

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

202605025

Originating Department:	90 - Public Works
Division:	9075 - Flood
Program:	907525 - CFHMP
Contract or Grant Administrator:	Paula Harris, Flood Planning and Mitigation Manager
Contractor's / Agency Name:	SCJ Alliance

Type of contract:	Standard Contract for Services	
Is this a new contract ? Yes	If not, is this an amendment or renewal to an existing contract? No	If amendment or renewal (per W.C.C. 3.08.11(a)), original contract # : NA
Is this a grant agreement? No	If yes, grantor agency contract numbers: NA	ALN: NA <i>Complete ALN field if contract involves direct federal grants/cooperative agreements or pass-through federal funds</i>
Is this contract grant-funded ? Yes	If yes, Whatcom County grant contract number(s): #202507019	
Is this contract the result of an RFP or Bid Process ? RFP	If yes, RFP and Bid number(s): 25-79	Federal reimbursement? No
Procurement Method:	Request for Proposal (RFP) - For services or technologically complex equipment such as comp	
Council review requirements & exemptions:	Required - Contract/bid exceeds \$75,000	

Fund:	1908	Original Contract Amount (if amendment):	NA
Cost Center:	19082578	This Amendment Amount (if applicable):	NA
Object Account:	6630	Total Contract Amount:	\$274,981.33

Contract term ends: June 30, 2027

Contract routing (please initial & date):

Prepared by:	LC, 5-4-2026	Contractor signed:	
Contractor review:	SE, 4-29-2026	Executive review:	Initial FW 5/27/2026
Attorney signoff:	TS, 5-8-2026	Council approval, if necessary:	05/26/2026
AS Finance review:	MC, 5-6-2026		AB#: 2026-387
IT review (if related):	NA	Executive signed	Signed by: Satpal Sidhu 5/27/2026 119267C18B664E3...

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**



NATURAL RESOURCES DIVISION

322 N. Commercial Street
Bellingham, WA 98225-4042
Phone (360) 778-6230

Elizabeth Kosa
Public Works Director

MEMORANDUM

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

Through: Elizabeth Kosa, Public Works Director

From: Gary Stoyka, Natural Resources Division Manager 
Julie Anderson, River and Flood Manager 

Subject: City of Sumas – Flood Mitigation and Resilience Plan

Date: 05/26/2026

Enclosed is one (1) original of the Contract between Whatcom County Flood Control Zone District and SCJ Alliance for the City of Sumas- Flood Mitigation and Resilience Plan for your review and signature. The authorized agreement will be signed electronically through DocuSign.

Background and Purpose

The FCZD was awarded up to \$559,000 in Commerce funding through the Community Development Block Grant program (Whatcom County contract #202507019) for planning activities to determine feasible projects that would reduce Nooksack River flood damage in and around the City of Sumas.

SCJ Alliance will facilitate a collaborative planning process with the Sumas community and the Whatcom County Floodplain Integrated Planning Reach 5 Team. The planning process will develop a locally supported vision for a more flood-resilient City of Sumas with additional capacity to prepare for, protect from, and recover rapidly from flood events. Tasks for phase 1 will include visioning for future growth and land use connections to the City of Sumas, risk-based flood resilience planning, development of localized mitigation options in and around the City of Sumas, regulatory program changes to ensure new development is protected consistent with Growth Management Act requirements and provisions of the National Flood Insurance Program, and a community engagement process.

Funding Amount and Source

This contract will provide \$274,981.33 to support flood mitigation planning for the City of Sumas. This agreement is fully funded through Community Development Block Grant Disaster Recovery (CDBG-DR) funds made available for flood mitigation planning as a result of the November 2021 disaster declaration (contract #202507019). All terms and conditions in the CDBG grant agreement are carried forward to the SCJ Alliance agreement. Budget authority for this agreement is provided in the 2026 Public Works- River and Flood budget.

Procurement Method and Reason for Selection

This contract is awarded as a result of RFP 25-78, "CONSULTANT PLANNING AND ENGINEERING SERVICES FOR:

FLOOD MITIGATION AND RESILIENCY PLANNING FOR SUMAS, WA (NO. 19082578) LOCATED IN WHATCOM COUNTY." Whatcom County received four responses to the RFP and the firm was selected based on qualifications of the project team working in floodplain environments on large-scale planning projects.

Please contact Julie Anderson, River and Flood Manager, at 360-778-6258 if you have any questions or concerns regarding the terms of this agreement.

Whatcom County Contract No.

202605025

CONTRACT FOR SERVICES
Between Whatcom County Flood Control Zone District and Shea, Carr & Jewell, Inc.

Shea, Carr & Jewell, Inc., dba SCJ Alliance, hereinafter called **Contractor** and Whatcom County Flood Control Zone District, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 12,
 Exhibit A (Scope of Work), pp. 13 to 17,
 Exhibit B (Compensation), pp. 18 to 21,
 Exhibit C (Completion Deadlines), pp. 22,
 Exhibit D (Grant Agreement), pp. 23 to 69,
 Exhibit E (Certificate of Insurance), pp. 71

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 26th day of May, 2026, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of June, 2027.

