

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.

202210006

Originating Department:	Executive
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Non-departmental / CDBG
Contract or Grant Administrator:	Suzanne Mildner
Contractor's / Agency Name:	Opportunity Council
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval?    Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, include WCC: _____ (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, grantor agency contract number(s): <u>22-62210-015</u> CFDA#: <u>14.228</u>	
Is this contract grant funded? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, Whatcom County grant contract number(s): <u>202209025</u>	
Is this contract the result of a RFP or Bid process?    Contract _____ Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____    Cost Center: <u>4301</u>	
Is this agreement excluded from E-Verify?    No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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"/> 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 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>131,000</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , 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: This Subrecipient Agreement is for a CDBG Public Services Grant (pass-through) to provide services through the Opportunity Council to low- and moderate-income persons in Whatcom, Island and San Juan Counties.	
Term of Contract:    1 year	Expiration Date:    6/30/23

Contract Routing:	1. Prepared by: <u>sm</u>	Date: <u>10/11/22</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>10/11/2022</u>
	3. AS Finance reviewed: _____	Date: _____
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: <u>&gt;</u>	Date: <u>10/12/22</u>
	7. OppCo pre-approval/review: _____	Date: _____
	8. Council approval: _____	Date: _____
	9. Executive signed: _____	Date: _____
	10. Original to Council: _____	Date: _____

**SUBRECIPIENT AGREEMENT  
BETWEEN  
WHATCOM COUNTY AND THE OPPORTUNITY COUNCIL**

This Agreement is made between Whatcom County (herein called the Local Government) and Opportunity Council (herein called Subrecipient) for direct public services for low- and moderate-income persons in Whatcom, Island and San Juan counties (herein called the Project).

As the Washington State Department of Commerce (COMMERCE) is authorized by the federal Department of Housing and Urban Development (HUD) to provide funds to units of local government selected to undertake and carry out projects under the Washington State Community Development Block Grant (CDBG) Program in compliance with all applicable local, state, and federal laws, regulations and policies; and

As the Local Government has applied for and received a CDBG award, contract number 22-62210-015 (CFDA 14.228), to fund the Project with Federal Award Identification Number (FAIN) B-22-DC-53-0001; and

As it benefits the Local Government to engage the Subrecipient to accomplish the Scope of Service and the objectives of the local CDBG project;

The parties agree that:

1. SCOPE OF SERVICE

A. Local Government Responsibilities

The Local Government is responsible for administration of the CDBG contract, and ensuring CDBG funds are used in accordance with all program requirements [(24 CFR 570.501(b))] and its CDBG contract with COMMERCE referenced above. The Local Government will provide such assistance and guidance to the Subrecipient as may be required to accomplish the objectives and conditions set forth in this Agreement.

B. Subrecipient Responsibilities

The Subrecipient will complete in a satisfactory and proper manner as determined by the Local Government the following tasks to accomplish the objectives of the Project. The Subrecipient will periodically meet with the Local Government to review the status of these tasks.

Principal Tasks

- Complete the Scope of Work as outlined in the Project Application and as described in Budget Code 05, Public Services in Attachment A – Scope of Work and Budget of the CDBG contract between COMMERCE and Local Government which is attached as Exhibit A and forms a part of this agreement;

- Ensure that CDBG funds are used in accordance with all program requirements [(24 CFR 570.501(b)] and with the CDBG contract number 22-62210-015 (Exhibit A);
- Provide periodic reports to the Local Government to include quarterly CDBG Beneficiary Reports, and narrative progress reports upon request of the Local Government.

2. TIME OF PERFORMANCE

The effective date of this Agreement will be July 1, 2022, regardless of the date the parties sign and complete execution of this agreement, and shall, unless otherwise terminated as elsewhere provided in the Agreement, terminate on June 30, 2023.

3. AGREEMENT REPRESENTATIVES

Each party to this Agreement shall have a representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

A. Subrecipient:

Sheri Emerson, Associate Director  
 Opportunity Council  
 1111 Cornwall Avenue  
 Bellingham, WA 98225  
 (360) 734-5121, ext. 301  
[Sheri\\_Emerson@oppco.org](mailto:Sheri_Emerson@oppco.org)

B. Local Government:

Suzanne Mildner, Grants Coordinator  
 Whatcom County Executive Office  
 311 Grand Avenue, Suite 108  
 Bellingham, WA 98225  
 (360) 778-5200  
[smildner@co.whatcom.wa.us](mailto:smildner@co.whatcom.wa.us)

4. BUDGET

The Local Government will pass through to the Subrecipient no more than \$131,000 in CDBG funds for eligible incurred costs and expenses for the Project according to the following budget. All costs must be tied to the delivery of the CDBG public service.

