the date of execution, may be reimbursed. Reimbursable costs are determined by the Scope of Work, Attachment A.

Generally, costs within the following cost categories are considered capital expenditures:

- A. Real property, and costs directly associated with such purchase.
- B. Design, engineering, architectural, and planning.
- C. Construction management and observation.
- D. Construction costs including, but not limited to, the following:
  - i. Site preparation and improvements.
  - ii. Permits and fees.
  - iii. Labor and materials.
  - iv. Taxes on goods and services.
  - v. Landscaping.

## 10. **BILLING PROCEDURES AND PAYMENT**

COMMERCE shall reimburse the GRANTEE for up to 100% of each invoice for eligible expenditures, up to the maximum payable under this Grant Agreement. When requesting reimbursement for expenditures made, the GRANTEE shall submit to COMMERCE a completed Invoice Voucher via the Commerce





Contract Management System.. The GRANTEE must submit all Invoice Vouchers and any required documentation electronically. Submissions shall be in accordance with directions provided by COMMERCE. Funds are reimbursement based and cannot be advanced under any circumstance. Disbursements of funds for invoices due and payable within 30 days are not considered advanced payments.

The GRANTEE shall evidence the costs claimed on each voucher by including copies of each invoice received from subgrantees/subcontractors providing goods or services covered by the Grant Agreement.

The GRANTEE shall also provide COMMERCE with a copy of the cancelled check or electronic funds transfer, as applicable, that confirms that they have paid each expenditure being claimed at the time the voucher is submitted or within 30 calendar days of Commerce's disbursement of payment. The cancelled checks or electronic funds transfers may be submitted to COMMERCE at the time the voucher is initially submitted or within 60 calendar days thereafter.

The voucher must be certified by an official of the GRANTEE with authority to bind the GRANTEE. The voucher shall be submitted to COMMERCE within 60 calendar days following the completion of work or other termination of this Grant Agreement.

If GRANTEE has or will be submitting any of the invoices attached to a request for payment for partial reimbursement under another contract or grant agreement, GRANTEE must clearly identify such contracts or grant agreements in the transmittal letter and request for payment.

COMMERCE will pay GRANTEE upon receipt and approval of properly completed invoices and supporting documentation, which shall be submitted to COMMERCE not more often than monthly. After approving the Invoice Voucher, COMMERCE shall promptly remit a warrant to the GRANTEE. Payment shall be considered timely if made by COMMERCE within 30 calendar days after receipt of properly completed invoices. Payment shall be sent by electronic funds transfer or to the address designated by the GRANTEE.

Notwithstanding the foregoing, COMMERCE may, in its sole discretion, holdback up to the final 10% of grant funds until the scope of work is complete and there is a Certificate of Occupancy from the appropriate local permitting entity, or for projects without occupiable space, when comparable evidence of substantial completion is submitted by GRANTEE.

## **11. PROGRAM INCOME**

Under 24 CFR 570.489(e), program income is any income generated from the use of CDBG program funds that totals at least \$35,000 in a calendar year. All program income is subject to CDBG regulations. When income is generated by an activity that is only partially assisted with CDBG-DR funds, the income shall be prorated to reflect the percentage of CDBG-DR funds used (e.g., a single loan supported by CDBG-DR funds and other funds, or a single parcel of land purchased with CDBG-DR funds and other funds). If CDBG funds are used with CDBG-DR funds on an activity, any income earned on the CDBG portion would not be subject to the waiver and alternative requirement in the Consolidated Notice.

Grantees must use all program income received during an open CDBG grant prior to drawing remaining CDBG grant funds. Grantees can use their program income for CDBG eligible activities if the Grantee has an approved Program Income Reuse Plan.

## **12. ACQUISITION AND DISPOSITION OF ASSETS**

The Grantee will account for any tangible personal property acquired or improved with this Grant Agreement.

The use and disposition of real property and equipment under this Grant Agreement will be in compliance with the requirements of all applicable federal laws and regulations, including, but not limited to, 24 CFR Part 84 and 24 CFR Part 570.489, 570.502, 570.503, 570.504, and 570.505 as applicable.



Disposition of real property acquired with this Grant Agreement within 10 years of closeout of the Grant Agreement shall be treated as CDBG Program Income.

In cases in which equipment acquired in whole or in part with funds under this Grant Agreement is sold, the proceeds will be CDBG Program Income.

### **13. RECORD KEEPING AND ACCESS TO RECORDS**

The GRANTEE shall establish and maintain records sufficient to enable COMMERCE to (1) determine whether the GRANTEE and its lower-tier recipients, contractors, and consultants complied with this Grant Agreement, applicable federal statutes and regulations, and the terms and conditions of COMMERCE's federal award and (2) satisfy recordkeeping requirements applicable to COMMERCE.

Such records may include: Records providing a full description of each activity undertaken; Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG-DR program; Records required to determine the eligibility of activities; Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance; Records documenting compliance with the fair housing and equal opportunity requirements of the CDBG program regulations; Financial records as required by 24 CFR 570.502, and 2 CFR part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and Other records necessary to document compliance with this Grant Agreement, any other applicable federal statutes and regulations, and the terms and conditions of COMMERCE's federal award.

The GRANTEE shall give the United States Department of Housing and Urban Development, the Inspector General and COMMERCE, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the GRANTEE pertaining to this Grant Agreement. Such rights to access shall continue as long as the records are retained by the GRANTEE. The GRANTEE agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with state laws governing open records, freedom of information or similar.

The GRANTEE shall include the substance of this Section in all subgrants/subcontracts.

Prior to close out of this Grant Agreement, the GRANTEE must transmit to COMMERCE records sufficient for COMMERCE to demonstrate that all costs under this Grant Agreement met the requirements of the federal award.

The Grantee shall retain financial records, supporting documents, statistical records, and all other GRANTEE records pertinent to this Grant Agreement and Subrecipient's subaward for the longer of 6 years after the expiration or termination of this Grant Agreement, or 6 years after the submission of COMMERCE's annual performance and evaluation report, as prescribed in § 91.520 of this title or in the applicable Federal Register notices governing the use of the funds, in which the specific activity is reported on for the final time.

The preceding requirement is, however, subject to the following exceptions:

Records for activities subject to the reversion of assets provisions at 24 CFR § 570.503(b)(7) or change of use provisions at 24 CFR § 570.505 must be maintained for as long as those provisions continue to apply to the activity; otherwise, records for real property and equipment acquired under this Grant Agreement must be retained for 6 years after final disposition.

Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied.





If any litigation, claim, or audit is started before the expiration of the 6-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

When the GRANTEE is notified to do so in writing by HUD, the cognizant agency for audit as defined in 2 CFR 200.18, the oversight agency for audit as defined in 2 CFR 200.73, the cognizant agency for indirect costs as defined in 2 CFR 200.19, or COMMERCE, the GRANTEE shall extend the retention period consistent with the notification.