The general purpose or objective of this Agreement is to provide flood mitigation planning for the City of Sumas, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$274,981.33. The maximum consideration may be amended in accordance with Whatcom County Code and the terms and conditions set forth in this agreement. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

The Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

The Contractor shall follow all applicable terms of Washington State Department of Commerce Interagency Agreement with Whatcom County through Community Development Block Grant- Disaster Recovery (CDBG-DR) for Nooksack Overflow Corridor Flood Resiliency Planning (Whatcom County Contract #20250719).

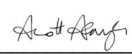
The Washington State Department of Commerce and the State of Washington are not liable for claims or damages arising from the Contractor's performance of this contract.

IN WITNESS WHEREOF, the parties have executed this Agreement this 26th day of May, 2026.

Each signatory below to this Contract warrants that they are the authorized agent of the respective party; and that they have the authority to enter into the contract and to bind the party thereto.

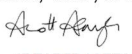
CONTRACTOR:

Shea, Carr & Jewell, Inc. (dba SCJ Alliance)

 5/27/2026
 4DEAB5D1CEE24FA
 Scott Sawyer, Principal

CONTRACTOR INFORMATION:

Shea, Carr & Jewell, Inc. (dba SCJ Alliance)

 5/27/2026
 4DEAB5D1CEE24FA
 Scott Sawyer, PE, Principal

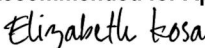
Contract for Services
 Sumas Flood Mitigation and Resilience Plan

Mailing Address:
8730 Tallon Lane NE, Suite 200
Lacey, WA 98516-6642

Email Address:
scott.sawyer@scjalliance.com

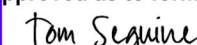
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:

Recommended for Approval:

 5/27/2026
870E242DD76C408...

Elizabeth Kosa, Public Works Director Date

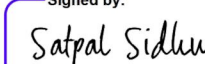
Approved as to form:

 5/27/2026
A5726B945D1F40D...

Tom Seguire, Chief Civil Deputy Prosecuting Attorney Date

Approved:

Accepted for Whatcom County Flood Control Zone District:

Signed by:
 5/27/2026
By: 1192C7C78B664E3
Satpal Singh Sidhu, Whatcom County Executive Date

GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:

The Contractor agrees to provide to the County, services and any materials as set forth in the project narrative identified as Exhibit "A", during the Agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

The term of this Agreement shall commence and end on the dates specified on the first page of this Agreement unless terminated or extended as provided elsewhere in this Agreement.

Services and any materials provided by the Contractor prior to or after the term of this Agreement shall be performed or provided at the expense of the Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing.

10.2 Extension:

The term, consideration, and other conditions of this original Agreement may be extended upon mutual written agreement of the parties. Any such extension shall be documented in a written amendment signed by both parties and shall specify the revised term and any applicable modifications to this Agreement. Failure to extend or renew this Agreement shall result in expiration of the Agreement at the end of its current term.

10.3 Renewal:

Subject to applicable law, County priorities, Contractor performance, and the availability of appropriated funds, this Agreement may be renewed on an annual basis, upon mutual written agreement of the parties. Any renewal shall require affirmative written notice from the County of intent to renew, no later than thirty (30) days prior to the expiration of the then-current term. Each renewal shall extend the Term and shall incorporate and continue in full force and effect the consideration, scope of work, and all other conditions of this Agreement, including any amendments properly executed during the then-current term.

The renewal shall be effected by written amendment executed by the parties and shall specify the renewal period and any approved changes to the Agreement. The cumulative duration of this Agreement, including the initial term, any extensions, and all renewals, shall not exceed four (4) years from the effective date of the original agreement, unless otherwise authorized by the County.

Failure of the County to provide the required affirmative written notice of intent to renew within the time specified above, or failure to execute a renewal amendment shall result in expiration of the Agreement at the end of its current term.

11.1 Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon the Contractor's receipt of the notice given pursuant to section 37.2 of this Agreement. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Reduction in Funding:

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective in accordance with the provisions set forth in section 37.2 of this Agreement.

11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or its designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Any such approval must be set forth in a written amendment executed by both parties and shall identify the specific cost or expenses not previously included in this Agreement.

Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to the Contractor, the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling the Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than ten (10) days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (a) cure any failure or default, (b) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (c) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to the Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement**30.1 Independent Contractor:**

In providing services under this Contract, the Contractor is an independent contractor, and neither it nor its officers, agents, or employees are employees of the County for any purpose. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the Contractor, its employees, and/or others by reason of this Contract.