<b>Project Budget Element</b>	<b>Budgeted Amount</b>
Staffing - Documented by payroll records	\$ 102,964.58
Goods and Services	\$ 12,175.71
Travel – Out of State travel requires COMMERCE pre-approval; federal per diem rates apply	\$ 1,824.28
Indirect Costs @ federally approved rate	\$ 14,035.43
<b>TOTAL</b>	<b>\$ 131,000.00</b>

The Local Government may require a more detailed budget breakdown, and the Subrecipient will provide such supplementary budget information in a timely fashion in the form and content prescribed by the Local Government. Any amendments to this Agreement's Budget must first be determined by the Local Government as consistent with its CDBG contract with COMMERCE and then approved in writing by the Local Government and the Subrecipient.

Indirect Cost Rate if the Subrecipient chooses to charge Indirect under this grant, the Subrecipient shall provide their indirect cost rate that has been negotiated between their entity and the Federal Government.

## 5. PAYMENT

The Local Government will reimburse the Subrecipient in accordance with the payment procedures outlined in the CDBG Management Handbook, Financial Management Section for all allowable expenses agreed upon by the parties to complete the Scope of Service.

Reimbursement under this agreement will be based on billings, supported by appropriate documentation of costs actually incurred. It is expressly understood that claims for reimbursement will not be submitted in excess of actual, immediate cash requirements necessary to carry out the purposes of the agreement. Funds available under this Agreement will be utilized to supplement rather than supplant funds otherwise available.

The Subrecipient's deadline for submitting the final claim for reimbursement under this agreement shall be July 14, 2023.

It is understood that this agreement is funded in whole or in part with CDBG funds through the Washington State CDBG Program as administered by COMMERCE and is subject to those regulations and restrictions normally associated with federally-funded programs and any other requirements that the state may prescribe.

## 6. PERFORMANCE MONITORING

The Local Government will monitor the performance of the Subrecipient by tracking project progress, reviewing payment requests for applicable costs, managing the timely pass-through of CDBG funds, overseeing compliance with CDBG requirements, and ensuring recordkeeping and audit requirements are met (including an on-site monitoring visit). Substandard performance as determined by the Local Government will constitute noncompliance with this Agreement.

If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Local Government, contract suspension or termination procedures will be initiated.

## 7. SPECIAL CONDITIONS

The Subrecipient will provide the Local Government with copies of their sub-contracts with the 3 Community Resource Centers on San Juan, Orcas and Lopez Islands in San Juan County; such

copies to be delivered prior to the issuance of the first reimbursement request. Subcontracts must include all applicable provisions of Section 39 of the General Terms and Conditions specified in Exhibit A and include the provisions of Section 10.B. of this Agreement. The Subrecipient shall appropriately monitor the activities of these subcontractors to assure that fiscal conditions and requirements of the CDBG contract are met, and will include in their reports to the Local Government both financial and service outcome data resulting from these subcontracts.

The Subrecipient will ensure that they have complied with the requirements of the Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504 29 U.S.C. 793, and further, will provide the Local Government with a completed Section 504 Self-Evaluation Checklist.

The Subrecipient will comply with all applicable requirements of Exhibit A.

The Subrecipient will comply with the Local Government's E-Verify requirements, as follows:

The E-Verify contractor program for Whatcom County applies to contracts of \$100,000 or more and sub contracts for \$25,000 or more if the primary contract is for \$100,000 or more. The Subrecipient Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Subrecipient agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Subrecipient further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Subrecipient understands and agrees that any breach of these warranties may subject Subrecipient to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Subrecipient would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Subrecipient will review and enroll in the E-Verify program through this website: [www.uscis.gov](http://www.uscis.gov).

Further, the Subrecipient will provide the Local Government with a completed and signed E-Verify Declaration, attached hereto as Attachment "B".

## 8. GENERAL CONDITIONS

### A. General Compliance

The Subrecipient agrees to comply with:

- The requirements of Title 24 of the Code of Federal regulations, Part 570 (HUD regulations concerning CDBG); and
- All other applicable Federal, state and local laws, regulations, and policies, governing the funds provided under this Agreement.