When records are transferred to or maintained by HUD or COMMERCE, the 6-year retention requirement is not applicable to the GRANTEE.

The retention period for the records pertaining to the earning of the program income (as defined in this Grant Agreement) starts from the end of the GRANTEE's fiscal year in which the program income is earned.

For indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates), and their supporting records:

- If submitted for negotiation - If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to COMMERCE) to form the basis for negotiation of the rate, then the 6-year retention period for its supporting records starts from the date of such submission.
- If not submitted for negotiation - If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to COMMERCE) for negotiation purposes, then the 6-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Notwithstanding the term of this Grant Agreement, all records the GRANTEE is required to maintain, including supporting documentation, shall be retained for the greater of 6 years from closeout of the federal award to COMMERCE, or the period required by other applicable laws and regulations as described in 24 CFR § 570.487 and 24 CFR § 570.488.

#### **14. SUBGRANTEE/SUBCONTRACTOR DATA COLLECTION**

GRANTEE will submit reports, in a form and format to be provided by COMMERCE and at intervals as agreed by the parties, regarding work under this Grant Agreement performed by subgrantees/subcontractors and the portion of grant funds expended for work performed by subgrantees/subcontractors, including, but not necessarily limited to, minority-owned, woman-owned, and veteran-owned business subgrantees/subcontractors. "Subgrantees/subcontractors" shall mean subgrantees of any tier.

#### **15. INSURANCE**

##### **A. Insurance Requirements for Reimbursable Activities**

The GRANTEE must have insurance coverage that is substantially similar to the coverage described in Section 15B below for all periods in which GRANTEE performed work for which it will seek reimbursement. The intent of the required insurance is to protect the State of Washington 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 subgrantee/subcontractor, or agents of either, while performing under the terms of this Grant Agreement.



**B. Additional Insurance Requirements During the Term of the Grant Agreement**

- i. The GRANTEE shall provide proof to COMMERCE of insurance coverage that shall be maintained in full force and effect, as indicated below, and shall submit renewal certificates not less than 30 calendar days prior to expiration of each policy required under this Section:

- 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 or related to this Grant Agreement but in no less than \$1,000,000 per occurrence. Additionally, the GRANTEE is responsible for ensuring that any subgrantee/subcontractor provide adequate insurance coverage for the activities arising out of or related to subgrants/subcontracts (if any). Commercial General Liability Insurance

coverage shall be maintained in full force and effect during the term of this Grant Agreement and throughout the term of the deed of trust, if applicable.

- b. **Property Insurance.** The GRANTEE shall keep the property insured in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis. Such insurance shall cover the following hazards, as applicable:

1. Loss or damage by fire and such other risks;
2. Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises;
3. Loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks, or similar apparatus now or hereafter installed in a building or building on the premises.

This property insurance coverage must be maintained in full force and effect throughout the term of this Grant Agreement and the term of the deed of trust, if applicable.

- c. **Professional Liability, Errors, and Omissions Insurance.** If GRANTEE will be providing any professional services to be reimbursed under this Grant Agreement, the GRANTEE shall maintain Professional Liability or Errors and Omissions Insurance with 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, the Department of Commerce, its agents, officers, and employees need not be named as additional insureds under this policy. This insurance must be maintained throughout the term of the deed of trust, if applicable. GRANTEE shall require that any subgrantees/subcontractors providing professional services that are reimbursable under this Grant Agreement maintain Professional Liability or Errors and Omissions Insurance at the coverage levels set forth in this subsection.

- 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 where:

1. The amount of fidelity coverage secured pursuant to this Grant Agreement shall be \$2,000,000 or the highest of planned reimbursement for the Grant Agreement period, whichever is lower. Fidelity insurance secured pursuant to this paragraph shall name the State of Washington, the Department of Commerce, its agents, officers, and employees as beneficiary.
2. Subgrantees/subcontractors that receive \$10,000 or more per year in funding through this Grant Agreement shall secure fidelity insurance as noted above. Fidelity insurance secured by subgrantees/subcontractors pursuant to this paragraph shall name the GRANTEE and the GRANTEE's fiscal agent (if any) as beneficiary.
3. Fidelity Insurance coverage shall be maintained in full force and effect from the start date of this Grant Agreement until GRANTEE has submitted a Closeout Certification Form, subject to the following: Fidelity Insurance must be issued on either (a) a "loss sustained" basis; or (b) if issued on a "loss-discovered" basis, provide coverage for at





least 6 months following the date of COMMERCE's receipt of the Closeout Certification Form.

- ii. The insurance required shall be issued by an insurance company authorized to do business within the State of Washington. Except as otherwise set forth in this Section, each insurance policy shall name "the State of Washington the Department of Commerce, its agents, officers, and employees" as additional insureds on all policies. All policies shall be primary to any other valid and collectable insurance. The GRANTEE shall instruct the insurers to give COMMERCE 30 calendar days' advance notice of any insurance cancellation or modification.
- iii. The GRANTEE shall submit to COMMERCE within 15 calendar days of the Grant Agreement start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section including, without limitation, the type of insurance coverage under the policy, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided 30 days' advance written notice of cancellation. During the term of the Grant Agreement, the GRANTEE shall submit renewal certificates not less than 30 calendar days prior to expiration of each policy required under this Section. Additionally, GRANTEE shall provide copies of insurance instruments or certifications at COMMERCE's request and until six months after Grant Agreement closeout. Copies of such insurance instruments and certifications will be provided within 15 calendar days of COMMERCE's request unless otherwise agreed to by the parties.

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

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from 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, the Department of Commerce, 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 Grant Agreement.

**16. HISTORICAL AND CULTURAL ARTIFACTS**

Prior to approval and disbursement of any funds awarded under this Grant Agreement, GRANTEE shall cooperate with COMMERCE to complete the requirements of Governor's Executive Order 21-02 or GRANTEE shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. GRANTEE agrees that the GRANTEE is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the State of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the Project funded by this Grant Agreement.

In addition to the requirements set forth in this Grant Agreement, GRANTEE shall, in accordance with Governor's Executive Order 21-02 as applicable, coordinate with COMMERCE and the Washington State Department of Archaeology and Historic Preservation (DAHP), including any recommended consultation



with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. GRANTEE agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Grant Agreement.

The GRANTEE agrees that, unless the GRANTEE is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the GRANTEE shall immediately stop construction and notify the local historical preservation officer and the State's historical preservation officer at DAHP, and the COMMERCE Representative identified on the Face Sheet. If human remains are uncovered, the GRANTEE shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The GRANTEE shall require this provision to be contained in all subgrants/subcontracts for work or services related to the Project described in Attachment A (Scope of Work).

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

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

In the event that the GRANTEE finds it necessary to amend the Project described in Attachment A (Scope of Work), the GRANTEE may be required to re-comply with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act.