The Contractor shall protect, indemnify, defend, and save harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (a) the Contractor's failure to pay any such compensation, wages, benefits, or taxes, and/or (b) the supplying to the Contractor of work, services, materials, or supplies by the Contractor's employees or other suppliers in connection with or support of the performance of this Contract.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County's Administrative Officer. Subcontractors must comply with the terms and conditions of this Agreement.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County. If the Contractor creates any copyrightable materials or invents any patentable property, the Contractor may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. The Contractor further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Any reuse of "works made for hire" by the County for another project shall be without liability to the Contractor. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

31.2 Patent/Copyright Infringement:

The Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

- a. The Contractor shall be notified promptly in writing by the County of any notice of such claim.
- b. The Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

31.3 Web Content Accessibility:

The Contractor will ensure that all public-facing deliverables provided under this contract that constitute web content – including, without limitation, reports, presentations, flyers, digital handouts, and website material) conform to Web Content Accessibility Guidelines (WCAG) 2.1 (or any later version adopted by the Contractor) at Levels A and AA, to the extent applicable under the U.S. Department of Justice Title II web and mobile accessibility rule, 28 C.F.R. § 35.200 et seq.

The County may request reasonable clarifications or supplemental evidence regarding conformance with the standard, as set forth above. The Contractor will respond to any such requests within ten (10) days from the date of request.

If at any time the County identifies accessibility defects that materially impede completion of core tasks by its residents, the Contractor shall remediate those defects at no additional cost and re-present the affected deliverables for acceptance within a reasonable timeline.

32.1 Confidentiality:

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. The Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information.

The Contractor shall report any known or suspected unauthorized access, acquisition, or disclosure of County data or personal information ("Data Breach") to the County within forty-eight (48) hours of discovery, in accordance with RCW 19.255 and RCW 42.56.590. Such notice shall include, to the extent known, the nature of the Data Breach, the data affected, and any actions taken or planned to mitigate harm.

The Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from the Contractor's breach of this provision, including failures to maintain confidentiality or to timely report a Data Breach.

The Contractor shall fully cooperate with the County in any investigation, litigation, administrative proceeding, or audit relating to a Data Breach or alleged breach of this Agreement, including providing records, affidavits, or testimony in a timely manner, and complying with any litigation or document preservation holds issued by the County or a court of competent jurisdiction.

The Contractor shall bear all costs associated with investigating, mitigating, and remediating a Data Breach, including notification of affected individuals and agencies, unless otherwise directed by the County.

33.1 Right to Review:

This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. The Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Insurance

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

1. Commercial General Liability

Property Damage	\$500,000.00, per occurrence
General Liability & bodily injury	\$1,000,000.00, per occurrence
Annual Aggregate	\$2,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

2. Professional Liability

Professional Liability - \$1,000,000 per occurrence

Obtain professional liability insurance covering the negligent acts, errors, or omissions of the professional in connection with the performance of services to the County. If any insurance policy or the professional liability insurance is written on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims-made form coverage shall be maintained by the Contractor for a minimum of 36 months following the Completion Date or earlier termination of this Contract, and the Contractor shall annually provide the Contracting Agency with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Contracting Agency to assure financial responsibility for liability for services performed.

3. Business Automobile Liability

\$1,000,000.00 Minimum, per occurrence

\$2,000,000.00 Minimum, Annual Aggregate

The Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If the Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

4. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on the Contractor's and the Contractor's subcontractors' insurance policies (except Professional Liability) by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. The Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non-contributory to the Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit the Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then the Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.

- e. Review of and Revision of Policy Provisions. Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. Verification of Coverage/Certificates and Endorsements. The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. The Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. No Limitation on Liability. The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. Payment Conditioned on Insurance and Failure to Maintain Insurance. Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five (5) business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of the Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. Workers' Compensation. The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all of the Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.
- l. Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.
- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees that the Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 **Defense & Indemnity Agreement.** To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims,

damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: to the extent caused in whole or in part by any negligent error, act or omission, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

In the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of the Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding the Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees that all of Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

35.1 Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, political affiliation, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; or subject an individual or business to segregation or separate treatment in any manner related to his/her/their receipt any service or services or other benefits provided under this Agreement unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

36.1 Waiver of Noncompetition:

The Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, the Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then the Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Elizabeth Kosa, Director
Whatcom County Public Works
322 N Commercial St
Bellingham, WA 98225

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (a) given in writing, and (b) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Whatcom County Public Works
322 N Commercial St
Bellingham, WA 98225
Attention: Elizabeth Kosa
(360) 778-6230
EKosa@co.whatcom.wa.us

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If applicable, by signing this contract, the Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:

If applicable, by signing this contract, the Contractor further certifies, 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.

The Contractor also agrees and certifies, by initialing below and executing this Agreement, that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "Excluded Parties List System in the System for Award Management (SAM) website is available to research this information at WWW.SAM.GOV. The Contractor shall immediately notify Whatcom County if, during the term of this Contract, the Contractor becomes debarred. The Contractor further agrees to provide immediate written notice to the County if, at any time during the term of this Agreement, they learn that their certification was erroneous when made or has become erroneous by reason of changed circumstances.