### B. CDBG National Objective

The Subrecipient certifies the activities carried out under this Agreement meet the CDBG Program National Objective of providing activities benefitting low- and moderate-income persons as defined in 24 CFR 570.208.

- C. Independent Contractor  
Nothing contained in this Agreement is intended to, or will be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient will at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Local Government will be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.
- D. Hold Harmless  
The Subrecipient will hold harmless, defend and indemnify the Local Government from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement. Further, Commerce and the State of Washington will not be held liable for any claims or damages arising from the Subrecipient's performance of services provided for in this Agreement, and the obligation to hold harmless, defend, and indemnify to the benefit of the Local Government shall extend from Subrecipient to the benefit of those agencies as well.
- E. Workers' Compensation  
The Subrecipient will provide Workers' Compensation Insurance Coverage for all of its employees involved in the performance of this Agreement.
- F. Insurance and Bonding  
The Subrecipient will carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum will purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Local Government.  
  
The Subrecipient shall furnish the Local Government with properly executed certificate of insurance or a signed policy endorsement which shall clearly evidence all insurance required in this section prior to commencement of services. The certificates will, at a minimum, list limits of liability and coverage. The certificate will provide that the underlying insurance contract will not be cancelled or allowed to expire except on thirty (30) days prior written notice to the Local Government.
- G. Funding Source Recognition  
The Subrecipient will insure recognition of the roles of COMMERCE, the WA State CDBG program, and the Local Government in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement will be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.
- H. Amendments  
The Local Government or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Local

Government's governing body. Such amendments will not invalidate this Agreement, nor relieve or release the Local Government or Subrecipient from its obligations under this Agreement.

I. Suspension or Termination

In accordance with 2 CFR 200.338-9, the Local Government may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement.
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Local Government of reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR 200.339, this Agreement may also be terminated for convenience by either the Local Government or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Local Government determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Local Government may terminate the award in its entirety.

9. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 2 CFR 200 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient will administer its program in conformance with 2 CFR 200. These principles will be applied for all costs incurred whether charged on a direct or indirect basis.

3. Duplication of Costs

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

B. Documentation and Record Keeping

1. Records to Be Maintained

The Subrecipient will maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement and those records described in the CDBG Management Handbook. Such records will include but not be limited to the following, as applicable:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets the National Objective of the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the civil rights components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 2 CFR 200.333;
- g. Labor standards records required to document compliance with the Davis Bacon Act, the provisions of the Contract Work Hours and Safety Standards Act, and all other applicable Federal, state and local laws and regulations applicable to CDBG-funded construction projects; and
- h. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Access to Records and Retention

The Local Government, COMMERCE, and other authorized representatives of the state and federal governments shall have access to any books, documents, papers and records of the Subrecipient that are directly pertinent to this Agreement for the purposes of making audit, examination, excerpts and transcriptions.

All such records and all other records pertinent to this agreement and work undertaken under this Agreement will be retained by the Subrecipient for a period of six years after final audit of the Local Government's CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the Local Government will request a longer period of record retention.

3. Audits and Inspections

All Subrecipient records with respect to any matters covered by this Agreement will be made available to the Local Government, COMMERCE, and duly authorized officials of the state and federal government, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

The Subrecipient that expends \$750,000 or more in a fiscal year in federal funds from all sources hereby agrees to have an annual agency audit conducted in accordance with current Local Government policy concerning Subrecipient audits and 2 CFR 200.501. The Catalog of Federal Domestic Assistance (CFDA) number is 14.228.



C. Reporting

1. Program Income – Not applicable to this Agreement.

2. Periodic Reports

The Subrecipient, at such times and in such forms as the Local Government may require, will furnish the Local Government such periodic reports as have been specified in other sections of this Agreement. Reports will pertain to the work or services undertaken pursuant to this agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this agreement.

10. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

Title VI of the Civil Rights Act of 1964:

Under Title VI of the Civil Rights Act of 1964, no person will, on the grounds of race, color, creed, religion, sex or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Section 109 of the Housing and Community Development Act of 1974:

No person in the United States will on the grounds of race, color, creed, religion, sex or national origin be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

Age Discrimination Act of 1975, as Amended

No person will be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance. (42 U.S.C. 610 et. seq.)