#### **17. TERMINATION FOR FRAUD OR MISREPRESENTATION**

In the event the GRANTEE commits fraud or makes any misrepresentation in connection with the grant application or during the performance of this Grant Agreement, COMMERCE reserves the right to terminate or amend this Grant Agreement accordingly, including the right to recapture all funds disbursed to the GRANTEE under the Grant Agreement.

#### **18. FRAUD AND OTHER LOSS REPORTING**

GRANTEE shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Grant Agreement immediately or as soon as practicable to the COMMERCE Representative identified on the Face Sheet.

#### **19. CLOSEOUT**

The GRANTEE shall close out its use of the CDBG-DR funds and its obligations under this Grant Agreement by complying with the closeout procedures in 2 CFR § 200.344. Notwithstanding the terms of 2 CFR 200.344, upon the expiration of this Grant Agreement, the GRANTEE shall transfer to COMMERCE any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds, further, any real property under the GRANTEE's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the GRANTEE in the form of a loan) shall be treated in accordance with 24 CFR 570.503(b)(7).

COMMERCE will advise the GRANTEE to initiate closeout procedures when there are no impediments to closing and the following criteria have been met or soon will be met:

All costs have been incurred with the exception of closeout costs and any unsettled third-party claims against the GRANTEE. Costs are incurred when goods and services are received, or contract work is performed.





The GRANTEE has submitted the Contract Closeout Report. Failure to submit a report will not preclude COMMERCE from effecting closeout if it is deemed to be in the state's interest. Any excess grant amount in the GRANTEE's possession shall be returned in the event of failure to finish or update the report.

Other responsibilities of the GRANTEE under this Grant Agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further state interest in keeping this Grant Agreement open for the purpose of securing performance.

## **20. PUBLIC RECORDS ACT**

Notwithstanding General Terms and Conditions Section 13 (Confidentiality/Safeguarding of Information), COMMERCE is a public agency subject to the Public Records Act, RCW 42.56 (PRA). Under the PRA, all materials relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by COMMERCE or its functional equivalents are considered public records. The PRA requires that public records responsive to a public records request be promptly produced unless the PRA or an "other statute" exempts such records from production. This Grant Agreement is not intended to alter COMMERCE's obligations under the PRA. The parties agree that if COMMERCE receives a public records request for files that may include confidential information under General Terms and Conditions Section 13 (Confidentiality/Safeguarding of Information), COMMERCE may notify the other party of the request and of the date that the records will be released to the requester unless GRANTEE obtains a court order enjoining disclosure. If the GRANTEE fails to obtain the court order enjoining disclosure, COMMERCE may release the requested information on the date specified. If the GRANTEE obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to the PRA, COMMERCE shall maintain the confidentiality of the information per the court order.

## **21. APPLICABILITY OF COPYRIGHT PROVISIONS TO ARCHITECTURAL/ENGINEERING DESIGN WORK**

General Terms and Conditions Section 15 (Copyright Provisions) are not intended to apply to any architectural and engineering design work funded by this Grant Agreement.

## **22. TREATMENT OF ASSETS**

Title to all property furnished by COMMERCE shall remain in COMMERCE. General Terms and Conditions Section 46(Treatment of Assets) is superseded by this provision.

## **23. ORDER OF PRECEDENCE**

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

- Applicable federal and State of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work and Budget
- Attachment B – CDBG-DR Requirements for Federal Awards
- Attachment C - Contract Addendum for Housing Activities
- CDBG-DR Program Policies and Procedures, as amended, located at <https://www.commerce.wa.gov/cdbg/cdbg-disaster-recovery/>



## **General Terms and Conditions**

### **1. DEFINITIONS**

As used throughout this Grant 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. "Claim" shall mean any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), and attorneys' fees and costs.
- C. "COMMERCE" or "Department" shall mean the Washington Department of Commerce.
- D. "Grant Agreement" shall mean the entire written agreement between COMMERCE and the GRANTEE, including any attachments, exhibits, documents, or materials incorporated by reference, and any amendments executed by the parties.
- E. "GRANTEE" shall mean the entity identified on the Face Sheet performing service(s) under this Grant Agreement and shall include all employees and agents of the GRANTEE.
- F. "Modified Total Direct Costs" (MTDC) shall mean all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$50,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs, and the portion of each subaward in excess of \$50,000.
- G. "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, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- H. "State" shall mean the State of Washington.
- I. "Subaward" shall mean an award provided by a pass-through entity to a Subrecipient for the Subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.
- J. "Subrecipient" shall mean a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.
- K. "Subgrantee/subcontractor" shall mean one not in the employment of the GRANTEE, who is performing all or part of those services under this Grant Agreement under a separate Grant Agreement with the GRANTEE. The term "subgrantee/subcontractor" means any tier.

### **2. ACCESS TO DATA**

In compliance with RCW 39.26.180, the GRANTEE shall provide access to data generated under this Grant to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the GRANTEE's reports, including computer models and the methodology for those models.

### **3. ADVANCE PAYMENTS PROHIBITED**

No payments in advance of or in anticipation of goods or services to be provided under this Grant Agreement shall be made by COMMERCE.





**4. ALL WRITINGS CONTAINED HEREIN**

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

**5. AMENDMENTS**

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

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

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.

**7. ASSIGNMENT**

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

**8. ATTORNEYS' FEES**

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

**9. AUDIT**

If the GRANTEE expends \$1,000,000 or more in federal awards as a Subrecipient from any and all sources in a fiscal year, the GRANTEE shall procure and pay for a single audit or a program-specific audit for that fiscal year in accordance with 2 CFR 200 Subpart F. In accordance with 2 CFR 200.501, for-profit Subrecipients expending \$1,000,000 or more in federal awards in a fiscal year are also required to procure and pay for a single audit or program-specific audit for that fiscal year.

Upon completion of each audit:

- A. If non-profit, GRANTEE shall submit all audit documentation to the [Federal Audit Clearinghouse](#).
- B. If for-profit, GRANTEE shall submit all audit documentation to COMMERCE.

If the GRANTEE expends **less** than \$1,000,000 in federal awards as a subgrantee/subcontractor from any and all sources in a fiscal year, whether non-profit or for-profit, the GRANTEE shall notify COMMERCE they did not meet the audit requirement threshold within 30 calendar days of the end of that fiscal year.

**10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION- PRIMARY AND LOWER TIER COVERED TRANSACTIONS**

- A. GRANTEE, defined as the primary participant and its principals, certifies by signing this Grant Agreement that to the best of its knowledge and belief they:
  - i. Are not presently debarred, suspended, proposed for debarment, and declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
  - ii. Have not within a three-year period preceding this Grant 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;



- iii. 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 federal Executive Order 12549; and
  - iv. Have not within a three-year period preceding the signing of this Grant 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 Grant Agreement, the GRANTEE shall attach an explanation to this Grant Agreement.
- C. The GRANTEE agrees by signing this Grant 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 Grant 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**

- i. The lower tier GRANTEE certifies, by signing this Grant 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.
  - ii. Where the lower tier GRANTEE is unable to certify to any of the statements in this Grant Agreement, such GRANTEE shall attach an explanation to this Grant 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.