38.3 Federal Employment Verification:

Where required by federal law, including contracts containing the Federal Acquisition Regulation (FAR) E-Verify clause (48 C.F.R. 52.222-54), Contractor shall comply with all applicable federal employment eligibility verification requirements.

Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes

40.1 Modifications:

Either party may request changes in the Agreement. Any modification or amendment to this Agreement shall be valid and binding only through written agreement signed by both parties and executed by duly authorized representatives of both parties, and, for the County, approved by governing authority or county policy. No amendment shall be effective unless such approval has been obtained and the amendment has been fully executed.

40.2 Contractor Commitments, Warranties and Representations:

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

41.1 Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (a) any act or failure to act by the Administrative Officer or the County, or (b) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved,

and insofar as possible, the amount of the potential claim. The Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration:

Other than claims for injunctive relief, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract shall be governed by the laws of Whatcom County and the State of Washington.

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A"

(SCOPE OF WORK)

Sumas Flood Mitigation and Resilience Plan Scope of Work Overview

This scope of work details the approach for conducting Phase 1 of mitigation and resilience planning for Sumas, Washington. The work will be conducted for Whatcom County and the Whatcom County Flood Control Zone District (collectively referred to throughout this scope as Whatcom County) by SCJ Alliance and by the subconsultant, Environmental Science Associates (ESA) (collectively referred to throughout this scope of work as the SCJ team). This scope of work will be conducted in alignment with Whatcom County's Community Development Block Grant – Disaster Recovery. Phase 1 of work will last until June 30th, 2027 and will focus on engagement and collaboration and the development and evaluation of localized mitigation options. Phase 1 will be directly followed by a second phase that will focus on capital facilities planning, implementation planning, and feasibility studies.

This scope of work includes seven Tasks:

- Task 1: Project Management and Coordination
- Task 2: Gather and Review Existing Information
- Task 3: Engagement and Collaboration
- Task 4: Identify Options
- Task 5: Evaluate Options
- Task 6: Mitigation Planning Report
- Task 7: Phase 2 Scoping

General Assumptions

- No modeling (including hydraulic or hydrologic modeling) will be conducted as part of Phase 1.
- Invoicing and budget tracking will occur at the task level, not the subtask level.
- Whatcom County and City of Sumas staff will actively collaborate with the SCJ team on mitigation and resiliency planning, including, but not limited to, planning and implementation of engagement activities and identification and evaluation of mitigation options.
- This scope of work does not include analysis of watershed-scale or reach-scale flood mitigation actions, including, but not limited to alternating the flow split at Everson. Analysis will be limited to local actions that can be taken within Sumas.

Task 1 – Project Management and Coordination

Under this task, SCJ Alliance will oversee all aspects of this scope of work with a focus on clear communication, structured coordination, and diligent tracking of scope, schedule, and budget.

Task 1.1 – General Project Management. Under Task 1.1, SCJ Alliance will manage the overall project, including tracking the budget and schedule, preparing invoices, and submitting monthly progress reports.

Task 1.2 – Kickoff Meeting. At the outset of the project, the SCJ team will participate in a kickoff meeting with Whatcom County and with any partners (such as the City of Sumas) that Whatcom County would like to invite. The kickoff meeting will cover the scope of work, schedule, project milestones, and communication protocols

Task 1.3 – Regular Check-in Meetings. SCJ Alliance will participate in regular monthly check-in meetings with Whatcom County. Check-in meetings will cover the project status, schedule, and progress on deliverables. The check-in meetings will also be an informal opportunity to solicit County feedback on work in progress.

Assumptions

- Up to 6 members of the SCJ team will participate in the kickoff meeting. The kickoff meeting will be held via Zoom and will last up to 2 hours.
- Monthly check-in meetings will be held via Zoom and will be 1 hour long. An average of 2 members of the SCJ team will participate in check-in meetings. Check-in meetings will be staggered with Sumas Steering Group meetings to avoid both meetings occurring within the same two-week period.

Deliverables

- Monthly invoices, including a bullet point progress report
- Kickoff meeting agenda and summary, focusing on decisions and action items
- Running shared document of check-in meeting notes

Task 2 – Gather and Review Existing Information

Under this task, the SCJ team will ensure that the overall effort is informed by existing information and work, including the work of the Floodplain Integrated Planning effort. SCJ will also conduct a site visit.

Task 2.1– Site Visit. At the outset of the project, up to 5 members of the SCJ team will participate in a site visit to Sumas to see areas that experienced flooding, visit key infrastructure sites, and hear directly from Sumas Steering Group members about priorities (see task 3.3 for information about the Sumas Steering Group). The site visit will be planned collaboratively by the SCJ team and Whatcom County. The SCJ team will write a short summary of the site visit, including documentation of key findings.

Task 2.2 – Gather and Review Existing Information. Whatcom County and the City of Sumas will provide existing information related to flooding in Sumas and in the watershed as a whole. The SCJ team will review the information and conduct additional research to ensure that work conducted under subsequent tasks is informed by previous efforts and local knowledge.