Section 504 of the Rehabilitation Act of 1973, as Amended

No otherwise qualified individual will, solely by reason or his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funds. (29 U.S.C. 794)

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

Subject to the provisions of this title, no qualified individual with a disability will, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

B. Section 3 of the Housing and Community Development Act of 1968

Compliance in the Provision of Training, Employment, and Business Opportunities:

1. The work to be performed under this agreement is on a project assisted under a program providing direct federal financial assistance from HUD and 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 requires that to the greatest extent feasible opportunities for training and employment be given lower-income residents of the project area; and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.
2. The parties to this contract will comply with the provisions of said Section 3 and the regulations set forth in 24 CFR 135, and all applicable rules and orders of HUD and COMMERCE issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these provisions.
3. The Subrecipient will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and will post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. The Subrecipient will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant, or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. The Subrecipient will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract, unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of HUD and COMMERCE issued hereunder prior to the execution of the contract, will be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements will subject the applicant, or recipient, its consultants and subcontractors, its successors and assigned to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

C. Conduct

1. Assignability

The Subrecipient will not assign or transfer any interest in this Agreement without the prior written consent of the Local Government thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Local Government under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer will be furnished promptly to the Local Government and COMMERCE.

2. Conflict of Interest

No member of the Local Government's governing body and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning or carrying out of the project, will have any personal financial interest, direct or indirect, in this agreement; and the Subrecipient will take appropriate steps to assure compliance.

The Subrecipient agrees to abide by the provisions of 24 CFR 200.318 and 570.611, which includes maintaining a written code or standards of conduct that will govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

The Subrecipient covenants that its employees have no interest and will not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of services hereunder. The Subrecipient further covenants that in the performance of this Agreement, no person having such interest will be employed.

3. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

- a. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor will attach an explanation to this contract.
- c. The contractor further agrees by signing this contract that it will 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.

D. Copyright

If this Agreement results in any copyrightable material or inventions, the Local Government and/or COMMERCE reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

E. Religious Activities

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

11. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement will not be affected thereby and all other parts of this Agreement will nevertheless be in full force and effect.

12. PERFORMANCE WAIVER

The Local Government's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Local Government to exercise or enforce any right or provision will not constitute a waiver of such right or provision.

13. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Local Government and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior communications and proposals, whether electronic, oral, or written between the Local Government and the Subrecipient with respect to this Agreement. The attachments to this Agreement are identified as follows: Exhibit A: CDBG contract number 20-62210-015; and Attachment B: E-Verify Declaration.

IN WITNESS WHEREOF, the Local Government and the Subrecipient have executed this agreement as of the date and year last written below.

WHATCOM COUNTY

OPPORTUNITY COUNCIL

By: \_\_\_\_\_

By: \_\_\_\_\_


Title: Satpal Sidhu, County Executive

Title: Greg Winter, Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved As To Legal Form:

  
Civil Deputy Prosecuting Attorney

10-12-22  
(Date)

Exhibit "A"



WHATCOM COUNTY  
CONTRACT NO.  
202209025

**Federal Interagency Agreement with**

Whatcom County

**through**

Community Development Block Grant (CDBG) Program  
Public Services Grant

**Contract Number:**  
22-62210-015

**For**

Public Services through Opportunity Council to low- and moderate-income persons in Whatcom, Island and San Juan counties