### **11. CODE REQUIREMENTS**

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

### **12. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

- A. "Confidential Information" as used in this section includes:
- B. All material provided to the GRANTEE by COMMERCE that is designated as "confidential" by COMMERCE;
- C. All material produced by the GRANTEE that is designated as "confidential" by COMMERCE; and All Personal Information in the possession of the GRANTEE that may not be disclosed under state or federal law.
- D. 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 Grant 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 Grant 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.





- E. Unauthorized Use or Disclosure. The GRANTEE shall notify COMMERCE within 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.

### **13. CONFORMANCE**

If any provision of this Grant 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.

### **14. CONFLICT OF INTEREST**

GRANTEE must maintain and comply with written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. GRANTEE must comply with the following minimum requirements:

No employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the GRANTEE may neither solicit nor accept gratuities, favors, or anything of monetary value from grantees or parties to subcontracts and must comply with RCW 39.26.020. However, GRANTEE may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the GRANTEE.

If the GRANTEE has a parent, affiliate, or subsidiary organization that is not a state, local government, or federally recognized tribe, the GRANTEE must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the GRANTEE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

### **15. COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced under this Grant 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 Grant Agreement, but that incorporate pre-existing materials not produced under the Grant 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 Grant 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 Grant 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 Grant Agreement. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the GRANTEE.





## **16. DISPUTES**

Except as otherwise provided in this Grant Agreement, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, 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 GRANTEE's name, address, and Grant Agreement number; and
- be mailed to the Director and the other party's (respondent's) Grant Agreement Representative within 3 working days after the parties agree that they cannot resolve the dispute.

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

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

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

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

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

## **17. DUPLICATE PAYMENT**

COMMERCE shall not pay the GRANTEE, if the GRANTEE has charged or will charge the State of Washington or any other party under any other grant or agreement, for the same services or expenses.

## **18. GOVERNING LAW AND VENUE**

This Grant 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.

## **19. INDEMNIFICATION**

To the fullest extent permitted by law, GRANTEE shall indemnify, defend, and hold harmless the State of Washington, COMMERCE, agencies of the State and all officials, agents and employees of the State, from and against all Claims for injuries or death arising out of or resulting from the performance of the Grant Agreement. "Claim" as used in this Grant Agreement, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

GRANTEE's obligation to indemnify, defend, and hold harmless includes any Claim by GRANTEE's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

The GRANTEE's obligation shall not include such Claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the Claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the GRANTEE, its subgrantees/subcontractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the GRANTEE or its subgrantees/subcontractors, agents, or employees.

GRANTEE waives its immunity under Title 51 RCW, Industrial Insurance, 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 GRANTEE**

The parties intend that an independent GRANTEE relationship will be created by this Grant Agreement. The GRANTEE and its employees or agents performing under this Grant Agreement are not employees or



agents of the State of Washington or COMMERCE. The GRANTEE will not hold itself out as or claim to be an officer or employee of COMMERCE or of the State of Washington by reason hereof, 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.

## **21. INDIRECT COSTS**

The GRANTEE shall provide their indirect cost rate that has been negotiated between their entity and the Federal Government. If no such rate exists a de minimis indirect cost rate of not more than 15% of Modified Total Direct Costs (MTDC) may be used.

## **22. INDUSTRIAL INSURANCE COVERAGE**

GRANTEE shall comply with all applicable provisions of Title 51 RCW. 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 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 GRANTEE by COMMERCE under this Grant 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.

## **23. LAWS**

GRANTEE shall comply with all applicable laws, ordinances, codes, regulations and policies of local, state, and federal governments, as now or hereafter amended.

## **24. LICENSING, ACCREDITATION AND REGISTRATION**

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

## **25. LIMITATION OF AUTHORITY**

Only the Authorized Representative or the Authorized Representative's delegate by writing (delegation 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 Grant Agreement. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Grant Agreement is not effective or binding unless made in writing and signed by the Authorized Representative.

## **26. NONDISCRIMINATION**

- A. Nondiscrimination Requirement. During the performance of this Grant Agreement, the GRANTEE, including any subgrantee/subcontractor, shall comply with all federal, state, and local nondiscrimination laws, regulations and policies, this shall include but not be limited to the following: GRANTEE, including any subgrantee/subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, GRANTEE, including any subgrantee/subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which GRANTEE, or subgrantee/subcontractor, has a collective bargaining or other agreement.
- B. The funds provided under this Grant Agreement shall not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this Grant Agreement.
- C. Obligation to Cooperate. GRANTEE, including any subgrantee/subcontractor, shall cooperate and comply with any Washington State agency investigation regarding any allegation that GRANTEE, including any subgrantee/subcontractor, has engaged in discrimination prohibited by this Grant Agreement pursuant to RCW 49.60.530(3).
- D. Default. Notwithstanding any provision to the contrary, COMMERCE may suspend GRANTEE, including any subgrantee/subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Grant Agreement, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until COMMERCE receives notification





that GRANTEE, including any subgrantee/subcontractor, is cooperating with the investigating state agency. In the event GRANTEE, or subgrantee/subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), COMMERCE may terminate this Agreement in whole or in part, and GRANTEE, subgrantee/subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. GRANTEE or subgrantee/subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

- E. Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Grant Agreement termination or suspension for engaging in discrimination, GRANTEE, subgrantee/subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original grant and the replacement or cover grant and all administrative costs directly related to the replacement grant, e.g., cost of the competitive bidding, mailing, advertising and staff time, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. GRANTEE may also be required to repay grant funds pursuant to Section 29 (Recapture) of the General Terms & Conditions if the Grant Agreement is terminated based on a violation of the nondiscrimination requirement. COMMERCE shall have the right to deduct from any monies due to GRANTEE or subgrantee/subcontractor, or that thereafter become due, an amount for damages GRANTEE or subgrantee/subcontractor will owe COMMERCE for default under this provision.

## **27. PAY EQUITY**

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

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

This Grant Agreement may be terminated by the Department, if the Department or the Department of Enterprise Services determines that the Grantee is not in compliance with this provision.

## **28. POLITICAL ACTIVITIES**

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

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

## **29. PREVAILING WAGE LAW**

The GRANTEE certifies that all subgrantees/subcontractors performing work on the Project shall comply with State Prevailing Wages on Public Works, RCW 39.12, as applicable to the Project funded by this Grant Agreement, 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 GRANTEE shall maintain records sufficient to evidence compliance with RCW 39.12 and shall make such records available for COMMERCE's review upon request. The GRANTEE is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine whether prevailing wages must be paid. COMMERCE is not responsible for determining whether prevailing wage applies to this Project or for any prevailing wage payments that may be required by law.