Task 2.3 – Coordination with FLIP Technical Analysis. The SCJ team will stay informed about the FLIP technical analysis as it moves forward concurrent to this planning process. SCJ will review FLIP meeting notes and other FLIP materials provided by Whatcom County. Up to 3 members of the SCJ team will participate in a meeting with Whatcom County and with the FLIP consulting team to discuss the technical details of modeling to inform our work.

Assumptions

- Whatcom County and the City of Sumas will provide information including: technical studies related to flooding; materials and notes from previous public meetings and outreach activities in the City of Sumas; information about flood levels and impacts to capital facilities and public utilities from the 2021 and 2025 floods; and any other relevant reports, studies, or information.
- Instead of a stand-alone deliverable, the result of information gathering will be the reference list included in the Mitigation Planning Report (Task 6).

Deliverables

- Site visit itinerary and summary
- Summary of meeting with FLIP consulting team

Task 3 – Engagement and Collaboration

Under Task 3, the SCJ team will conduct engagement and collaborate with key partners, stakeholders and, the public. Specific engagement activities will be identified through development of a Public Engagement Plan.

Task 3.1 – Sumas Steering Group. A Sumas Steering Group will be formed to provide input on the project throughout the process. The Sumas Steering Group will consist of 8-10 members representing Whatcom County, the City of Sumas, and the FLIP Steering Committee. The Sumas Steering Group will meet monthly. The SCJ team will prepare meeting agendas, facilitate the meetings, and develop meeting summaries.

Task 3.2 – Public Engagement Plan. In collaboration with Whatcom County and the Sumas Steering Group, the SCJ team will develop a Public Engagement Plan that outlines specific activities that will be undertaken to engage the Sumas community. The SCJ team will prepare for and facilitate a collaborative discussion with the Sumas Steering Group, then will develop a draft Public Engagement Plan. The County and Sumas Steering Group will review the draft plan, then the SCJ team will prepare a final Public Engagement Plan.

Task 3.3 – Interviews. The SCJ team will conduct interviews with up to 10 key stakeholders and partners, based on a list of interview subjects identified by Whatcom County. The purpose of the interviews will be to surface potential mitigation options, areas of conflicts, and approaches to public engagement. The SCJ team and Whatcom County will collaborate on a list of interview subjects. The SCJ team will conduct the interviews then develop a brief summary of interview findings.

Task 3.4 – FLIP Steering Committee Engagement. Members of the SCJ team will participate in up to 2 FLIP Steering Committee meetings over the course of this scope of work to provide updates on this project and/or to listen to and participate in conversations about the Everson Flow Split or other watershed-scale flood mitigation measures that would impact Sumas.

Task 3.5 – City Council Engagement. The SCJ team will participate in engagement activities with the Sumas City Council and its Flood Committee. Engagement with the City Council will be led by the City of Sumas staff or Whatcom County. Specific engagement activities will be identified collaboratively with the Sumas Steering Group, documented in the Public Engagement Plan, and mutually agreed upon by the SCJ team and Whatcom County.

Task 3.6 – Public Meetings and Workshops. The SCJ team will plan and facilitate community engagement events such as public meetings and workshops. The timing and format of meetings under this task will be identified through collaborative conversations with the Sumas Steering Group, documented in the Public Engagement Plan, and mutually agreed upon by the SCJ team and Whatcom County.

Task 3.7- Engagement Materials. The SCJ team will develop engagement materials for use during public meetings and workshops and for distribution by the City of Sumas or Whatcom County. Engagement materials could include factsheets, community engagement boards for use in open house-style meetings, website content, visuals and diagrams for community engagement boards and educational materials, maps, or other types of materials identified in conversations with the Sumas Steering Group. The number and type of engagement materials developed under this task will be identified through collaborative conversations with the Sumas Steering Group, documented in the Public Engagement Plan, and mutually agreed upon by the SCJ team and Whatcom County.