**Dated:** July 01, 2022

## Table of Contents


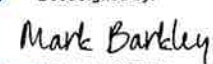
<b>Face Sheet .....</b>	<b>3</b>
<b>Special Terms and Conditions.....</b>	<b>4</b>
1. Definitions.....	4
2. Authority .....	4
3. Acknowledgement of Federal Funding .....	4
4. Grant Management .....	4
5. Compensation and Expenses .....	4
6. Subcontractor Data Collection .....	5
7. Indirect Costs .....	5
8. Billing Procedures and Payment.....	5
9. Audit .....	6
10. Fraud and Other Loss Reporting.....	6
11. Debarment.....	6
12. Insurance.....	7
13. Acquisition and Disposition of Assets .....	7
14. Environmental Review .....	7
15. Historical or Cultural Artifacts, Human Remains .....	8
16. Laws .....	8
17. Performance Reporting .....	8
18. Program Income.....	8
19. Subcontracts for Engineering Services .....	8
20. Closeout .....	9
21. Order of Precedence.....	9
<b>General Terms and Conditions.....</b>	<b>10</b>
1. Definitions.....	10
2. All Writings Contained Herein .....	10
3. Amendments .....	10
4. Assignments .....	11
5. Confidentiality and Safeguarding of Information.....	11
6. Copyright .....	11
7. Disputes .....	12
8. Indemnification .....	12
9. Licensing, Accreditation, and Registration.....	12
10. Recapture.....	12
11. Records Maintenance .....	12
12. Savings.....	12
13. Severability.....	13
14. Subgranting/Subcontracting.....	13
15. Survival.....	13
16. Termination for Cause.....	13
17. Termination for Convenience .....	14
18. Termination Procedures.....	14
19. Treatment of Assets .....	15
20. Waiver .....	15
<b>Attachment A – Scope of Work and Budget.....</b>	<b>16</b>



## Face Sheet

Contract Number: 22-62210-015

**Local Government Division  
Community Assistance and Research Unit  
CDBG Public Services Grant**

<b>1. Grantee</b> Whatcom County 311 Grand Avenue #108 Bellingham, WA 98225		<b>2. Grantee Doing Business As (optional)</b> N/A	
<b>3. Grantee Representative</b> Suzanne Mildner, Grants Coordinator (360) 778-5200 smildner@co.whatcom.wa.us		<b>4. COMMERCE Representative</b> Roberta Golden, Project Manager PO Box 42525/1011 Plum Street SE, Olympia, WA 98504 (360) 953-9069   roberta.golden@commerce.wa.gov	
<b>5. Grant Amount</b> \$131,000	<b>6. Funding Source</b> Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> 7/1/2022	<b>8. End Date</b> 6/30/2023
<b>9. Federal Funds</b> \$131,000	<b>Federal Agency</b> U.S. Department of Housing and Urban Development (HUD)	<b>ALN (CFDA #)</b> 14.228	<b>Indirect Rate</b> N/A
<b>10. Tax ID #</b> On File	<b>11. SWV #</b> 0002425-09	<b>12. UBI #</b> 371010246	<b>13. UEI #</b> NT6RMN8THTN7
<b>14. Grant Purpose</b> Public Services through Opportunity Council to low- and moderate-income persons in Whatcom, Island and San Juan Counties. A full description of the CDBG Public Services project is in Attachment "A" Scope of Work and Budget.			
COMMERCE, defined as the Department of Commerce, and the Grantee, as defined above, acknowledge and accept the terms of this Grant and Attachments and have executed this Grant on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Grant are governed by this Grant and the following documents hereby incorporated by reference: Grantee Terms and Conditions including Attachment "A" – Scope of Work and Budget.			
<b>FOR GRANTEE</b>   _____ Tyler Schroeder, Deputy County Executive  Date <u>9/21/22</u>		<b>FOR COMMERCE</b>  DocuSigned by:  _____ Mark K. Barkley, Assistant Director Local Government Division 9/27/2022   8:03 AM PDT  Date _____  <b>APPROVED AS TO FORM ONLY</b> Sandra Adix, Assistant Attorney General 09-02-2022	



## **Special Terms and Conditions**

### **1. Definitions**

- A. "Contractor" and "Grantee" in this Grant, and the term "subrecipient" found in the federal Community Development Block Grant (CDBG) rules and regulations, shall mean the same.
- B. "Low- and moderate-income" shall mean a household income equal to or less than 80 percent of area median income adjusted by family size.
- C. "Subgrantee" or "Subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms "subgrantee" or "subcontractor" mean subcontractor(s) in any tier.
- D. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.

### **2. Authority**

COMMERCE and Grantee enter into this Contract pursuant to the authority granted by the Interlocal Cooperation Act, Chapter 39.34 RCW.

### **3. Acknowledgement of Federal Funding**

Federal Award Date: August 29, 2022  
Federal Award Identification Number (FAIN): B-22-DC-53-0001  
Total amount of the federal award: \$12,719,519  
Awarding official: Carma Reed, Acting HUD CPD Director

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 Contract, shall contain the following statements:

"This project was supported by Grant No. B-22-DC-53-0001 awarded by the U.S. Department of Housing and Urban Development (HUD). Points of view in this document are those of the author and do not necessarily represent the official position or policies of HUD. Grant funds are administered by the Community Development Block Grant Program, Washington State Department of Commerce."

