

# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.  
202209025

Originating Department:	Executive
Division/Program: (i.e. Dept. Division and Program)	Non-Departmental / CDBG
Contract or Grant Administrator:	Suzanne Mildner
Contractor's / Agency Name:	WA State Department of Commerce
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 type="checkbox"/> No <input checked="" type="checkbox"/> If No, include WCC: <u>3.06.010</u> (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 type="checkbox"/> No <input checked="" type="checkbox"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Contract _____ Cost Center: <u>4301</u> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____	
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" 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 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>131,000.00</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, professional services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies or equipment included approved in the budget. 4. 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: Grant funding from the WA State Department of Commerce, which will be passed through to the subrecipient Opportunity Council, for direct public services to low and moderate income persons in Whatcom, Island and San Juan counties.	
Term of Contract: <u>1 year</u>	Expiration Date: <u>6/30/23</u>

Contract Routing:	1. Prepared by: <u>sm</u>	Date: <u>9/21/22</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>9/21/22</u>
	3. AS Finance reviewed: <u>M Caldwell</u>	Date: <u>9/21/22</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____ ✓	Date: <u>9-21-22</u>
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____ ✓	Date: <u>9-21-22</u>
	9. Original to Council: _____ ✓	Date: <u>9-29-22</u>





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

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## 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> <div style="text-align: center;">   <hr/>         Tyler Schroeder, Deputy County Executive  <div style="display: flex; align-items: center; margin-top: 10px;"> <div style="text-align: center; margin-right: 10px;">             9/21/22         </div> <div> <hr/>           Date         </div> </div> </div>		<b>FOR COMMERCE</b> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">             DocuSigned by:    <small>803128048856458...</small> </div> <hr/> Mark K. Barkley, Assistant Director Local Government Division 9/27/2022   8:03 AM PDT <hr/> 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 "Grant" 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>	Before first payment request
<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>	Not more than monthly
<ul style="list-style-type: none"> <li>Submit CDBG Beneficiary Reports by the end of the month following the semi-annual date.</li> </ul>	Jan 31, July 31
<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>	Annually
<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>	Before final payment request
<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>	Before contract end date