Assumptions

- Public engagement activities will be mutually agreed upon by the SCJ team and Whatcom County through the Public Engagement Plan process. This scope of work does not obligate the SCJ team to conduct any specific engagement activities without prior mutual agreement as documented in the plan.
- The Public Engagement Plan will only include events that fit within the budget for Task 3. If the County or Steering Committee would like additional outreach tasks, they can be identified with engagement leads other than the SCJ team.
- The Public Engagement Plan will contain specific assumptions about the number of SCJ team members who will participate in events, who will be responsible for venue booking and costs, and other considerations for outreach events.
- In order to allow interview subjects to speak freely, SCJ Alliance will not provide unedited interview notes to Whatcom County.
- Whatcom County will determine who will be invited to participate in the Steering Committee and will provide contact information to the SCJ team.
- Sumas Steering Group meetings will be held monthly. Meetings will be held via Zoom and will not exceed 2 hours in length. An average of 3 SCJ team members will participate in Sumas Steering Group meetings.
- The SCJ team will participate in FLIP Steering Committee meetings via Zoom. Up to 2 SCJ team members will participate in up to 2 FLIP Steering Committee meetings.
- Engagement with the City Council will be led by the City of Sumas staff or Whatcom County. Specific engagement activities will be identified collaboratively with the Sumas Steering Group, documented in the Public Engagement Plan, and mutually agreed upon by the SCJ team and Whatcom County. Engagement activities will fit within the budget identified for Task 3.5, which assumes 2 meetings with City Council members.
- The timing and format of public meetings will be identified through collaborative conversations with the Sumas Steering Group, documented in the Public Engagement Plan, and mutually agreed upon by the SCJ team and Whatcom County. Public meetings will fit within the budget identified for Task 3.6, which assumes 3 meetings or workshops.
- The number and type of engagement materials will be identified through collaborative conversations with the Sumas Steering Group, documented in the Public Engagement Plan, and mutually agreed upon by the SCJ team and Whatcom County. Engagement materials will fit within the budget identified for Task 3.7.

Deliverables

- Draft and Final Public Engagement Plan
- Interview subject list
- Interview questions

- Summary of interview input
- Sumas Steering Group agendas, meeting materials, and meeting summaries
- Summaries of City Council engagement activities
- Agendas, meeting plans, and summaries of public meetings and workshops
- Engagement materials as identified in the Public Engagement Plan

Task 4 – Identify Options

Under Task 4, the SCJ team will identify options to mitigate flood risk and increase resiliency in Sumas. Options will be developed in collaboration with Whatcom County, the Sumas Steering Group, and Sumas residents. The SCJ team will develop a running list of potential options. Options will include future growth and land use options, localized flood mitigation options, and regulatory changes. The list will initially be populated by options already identified through previous planning efforts. The SCJ team will identify additional options based on our expertise, analysis, and research. We will also add options to the list as they are identified through engagement and collaboration conducted under Task 3. The list will note options that were raised or considered but determined infeasible.

Assumptions

- Options will focus on actions that can be taken within the City of Sumas and will not include options that would reduce the amount of floodwaters coming to Sumas from other portions of the watershed (which are being explored as part of the FLIP process).
- Options that are identified to be infeasible will not be considered.
- Options will be identified in a list in a shared document that will be updated throughout the process. Whatcom county will have access to the running mitigation options list.

Deliverables

- Running mitigation options list

Task 5 – Evaluate Options

Under Task 5, the SCJ team will evaluate the options identified as part of Task 4. Tasks under this task include identifying criteria, conducting the evaluation, and developing a locally-informed prioritization.

Task 5.1 – Identify Criteria. In collaboration with the Sumas Steering Group and Whatcom County, the SCJ team will identify the criteria that will be used to evaluate options. It is anticipated that community agreement will be a primary criterion. It is also assumed that the criteria will include factors such as permitting feasibility, environmental impacts, technical feasibility, funding feasibility, and flood risk tolerance.

Task 5.2 – Conduct Evaluation. The SCJ team will evaluate options identified in Task 4 using the criteria identified in Task 5.1. If appropriate, evaluation will be discussed at a Sumas Steering Group meeting to solicit input. The SCJ team will develop and fill out a draft evaluation matrix. Following County review and input, the SCJ team will develop a final evaluation matrix.

Task 5.3 – Locally-Informed Prioritization. Based on the results of the evaluation conducted in Task 5.2 and on Sumas Steering Group and public input gathered throughout the course of the project, the SCJ team will develop a draft locally-informed prioritization. The prioritization will be documented in a short memo. Input from Whatcom County or other parties on the prioritization memo will be incorporated into the Mitigation Planning Report developed under Task 6.

Assumptions

- No more than 8 criteria will be evaluated. If more than 8 criteria are identified, the County and Sumas Steering Group will select 8 priority criteria.
- The evaluation will be primarily qualitative, with an emphasis on community opinions identified through conversations with the Sumas Steering Group and with the community through outreach conducted under Task 3. No hydrologic or hydraulic modeling will be conducted. Any non-qualitative evaluation methodology will be mutually agreed upon between SCJ Alliance and the County prior to being conducted.

- The Locally-Informed Prioritization could take various forms, such as a numbered list, prioritized tiers, or buckets of options based on implementation pathways. The format of the prioritization will be determined in conversation with Whatcom County and based on the outcomes of the evaluation.

Deliverables

- Draft and Final Evaluation Matrix
- Locally-Informed Prioritization Memo

Task 6 – Mitigation Planning Report

The SCJ team will develop a Mitigation Planning Report that documents the process and findings of the mitigation planning process. The report will detail the methodology, data gathered, engagement and collaboration activities conducted, options identified, the evaluation of options, and the locally-informed prioritization. The SCJ team will develop a draft Mitigation Planning Report for review by Whatcom County, then will develop a final Mitigation Planning Report that incorporates input from the County.