### **4. 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 Contract.

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

### **5. Compensation and Expenses**

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



## **6. 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 performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

## **7. 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 10% of modified total direct costs (MTDC) will be used.

## **8. Billing Procedures and Payment**

COMMERCE will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, submitted not more often than monthly to the COMMERCE Representative.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number identified on the Face Sheet of this Grant. If expenses are invoiced, provide a detailed breakdown of each type.

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

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Grant, including completion of the Environmental Review and the release of funds (if applicable).

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

COMMERCE shall not release the final five (5) percent of the total grant amount until acceptance by COMMERCE of project completion.

### **Invoices and End of Fiscal Year**

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The grantee must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

### **Duplication of Billed Costs**

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

### **Disallowed Costs**

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

COMMERCE, in its sole discretion, may withhold ten percent (10%) from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).

## 9. Audit

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement. The Grantee shall send all single audit documentation to [Federal Audit Clearinghouse](#).

## 10. Fraud and Other Loss Reporting

Contractor/Grantee shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

## 11. Debarment

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
  - i. Are not presently debarred, suspended, proposed for debarment, 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, 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 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, the Grantee shall attach an explanation to this Grant.
- C. The Grantee agrees by signing this Grant 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 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:
  - i. The lower tier Grantee certifies, by signing this Grant 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, such contractor shall attach an explanation to this Grant.

- 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.

## **12. Insurance**

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

## **13. Acquisition and Disposition of Assets**

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

The use and disposition of real property and equipment under this Grant will be in compliance with the requirements of all applicable federal law and regulation, 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, which include but are not limited to the following:

Real property that was acquired or improved, in whole or in part, with funds under this Grant in excess of \$25,000 shall be used to meet one of the CDBG national objectives for ten (10) years after the Grant is closed. Any exception must be made with COMMERCE approval and the Grantee will be responsible to pay COMMERCE an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of or improvement to the property. Such payment from the disposition of real property acquired with this Grant within ten (10) years of closeout of the Grant shall be treated as CDBG Program Income.

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

## **14. Environmental Review**

### **General Purpose and Economic Opportunity Grants**

COMMERCE shall not release funding to a Grantee until the following conditions implementing 24 CFR part 58 are met:

- A. The Grantee must complete an environmental review of the project and make a finding of environmental impact. A notice of this finding must be published along with a notice of the Grantee's intent to request release of funds for the project unless the project is exempt from the publication requirements as described. The Grantee must allow a seven (7) or fifteen (15) day period for public review and comment following publication of the notices unless exempt under the National Environmental Policy Act (NEPA) and the Washington State Environmental Policy Act (SEPA). When this review and comment period expires, the Grantee may, after considering any comments received, submit a request for release of funds to COMMERCE. Upon receipt of the request, COMMERCE must allow a fifteen (15) day period for public review and comment. When COMMERCE's public review and comment period expires, COMMERCE may, after considering any comments received, formally notify the Grantee in writing of the release of federal funds for the project.
- B. This special condition is satisfied when the Grantee completes the environmental review and request for release of funds from COMMERCE. The special condition is effectively removed on the date COMMERCE provides the Grantee with written notice of release of funds.

### **Planning-Only Activities and Public Services Activities**

Funding shall not be released to a Planning-Only Activities or Public Services Activities recipient until the following conditions are met: The Grantee assures that assisted activities are exempt under NEPA (24 CFR 58.34) and categorically exempt under SEPA (RCW 43.21C.110). The Grantee further assures that the activities do not come under the purview of any other federal, state, and known local

environmental laws, statutes, regulations or executive orders. In addition, the Grantee assures it will document, in writing, its determination that each activity or project is exempt and meets the conditions specified for such exemption under (NEPA) 24 CFR 58.34(3) (for Planning-Only) or 58.34(4) (for Public Services) and (SEPA) WAC 197-11-800.

#### **15. Historical or Cultural Artifacts, Human Remains**

In the event that historical or cultural artifacts are discovered at the project site during construction or rehabilitation, the Grantee shall immediately stop construction and notify the local historical preservation officer and the state historic preservation officer at the Department of Archaeology and Historic Preservation (DAHP). If human remains are discovered, the Grantee shall stop work, report the presence and location of the remains to the coroner and local law enforcement immediately, and contact DAHP and the concerned tribe's cultural staff or committee.