### **30. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS**

All Grantees must establish procurement policies and procedures in accordance with 2 CFR Part 200, for all expenditures funded by this Grant 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 grants 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:
  - i.** Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
  - ii.** Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
  - iii.** Positive efforts shall be made to use small and minority-owned businesses.
  - iv.** 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.
  - v.** Grants shall be made only with reasonable subgrantees who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
  - vi.** Some form of price or cost analysis should be performed in connection with every procurement action.
  - vii.** 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.
  - viii.** A system for grant administration to ensure Grantee conformance with terms, conditions and specifications of this Grant Agreement, and to ensure adequate and timely follow-up of all purchases.
- D.** GRANTEE and subgrantee/subcontractor must receive prior approval from COMMERCE for using funds from this Grant Agreement to enter into a sole source grant or a grant where only one bid or proposal is received when value of this grant is expected to exceed \$5,000.

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

### **31. 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.

### **32. RECAPTURE**

In the event that the GRANTEE fails to perform this Grant Agreement in accordance with state laws, federal laws, and/or the provisions of this Grant Agreement, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance (which may include all funds disbursed under the Grant Agreement, along with interest at the rate of the higher of: (i) five percent (5%) per annum,



or (ii) the rate of interest of state of Washington general obligation bonds issued on the date most close in time to the effective date in which legislation authorized funding for the subject facility) in addition to any other remedies available at law or in equity. COMMERCE's ability to recapture or seek remedies shall survive any receipt of a Closeout Certification Form or termination of this Grant Agreement.

Repayment by the GRANTEE of funds under this Section shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grant Agreement.

### **33. RECORDS MAINTENANCE**

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

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

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

### **34. REGISTRATION WITH DEPARTMENT OF REVENUE AND SECRETARY OF STATE**

If required by law, the GRANTEE shall complete registration with the Washington State Department of Revenue. Nonprofit and for-profit businesses must also be registered with the Washington Secretary of State and current with all required filings.

### **35. RIGHT OF INSPECTION**

At no additional cost, the GRANTEE shall provide right of access to its facilities to COMMERCE, or any of its officers, or to any other authorized agent or official of the State of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Grant Agreement. At no additional cost, the GRANTEE shall also provide any documents related to this Grant Agreement to COMMERCE upon request to assist COMMERCE in the periodic monitoring of this Grant Agreement.

### **36. 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 Grant Agreement and prior to normal completion, COMMERCE may terminate the Grant Agreement under the "Termination for Convenience" clause, without the 10-calendar day notice requirement. In lieu of termination, the Grant Agreement may be amended to reflect the new funding limitations and conditions.

### **37. SEVERABILITY**

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

### **38. SITE SECURITY**

While on COMMERCE premises, GRANTEE, its agents, employees, or subgrantees/subcontractors shall conform in all respects with physical, fire or other security policies or regulations.





### **39. SUBGRANTING/SUBCONTRACTING**

- A. GRANTEE must execute binding agreements with all subgrantees/subcontractors that will perform work under this Grant Agreement.
- B. GRANTEE must ensure that any and all subgrantees/subcontractors that perform work related to this Project are duly authorized and licensed in Washington State to perform the work contemplated by this Grant Agreement.
- C. Neither the GRANTEE nor any subgrantee/subcontractor shall enter into subgrants/subcontracts for any of the work associated with the Project contemplated under this Grant Agreement without obtaining prior written approval of COMMERCE. In no event shall the existence of the subgrant/subcontract operate to release or reduce the liability of the GRANTEE to COMMERCE for any breach in the performance of the GRANTEE's duties. This clause does not include grants of employment between the GRANTEE and personnel assigned to perform work associated with the Project under this Grant Agreement.
- D. Additionally, the GRANTEE is responsible for ensuring that all terms, conditions, assurances, and certifications set forth in this Grant Agreement are carried forward to any subgrants/subcontracts. Every subgrant/subcontract shall include a term that COMMERCE and the State of Washington are not liable for Claims or damages arising from a subgrantee's/subcontractor's performance of the subgrant/subcontract. GRANTEE and its subgrantees/subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of COMMERCE or as provided by law.
- E. Data Collection - GRANTEE will submit reports, in a form, format and at intervals as agreed by the parties, regarding work under this Grant Agreement performed by subgrantees/subcontractors and the portion of grant funds expended for work performed by subgrantees/subcontractors.
- F. The GRANTEE shall maintain written procedures related to subgrantees/subcontractors as well as copies of all subgrants and subcontracts and associated records. For cause, COMMERCE in writing may: (a) require the GRANTEE to amend its procedures for subgrantees/subcontractors as they relate to this Grant Agreement; (b) prohibit the GRANTEE from hiring subgrantees/subcontractors with a particular person or entity; or (c) require the GRANTEE to rescind or amend a subgrant or subcontract.
- G. The GRANTEE is responsible to COMMERCE if the subgrantee/subcontractor fails to comply with any applicable term or condition of this Grant Agreement. The GRANTEE shall appropriately monitor the activities of the subgrantee/subcontractor to assure fiscal conditions of this Grant Agreement. In no event shall the existence of a subgrant or subcontract operate to release or reduce the liability of the GRANTEE to COMMERCE for any breach in the performance of the GRANTEE's duties.
- H. Every subgrantee/subcontractor shall include a term that COMMERCE and the State are not liable for claims or damages arising from a subgrantee's/subcontractor's performance of the subgrant or subcontract.

### **40. SURVIVAL**

The terms, conditions, and warranties contained in this Grant Agreement that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this Grant Agreement shall so survive including, without limitation, any Recapture provision in this Grant Agreement.

### **41. 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.

### **42. TERMINATION FOR CAUSE**

In the event COMMERCE determines the GRANTEE has failed to comply with the conditions of this Grant Agreement in a timely manner, COMMERCE has the right to suspend or terminate this Grant Agreement.





Before suspending or terminating the Grant Agreement, COMMERCE shall notify the GRANTEE in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Grant Agreement may be terminated or suspended.

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

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

The rights and remedies of COMMERCE provided in this Grant Agreement are not exclusive and are, in addition to any other rights and remedies, provided by law.

#### **43. TERMINATION FOR CONVENIENCE**

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

#### **44. TERMINATION OR SUSPENSION FOR LOSS OR REDUCTION OF FUNDING**

In the event that funding or appropriation is not available at the time the request for reimbursement and supporting documentation are submitted, the issuance of payments will be delayed or suspended until such time as funds or appropriation become available. If funding does not become available within a reasonable time, COMMERCE may terminate the Grant Agreement, by notice to the GRANTEE Representative. Termination shall be effective as of the date of suspension.