Assumptions

- The purpose of the Mitigation Planning Report is to document findings of the Phase 1 work for use by Whatcom County, the Sumas Steering Group, and the U.S. Department of Housing and Urban Development (as the granting agency). The Report is not intended to be a public communication document.
- Whatcom County will provide a single consolidated set of comments on the draft Mitigation Planning Report. The SCJ team will prepare one draft for Whatcom County review and one revised/final version of the report.

Deliverables

- Mitigation Planning Report Outline
- Draft and Final Mitigation Planning Report

Task 7 – Phase 2 Scoping

Phase 2 of the Mitigation and Resiliency Planning for Sumas project is anticipated to include capital facilities and implementation planning and feasibility analyses of priority actions identified in Phase 1. Based on the outcomes of the Locally-Informed Prioritization, the SCJ team will develop a Draft Phase 2 Scope of Work for review by Whatcom County. Based on County input, the SCJ team will prepare a Final Phase 2 Scope of Work and a Phase 2 Budget.

Assumptions

- Phase 2 Scope of Work tasks will be mutually agreed upon by the SCJ team and Whatcom County.

Deliverables

- Draft and Final Phase 2 Scope of Work
- Phase 2 Budget

EXHIBIT "B"
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A, Scope of Work, the County agrees to compensate the Contractor according to the positions and hourly rates provided in Table B2. SCJ Alliance and ESA Project Billing Rate Table below. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County, including the consultant expenditures on each contract task # (for the month and the cumulative total), hourly rates, and hours worked on the task for the month. The budget below includes the expected effort according to staffing level, and totals by sub -task. Some tasks may require more or less than the estimated. Contractor will consult with and get written approval from the Administrator if it is later determined that the level of effort for any given task will be significantly greater than that which was estimated when Exhibit " A" - Scope of Work was prepared. The Whatcom County Public Works Director may, in writing, administratively approve modifications to the staff listed in the table below.

The Contractor will invoice monthly. Invoices will include hours worked by employee/ position for the invoice period listed together with tasks accomplished. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Total compensation shall not exceed \$274,981.33. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor' s expense.

Printing and copies will be at actual costs; requests for reimbursement will be accompanied by paid invoices itemizing costs incurred. Travel time is included in the hours listed below and will be charged at the staff member's full hourly rate. Consultants and subconsultants must follow the US General Services Administration's GSA travel reimbursement guidelines, by documenting costs consistent with rates as listed in the WA OFM per diem rates for Washington. Any consultant and subconsultant travel documentation for reimbursement must document travel beginning and end times, per diem claimed, and miles travelled using the most direct route. A 10% markup is included on the subconsultant budget as shown below.

Labor hour estimates for SCJ Alliance and ESA, showing hours by task and position title, are included below in Table B3. Consultant and Subconsultant Labor Hour Estimates.

Table B1. Sumas Flood Mitigation and Resilience Plan Project Budget by Task

Task #	Description	# of Hours	Total Cost
1	Project Management and Coordination	77	\$18,233.00
2	Gather and Review Existing Information	64.5	\$15,024.50
3	Engagement and Collaboration	483	\$98,346.50
4	Identify Options	148	\$26,386.00
5	Evaluate Options	251	\$52,668.00
6	Mitigation Planning Report	53	\$8,801.00
7	Phase 2 Scoping	25	\$7,625.00
SCJ Subtotal			\$227,084.00
ESA- Subcontractor			
1- Subcontract	ESA- Project Management and Coordination	4	\$1,150.00
2- Subcontract	ESA- Gather and Review Existing Information	36	\$8,312.00
3- Subcontract	ESA- Engagement and Collaboration	60	\$12,870.00
4- Subcontract	ESA- Identify Options	22	\$5,362.00
5- Subcontract	ESA- Evaluate Options	43	\$9,666.00
6- Subcontract	ESA- Mitigation Planning Report	16	\$3,294.00
7- Subcontract	ESA- Phase 2 Scoping	4	\$936.00
Subconsultant Mark-Up (10%)			\$4,159.00
ESA Subtotal			\$45,749.00
Reimbursable Expenses			

Copies, Printing	\$227.08
Mileage	\$1,921.25
Reimbursable Expenses Subtotal	\$2,148.33
Sumas Flood Mitigation Plan Total	\$274,981.33

Table B2. SCJ Alliance and ESA Project Billing Rates

Position Title	Name	Project Rate
Principal	Bill Dunning	\$365
Principal	Chris Overdorf	\$271
Principal	Randy Sackett	\$263
Principal	Gen Dial	\$269
Senior Consultant	Critter Thompson	\$228
Project Manager 3	Spencer Easton	\$265
Engineer 4	Emily Sortevik	\$213
Engineer 4	Rikki Martinez	\$181
Engineer 1	Nick Selberg	\$126
Planner 4	Malissa Burgess	\$158
Planner 3	Laura Barker	\$164
Planner 2	Allison Zimmerman	\$130
Planner 2	Alex Emmons	\$131
Planner 2	Gavin Scouten	\$128
Planner 2	Cassidy Burns	\$129
Planner 1	Michael Gacetta	\$126
Planner 1	Eddie Lambert	\$118
Project Accountant	Jackie Johnson	\$172
Graphic Designer	Hillary Kirby	\$166
Graphic Designer	Jay Cordovado	\$113