#### **16. Laws**

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including:

- Housing and Community Development Act of 1974.
- CDBG regulations in 24 CFR Part 570.
- 2 CFR 200.

#### **17. Performance Reporting**

The Grantee, at such times and in such forms as COMMERCE may require, shall furnish periodic progress and performance reports pertaining to the activities undertaken pursuant to this Contract. These reports may include environmental review records, publication affidavits, procurement and contracting records, documentation of compliance with federal civil rights requirements, job creation records, program income reports, reports of the costs and obligations incurred in connection therewith, the final closeout report, and any other matters covered by this Grant. Activities funded by this Grant providing income-qualified direct assistance or direct services under the limited clientele, housing, or job creation CDBG National Objectives, must submit quarterly beneficiary reports as furnished by COMMERCE. Failure to submit these reports may result in COMMERCE withholding payment or terminating this Contract.

#### **18. Program Income**

Program income, as defined in 24 CFR 570.489(e), retains federal identity and will be used before drawing additional CDBG funds to complete activities included in Attachment A - Scope of Work and Budget. The Grantee must maintain records of program income received and expended, and annually report program income received after closeout of this Grant. Program Income shall be used to continue the same activities to benefit low- and moderate-income persons or, with COMMERCE approval, for other activities to benefit low- and moderate-income persons. Interest earned in excess of \$100 on CDBG funds received to reimburse incurred costs must be remitted to COMMERCE for return to the U.S. Treasury.

#### **19. Subcontracts for Engineering Services**

Engineering firms must certify that they are authorized to do business in the state of Washington and are in full compliance with the requirements of the Board of Professional Registration. The Grantee shall require that engineering services providers be covered by errors and omissions insurance. The engineering firm shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the engineering firm and licensed staff employed or under contract to the engineering firm. The state of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.

## **20. Closeout**

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:

- A. 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.
- B. The Grantee has held a public hearing to review program performance.
- C. 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.

## **21. Order of Precedence**

In the event of an inconsistency in this Grant, 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
- Community Development Block Grant (CDBG) policies and procedures including the CDBG Management Handbook, prepared by Commerce, located at [www.commerce.wa.gov\CDBG](http://www.commerce.wa.gov/CDBG)
- COMMERCE grant award letter to Grantee
- Grantee's application for funding

## **General Terms and Conditions**

### **1. Definitions**

As used throughout this Grant, 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. "COMMERCE" shall mean the Washington Department of Commerce.
- C. "Grant" or "Agreement" or "Contract" means the entire written agreement between COMMERCE and the Grantee, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "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 \$25,000 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 \$25,000.
- F. "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.
- G. "State" shall mean the state of Washington.
- H. "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.
- I. "Subgrantee" or "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
- 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.

### **2. All Writings Contained Herein**

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

### **3. Amendments**

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

#### **4. Assignments**

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

#### **5. Confidentiality and Safeguarding of Information**

- A. "Confidential Information" as used in this section includes:
- i. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
  - ii. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
  - iii. All personal information in the possession of the Grantee that may not be disclosed under state or federal law.
- B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant 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 whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

#### **6. Copyright**

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

## **7. Disputes**

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

## **6. Governing Law and Venue**

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

## **8. Indemnification**

Each party shall be solely responsible for the acts of its employees, officers, and agents.

## **9. Licensing, Accreditation, and Registration**

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

## **10. Recapture**

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

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

## **11. Records Maintenance**

The Grantee shall maintain books, records, documents, data and other evidence relating to this Grant 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 Grantee.

The Grantee shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Grant, 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 six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

## **12. 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 and prior to normal completion, COMMERCE may suspend or terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day



notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

### **13. Severability**

The provisions of this Grant 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.

### **14. Subgranting/Subcontracting**

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

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

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

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

### **15. Survival**

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

### **16. Termination for Cause**

In the event COMMERCE determines the Grantee has failed to comply with the conditions of this Grant in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the Grant, 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 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 and the replacement or cover Grant and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the Grant, 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. 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 are not exclusive and are in addition to any other rights and remedies provided by law.

## **17. Termination for Convenience**

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

## **18. Termination Procedures**

Upon termination of this Grant, COMMERCE, in addition to any other rights provided in this contract, may require the Grantee to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this Grant 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 contract. 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 contract.