If the Grant Agreement amount is not fully drawn down and should the Washington State Legislature fail to enact a budget appropriating funds to fulfill the contractual obligation outlined in this Grant Agreement by midnight of June 30 of each odd-number year, the GRANTEE shall immediately suspend all reimbursable work under this Grant Agreement and take all reasonable steps necessary to minimize the cost of performance directly attributable to such suspension until the suspension is cancelled. COMMERCE shall notify the GRANTEE immediately upon the lifting of the suspension.

Further, should there be any loss or suspension of federal funding that supports this Grant Agreement, the Grant Agreement may be immediately suspended by COMMERCE upon notice to the GRANTEE. Should federal funding that supports this Grant Agreement be terminated, this Grant Agreement and all obligations, including payment for work done under this Grant Agreement, will be terminated as of the date of the termination of the federal funding.

Payment for any work done on the Grant Agreement prior to the loss of funding shall be done in accordance with the requirements of the funding source.

#### **45. TERMINATION PROCEDURES**

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

COMMERCE shall pay to the GRANTEE the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the GRANTEE and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and



services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Grant Agreement. COMMERCE may withhold from any amounts due the GRANTEE such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Grant Agreement.

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

- A. Stop work under the Grant Agreement on the date, and to the extent specified, in the notice;
- B. Place no further orders or subgrants for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant Agreement that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the GRANTEE under the orders and subgrants 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 subgrants;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subgrants, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the Grant Agreement had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this Grant Agreement, which is in the possession of the GRANTEE and in which COMMERCE has or may acquire an interest.

#### **46. TREATMENT OF ASSETS**

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the GRANTEE, for the cost of which the GRANTEE is entitled to be reimbursed as a direct item of cost under this Grant Agreement, shall pass to and vest in COMMERCE upon delivery of such property by the GRANTEE. Title to other property, the cost of which is reimbursable to the GRANTEE under this Grant Agreement, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant Agreement, or (ii) commencement of use of such property in the performance of this Grant Agreement, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

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



damage.

- D. The GRANTEE shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant Agreement.
- E. All reference to the GRANTEE under this clause shall also include GRANTEE's employees, agents or subgrantees/subcontractors.

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





### **Attachment A – Scope of Work and Budget**

**Subrecipient:** Whatcom County Flood Control Zone District | **Contract:** 26-64211-007

#### **Project Description / Deliverable**

Whatcom County Flood Control Zone District is awarded a CDBG-Disaster Recovery grant as match funding for the Hazard Mitigation Homeowner Elevation Project.

This project will provide match funding to elevate (27) homes that were damaged during the 2021 Western Washington Storm and Flood. Program activities will include, but not limited to, project management, legal expenses, temporary relocation expenses, architectural/engineering, inspection, site work, and construction.

This project will meet the national objectives of benefiting low- and moderate-income households or urgent need.

#### **Project Budget**

<b>CDBG Budget Code &amp; Funding</b>		<b>Leveraged Other Funding</b>		<b>Total Funding</b>
100SFR – FEMA Match Elevation	\$600,000	<b>Other Federal \$</b>	\$5,623,696	
		<b>Other State \$</b>	\$624,855	
		<b>Local Public \$</b>	\$0.00	
<b>Total CDBG Funds</b>	<b>\$600,000</b>	<b>Total Other Funds</b>	<b>\$6,248,551</b>	<b>\$6,848,551</b>

#### **Other Project Activities**

#### **Milestones**

<ul style="list-style-type: none"> <li>Establish administrative, financial, reporting, and record keeping systems, including a system to prevent duplication of benefit.</li> <li>Conduct Compliance monitoring, including but not limited to, applicable civil rights and fair housing compliance.</li> <li>Provide environmental review documentation to Commerce in compliance with Federal related laws, the Stafford Act, and authorities listed at 24 CFR 58.5 and 58.6 and request CDBG release of funds.</li> <li>Procure [engineer/architect/consultant] in compliance with state and CDBG requirements; verify all parties do not have an active exclusion record in SAM.gov.</li> </ul>	Before first payment request
<ul style="list-style-type: none"> <li>Review reimbursement requests, project costs, and invoices against the project budget and contract start date.</li> <li>Prepare and submit payment request and project status report to Commerce.</li> <li>Document receipt of grant funds and reimbursement of eligible costs.</li> </ul>	Not more than monthly
<ul style="list-style-type: none"> <li>Submit a CDBG-DR Beneficiary Report within 30 days of end of each calendar quarter.</li> </ul>	By Jan 31, April 30, July 30, Oct 31
<ul style="list-style-type: none"> <li>Document that construction procurement complies with state and federal requirements including outreach to MWBE and Section 3 local businesses, if applicable.</li> <li>Verify contractor/subcontractors do not have an active exclusion record in SAM.gov and include documentation in CDBG file.</li> </ul>	Before first construction pay estimate
<ul style="list-style-type: none"> <li>Monitor contractors to verify program funding conditions are being met.</li> <li>Resolve all monitoring issues with Commerce.</li> <li>Ensure all required documentation of compliance with program requirements is available to Commerce staff.</li> </ul>	Before final reimbursement request
<ul style="list-style-type: none"> <li>List CDBG-DR expenditures in your annual Schedule of Expenditures of federal awards</li> <li>As necessary, arrange an audit with the State Auditor's Office to meet the Uniform Guidance (2 CFR Part 200).</li> </ul>	Annually
<ul style="list-style-type: none"> <li>Meet a CDBG-DR national objective of either serving low-moderate incomes or urgent need.</li> </ul>	Before contract end date



## **ATTACHMENT B: CDBG-DISASTER RECOVERY REQUIREMENTS FOR FEDERAL AWARDS**

This agreement includes terms and conditions of the COMMERCE's federal award that are imposed on the GRANTEE, and the GRANTEE agrees to carry out its obligations in compliance with all of the obligations described in this Agreement.

### **1. GENERAL COMPLIANCE**

The GRANTEE shall comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 CFR part 570, as modified by the Federal Register notice(s) that govern the use of CDBG-DR funds available under this Agreement. Notwithstanding the foregoing:

- (1) the GRANTEE does not assume any of COMMERCE's responsibilities for environmental review, decision-making, and action, as described in 24 CFR part 58, and
- (2) the GRANTEE does not assume any of COMMERCE's responsibilities for initiating the review process under the provisions of 24 CFR Part 52.

The GRANTEE shall also comply with all other applicable federal, state and local laws, regulations, and policies that govern the use of the CDBG-DR funds in complying with its obligations under this agreement, regardless of whether CDBG-DR funds are made available to the GRANTEE on an advance or reimbursement basis.