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 on the date, and to the extent specified, in the notice;
- B. Place no further orders or subgrants/subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant 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/subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants/subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- 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 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, which is in the possession of the Grantee and in which the Authorized Representative has or may acquire an interest.

## **19. 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, 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, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, 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 contract.
- 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 contract

All reference to the Grantee under this clause shall also include Grantee's employees, agents or Subgrantees/Subcontractors.

## **20. 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 unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

## Attachment A - Scope of Work and Budget

Grantee: Whatcom County

Contract: 22-62210-015

### Project Description / Deliverable

Whatcom County is awarded a CDBG Public Services Grant for eligible public services through Opportunity Council.

The services will be directed to limited clientele with low- and moderate-incomes (LMI) based on HUD LMI criteria. This grant will exclusively benefit approximately 5,000 persons residing in the of non-entitlement area(s) of Island, San Juan, and Whatcom counties.

### Project Budget

Budget Code & Funding		Leveraged Other Funding		Total Funding
21A General Administration \$	\$0	Other Federal \$	\$42,316	
05 Public Services \$	\$131,000	Other State\$	\$0	
		Local Public \$	\$8,704	
		Private \$	\$24,330	
<b>Total CDBG Funds</b>	<b>\$131,000</b>	<b>Total Other Funds</b>	<b>\$75,350</b>	<b>\$206,350</b>

### Project Activities

### Milestones

<ul style="list-style-type: none"> <li>▪ Execute grant contract with Commerce.</li> <li>▪ Complete the environmental review in compliance with Federal related laws and authorities.</li> <li>▪ Verify subrecipient does not have an active exclusion record in SAM.gov.</li> <li>▪ Establish a subrecipient agreement that includes the project budget and the semi-annual beneficiary reporting requirement. Submit a signed copy to Commerce.</li> </ul>	<p>Before first payment request</p>
<ul style="list-style-type: none"> <li>▪ Review subrecipient reimbursement requests against the project costs, project budget, and contract start date.</li> <li>▪ Document the county's CDBG general administration costs.</li> <li>▪ Prepare and submit payment requests with supporting documentation to Commerce.</li> <li>▪ Document receipt of grant funds and reimbursement of eligible costs.</li> </ul>	<p>Not more than monthly</p>
<ul style="list-style-type: none"> <li>▪ Submit CDBG Beneficiary Reports by the end of the month following the semi-annual date.</li> </ul>	<p>Jan 31, July 31</p>
<ul style="list-style-type: none"> <li>▪ As necessary, arrange an audit with the Washington State Auditor in accordance with the <i>Uniform Guidance, 2 CFR 200, Subpart F- Audit Requirements</i>.</li> </ul>	<p>Annually</p>
<ul style="list-style-type: none"> <li>▪ Complete applicable civil rights requirements.</li> <li>▪ Conduct monitoring of the subrecipient to verify CDBG requirements and all costs reimbursed are allowable.</li> <li>▪ Conduct a final public hearing to review project performance, resolve all monitoring issues with CDBG, and submit a CDBG Contract Closeout Report.</li> </ul>	<p>Before final payment request</p>
<ul style="list-style-type: none"> <li>▪ Deliver the direct services identified in the CDBG application through the local community action program.</li> <li>▪ Allocate and manage public services funds as established in the approved subrecipient agreement and budget.</li> <li>▪ Meet the CDBG national objective of principally benefiting low- and moderate-income persons.</li> </ul>	<p>Before contract end date</p>

# E-Verify Declaration

## ATTACHMENT "B"

Firm Name: \_\_\_\_\_ Opportunity Council, Bellingham, WA \_\_\_\_\_

The undersigned declares, under **penalty of perjury** under the laws of Washington that:

1. The above named firm is currently enrolled in and using the E-Verify system for all employees hired on or after the contract inception date and will continue to use the E-Verify system for so long as work is being performed on the above named project.
2. I certify that I am duly authorized to sign this declaration on behalf of the above named bidder/proposer.
3. I acknowledge that Whatcom County requires a copy of the Memorandum of Understanding between the contractor listed above and the Department of Homeland Security certifying enrollment in the E-Verify program. Failure to provide the required Memorandum of Understanding could lead to suspension of this contract.

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_ Greg Winter \_\_\_\_\_