### **2. 2 CFR 200**

The Grantee must comply with the applicable requirements at [2 CFR Part 200 -- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#), as may be amended from time to time, to the extent that part 200 is incorporated into and made applicable by 24 CFR part 570, subpart I, or applicable Federal Register notices that govern this grant.

### **3. DUPLICATION OF BENEFITS**

The GRANTEE shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5155) and described in Appropriations Act. The GRANTEE must comply with HUD's requirements for duplication of benefits, imposed by Federal Register notice(s) that govern the use of CDBG-DR funds available under this agreement.

### **4. DRUG-FREE WORKPLACE**

GRANTEE must comply with drug-free workplace requirements in Subpart B of part 2429, which adopts the government-wide implementation (2 CFR part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

### **5. PROHIBITED ACTIVITIES**

The GRANTEE may only carry out the activities described in this Agreement. The GRANTEE is prohibited from charging to the subaward the costs of CDBG-ineligible activities, including those described at 24 CFR 570.207, and from using funds provided herein or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying.

### **6. NATIONAL OBJECTIVES**

The GRANTEE must ensure that all activities funded with CDBG-DR funds must meet the criteria for one of the CDBG program's National Objectives, as defined in 24 CFR 570.208. The GRANTEE will use demographic and income-driven information to document the National Objective, including the collection and submission to COMMERCE of income verification information from all individuals benefitting from this grant, if applicable. This documentation will include the applicant's most recent IRS Form 1040 (long form), W2 Form, pay stubs for the last 3 months, signed statement from the





employer stating wage and frequency of payment, or unemployment income documented by a current letter of benefits.

## **7. GRANTEE PERFORMANCE**

The GRANTEE shall conduct, in a satisfactory manner as determined by COMMERCE, CDBG-DR programs for emergency relief in the most impacted and distressed area of Whatcom County. The GRANTEE shall perform all activities in accordance with the terms of this Agreement and all exhibits incorporated herein. The GRANTEE must ensure that the persons to benefit from the activities described in Attachment A (Scope of Work and Budget) of this Agreement are receiving the service or a benefit from the expenditure of funds under this Agreement. If the persons to benefit from the activities described in Attachment A are not receiving the service or benefit, the GRANTEE is liable to repay to COMMERCE any associated disallowed costs.

## **8. PROPERTY STANDARDS**

The GRANTEE shall also comply with the Property Standards in 2 CFR 200.310 through 2 CFR 200.316, except to the extent they are inconsistent with 24 CFR 570.200(j) and 24 CFR 570.489(j), in which case GRANTEE shall comply with 24 CFR 570.200(j) and 24 CFR 570.489(j), and except to the extent that proceeds from the sale of equipment are program income and subject to the program income requirements under this agreement, pursuant to 24 CFR 570.489(e)(1)(ii).

## **9. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)**

The GRANTEE shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The GRANTEE must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and must have a Unique Entity Identifier (UEI). The GRANTEE must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

## **10. RELOCATION, REAL PROPERTY ACQUISITION, AND ONE-FOR-ONE HOUSING REPLACEMENT**

The GRANTEE shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 USC 4601 – 4655, 49 CFR part 24, 24 CFR part 42, and 24 CFR 570.606; in addition to waivers and alternate requirements of all applicable Federal Register Notices for this award.

In addition to other URA requirements, these regulations (49 CFR § 24.403(d)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC § 5181, which provides that "[n]otwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act".

## **11. NONDISCRIMINATION**

The GRANTEE will comply with 24 CFR part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with federal financial assistance.

The GRANTEE will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with CDBG-DR funds. Thus, the GRANTEE shall comply with regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs.



## **10.1 Architectural Barriers Act and the Americans with Disabilities Act**

The GRANTEE shall ensure that its activities are consistent with the requirements of the Architectural Barriers Act and the Americans with Disabilities Act.

The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain federal and federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and used by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

## **10.2 Title VI of the Civil Rights Act of 1964 (24 CFR part 1)**

### **10.2.1 General Compliance**

The GRANTEE shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352), as amended and 24 CFR 570.601 and 570.602. No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this agreement. The specific nondiscrimination provisions at 24 CFR 1.4 apply to the use of these funds. The GRANTEE shall not intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Civil Rights Act of 1964 or 24 CFR part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 24 CFR part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 2 CFR part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

### **10.2.2 Assurances and Real Property Covenants**

As a condition to the approval of this Agreement and the extension of any federal financial assistance, the GRANTEE assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to 2 CFR part 1.

If the federal financial assistance under this agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the GRANTEE's assurance herein shall obligate the GRANTEE or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the GRANTEE retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the GRANTEE for the period during which federal financial assistance is extended pursuant to the contract or application.

This assurance gives COMMERCE and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.

In the case of real property, structures or improvements thereon, or interests therein, acquired with federal financial assistance under this Agreement or acquired with CDBG-DR funds and





provided to the GRANTEE under this Agreement, the instrument effecting any disposition by the GRANTEE of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

If the GRANTEE receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part shall extend to any facility located wholly or in part in such space.

## **12. LABOR STANDARDS AND EMPLOYMENT**

The GRANTEE shall comply with the labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended, and ensure that all laborers and mechanics employed by contractors or subgrantees/subcontractors in the performance of construction work financed in whole or in part with assistance received under 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 in accordance with the Davis Bacon Act, as amended (40 U.S.C. 3141, et seq.), and 29 CFR part 1, 3, 5, 6, and 7, provided that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

The GRANTEE agrees to comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The GRANTEE shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to COMMERCE for review upon request.

## **13. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968**

The GRANTEE shall comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u, and implement its implementing regulations at 24 CFR part 75.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- c. The GRANTEE agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The GRANTEE agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subgrantee/subcontractor is in violation of the regulations in 24 CFR part 75.



The contractor will not subcontract with any subgrantee/subcontractor where the contractor has notice or knowledge that the subgrantee/subcontractor has been found in violation of the regulations in 24 CFR part 75.

- e. The GRANTEE will certify that any vacant employment positions, including training positions, that are filled (1) after the GRANTEE is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the GRANTEE's obligations under 24 CFR part 75.
- f. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

## **14. CONDUCT**

### **14.1 Hatch Act**

The GRANTEE shall comply with the Hatch Act, 5 USC 1501 – 1508, and shall ensure that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

### **14.2 Conflict of Interest**

In the procurement of supplies, equipment, construction, and services pursuant to this Agreement, the GRANTEE shall comply with the conflict-of-interest provisions in COMMERCE's procurement policies and procedures. In all cases not governed by the conflict-of-interest provisions in the COMMERCE's procurement policies and procedures, the GRANTEE shall comply with the conflict-of-interest provisions in 24 CFR 570.489(h).

### **14.3 Lobbying Certification**

The GRANTEE hereby certifies that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- c. It shall require that the language of paragraphs (a) and (b) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose; accordingly, and





- d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is required by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **15. RELIGIOUS ACTIVITY**

The GRANTEE agrees that funds provided under this agreement shall not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

## **16. ENVIRONMENTAL CONDITIONS**

### **16.1 Prohibition on Choice Limiting Activities Prior to Environmental Review**

The GRANTEE must comply with the limitations in 24 CFR 58.22 even though the GRANTEE is not delegated the requirement under Section 104(g) of the HCD Act for environmental review, decision making, and action (see 24 CFR part 58) and is not delegated COMMERCE's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. 24 CFR 58.22 imposes limitations on activities pending clearance and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in a prohibition on the use of federal funds for the activity.

### **16.2 Air and Water**

The GRANTEE shall comply with the following requirements insofar as they apply to the performance of this agreement:

Air quality. (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)); and (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93). Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, including the requirements specified in Section 114 and Section 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder.

### **16.3 Flood Disaster Protection**

The GRANTEE shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, 42 USC 4012a. Additionally, the GRANTEE shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which includes a prohibition on the provision of flood disaster assistance, including loan assistance, to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood purchase requirements. More information about these requirements is available in the Federal Register notice(s) governing the CDBG-DR award.

### **16.4 Lead-Based Paint**

The GRANTEE shall follow the GRANTEE's procedures with respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.



## **16.5 Historic Preservation**

The GRANTEE shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, codified in title 54 of the United States Code, and the procedures set forth in 36 CFR part 800 insofar as they apply to the performance of this agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that are included on a federal, state, or local historic property list.

## **17. SUBCONTRACTS**

The following provisions shall apply to the GRANTEE and any lower-tier recipient performing under this award:

- a. If the GRANTEE contracts any of the work required under this Agreement, a copy of the proposed contract, and any proposed amendments, extensions, revisions, or other changes thereto, must be forwarded to COMMERCE for prior written approval. The GRANTEE shall comply with COMMERCE's procurement policy. The GRANTEE must comply with CDBG regulations regarding debarred or suspended entities (24 CFR 570.489(I), pursuant to which CDBG funds must not be provided to excluded or disqualified persons and provisions addressing bid, and performance bonds, if applicable, and liquidated damages.
- b. In accordance with federal, state, and local laws, regulations, HUD Notices, program guidelines, and the policies and procedures to be issued by COMMERCE, the GRANTEE will monitor any and all sub-Subrecipient efforts on a regular basis to assure compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to address areas of noncompliance. Information detailing credible evidence of fraud, waste, or abuse shall be immediately reported to COMMERCE, followed by a written report within 10 calendar days.
- c. The GRANTEE shall include language in any subcontract that provides COMMERCE the ability to directly review, monitor, or audit the operational and financial performance or records of work performed under this contract.
- d. The GRANTEE shall comply with State of Washington's Action Plan for CDBG Disaster Recovery, this contract, and all applicable federal, state and local laws, regulations, and ordinances for making procurements under this contract.
- e. The GRANTEE shall include in any subcontracts that failure to adequately perform under this contract may result in penalties up to and including debarment from performing additional work for COMMERCE.
- f. The GRANTEE shall incorporate all required CDBG-DR and cross cutting requirements into subcontracts and all other lower-tier contracts executed in connection with this award.





## **ATTACHMENT C: CONTRACT ADDENDUM FOR HOUSING ACTIVITIES**

### **1. AFFORDABILITY – MULTI-FAMILY RENTAL HOUSING**

The GRANTEE agrees to rent and maintain the units constructed under this Agreement as affordable, ensuring that the units are occupied by households with incomes at or below 80% of the area median income during the affordability period (the "CDBG-DR Units"). The maximum gross rent for these CDBG-DR Units shall not exceed the most current HOME Program 65% rent limits as outlined in 24 CFR 92.252(a). The remaining units in the Project may be rented without income and rent restrictions. Consideration must be given to maintaining consistency among all units, both assisted and non-assisted, in terms of bedroom sizes, square footage, design features, and amenities.

The income of each CDBG-DR tenant must be determined initially in accordance with the "affordable housing" requirements established by the United States Department of Housing and Urban Development (HUD). Income determinations must utilize third-party verification per HUD requirements, applying the Part 5 income definition of inclusions and exclusions. The income of each tenant in a unit assisted with CDBG-DR funds must be recertified annually for the duration of the affordability period as defined in the next paragraph. In addition to tenant income data, the GRANTEE must provide documentation of compliance with the Affirmative Marketing Plan.

The CDBG-DR units shall remain affordable rental housing for an affordability period of five (5) to 15 years, dependent on the amount of CDBG-DR assistance provided per unit, from the date of project completion, occupancy, and the submission of final demographic information for tenants to the Department. Throughout this affordability period, COMMERCE or their designees shall comply with periodic reporting requirements, engage in compliance monitoring, and conduct inspections to verify tenant incomes, rents for affordable units, appropriate unit mix, and adherence to property standards.

As a condition of receiving CDBG-DR funds for the Project, COMMERCE will ensure that affordability restrictions are enforceable and imposed by recorded deed restrictions, covenants, property liens, bylaws, or other similar mechanisms.

### **2. GREEN BUILDING STANDARDS**

In accordance with 83 FR 5861, all new construction or reconstruction of residential structures must meet an industry-recognized standard that has achieved certification under one of the following: (i) ENERGY STAR (Certified Homes or Multifamily High-Rise), (ii) Enterprise Green Communities, (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC-700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite), or (vi) any other equivalent comprehensive green building program acceptable to HUD. COMMERCE is required to document standards used and monitor results to ensure the safety of residents and the quality of homes assisted through the program. Commerce will use at least one of the above standards for the proposed programs or activities.

For rehabilitation of non-substantially damaged residential buildings, Commerce will follow the guidelines to the extent applicable as specified in the HUD CPD Green Building Retrofit Checklist. When older or obsolete products are replaced as part of rehabilitation work, the rehabilitation is required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designed products and appliances.

The definition of substantial damage is defined in 44 CFR 59.1 and applies to any reconstruction, rehabilitation, addition or other improvement to a structure, the total cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement.

Commerce will utilize the UFAS Accessibility Checklist as a minimum standard for structures with five or more units to assist in the compliance of Section 504 of the Rehabilitation Act. The checklist will be used when reviewing the design of all newly constructed residential structures (other than privately owned residential structures). The Fair Housing Act (including the seven basic design and



construction requirements set forth in the Fair Housing Act) also applies to buildings with four or more units. Titles II and III of the Americans with Disabilities Act also applies to public housing.

**3. BROADBAND INFRASTRUCTURE (projects with 5+ units)**

In accordance with 83 FR 5862, any substantial rehabilitation, as defined by 24 CFR 5.100, or new construction of a building with more than four rental units must include installation of broadband infrastructure, except where COMMERCE and the GRANTEE documents that: (a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (b) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (c) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.