ESA	Name	Rate
Principal Consultant 5	Sky Miller	\$341
Principal Consultant 3	Susan O'Neil	\$282
Senior Consultant 4	Kayla Nollette	\$234
Senior Consultant 2	Drew Holstad	\$189
Project Technician 3	Eniola Adeyemia	\$131

Table B3. SCJ Alliance and ESA Labor Hour Estimates

Task #	Description	SCJ Staff Name	Total Labor Hours by Staff	Total Direct Labor Cost
1	Project Management and Coordination	Spencer Easton	39.0	\$10,335
		Bill Dunning	12.0	\$4,380
		Emily Sortevik	2.0	\$426
		Gavin Scouten	12.0	\$1,536
		Alex Emmons	4.0	\$524
		Jackie Johnson	8.0	\$1,032
Task 1- Project Management and Coordination Total Hours & Cost			77	\$18,233
2	Gather and Review Existing Information	Spencer Easton	24.0	\$6,360
		Bill Dunning	9.0	\$3,285
		Emily Sortevik	15.5	\$3,301.50
		Gavin Scouten	6.0	\$768
		Alex Emmons	10.0	\$1,310
Task 2- Gather and Review Existing Information Total Hours & Cost			64.5	\$15,024.50
3	Engagement and Collaboration	Spencer Easton	186.5	\$49,422.50
		Bill Dunning	24.0	\$8,760

		Emily Sortevik	46.0	\$9,798
		Gavin Scouten	24.5	\$3,136
		Alex Emmons	125.0	\$16,375
		Laura Barker	4.0	\$656
		Randy Sackett	13.0	\$3,419
		Jay Cardovado	60.0	\$6,780
Task 3- Engagement and Collaboration			483	\$98,346.50
Total Hours & Cost				
4	Identify Options	Spencer Easton	22.0	\$5,830
		Bill Dunning	10.0	\$3,650
		Chris Overdorf	2.0	\$542
		Emily Sortevik	6.0	\$1,278
		Gavin Scouten	52.0	\$6,656
		Laura Barker	26.0	\$4,264
		Randy Sackett	2.0	\$526
		Allison Zimmerman	28.0	\$3,640
Task 4- Identify Options			148	\$26,386
Total Hours & Cost				
5	Evaluate Options	Spencer Easton	84.0	\$22,260
		Bill Dunning	12.0	\$4,380
		Emily Sortevik	36.0	\$7,668
		Gavin Scouten	63.0	\$8,064
		Alex Emmons	10.0	\$1,310
		Laura Barker	18.0	\$2,952
		Randy Sackett	18.0	\$4,734
		Allison Zimmerman	10.0	\$1,300
Task 5- Evaluate Options			251	\$52,668
Total Hours & Cost				
6	Mitigation Planning Report	Spencer Easton	11.0	\$2,915
		Emily Sortevik	6.0	\$1,278
		Alex Emmons	30.0	\$3,930
		Jay Cordovado	6.0	\$678
Task 6- Mitigation Planning Report			53.0	\$8,801
Total Hours & Cost				
7	Phase 2 Scoping	Spencer Easton	15.0	\$3,975
		Bill Dunning	10.0	\$3,650
Task 7- Phase 2 Scoping			25.0	\$7,625
Total Hours & Cost				

Task #	Description	ESA Staff Name	Total Labor Hours by Subconsultant	Total Subconsultant Direct Labor Cost
1	Project Management and Coordination	Sky Miller	2.0	\$682
		Kayla Nollette	2.0	\$468
Task 1- Project Management and Coordination			4.0	\$1,150
Total Hours & Cost				
2	Gather and Review Existing Information	Sky Miller	4.0	\$1,364
		Kayla Nollette	20.0	\$4,680
		Drew Holstad	12.0	\$2,268
Task 2- Gather and Review Existing Information			36.0	\$8,312
Total Hours & Cost				
3	Engagement and Collaboration	Kayla Nollette	34.0	\$7,956
		Drew Holstad	26.0	\$4,914
Task 3- Engagement and Collaboration			60.0	\$12,870
Total Hours & Cost				

4	Identify Options	Sky Miller	2.0	\$682
		Kayla Nollette	20.0	\$4,680
Task 4- Identify Options Total Hours & Cost			22.0	\$5,362
5	Evaluate Options	Kayla Nollette	28.0	\$6,552
		Drew Holstad	12.0	\$2,268
		Susan O'Neil	3.0	\$846
Task 5- Evaluate Options Total Hours & Cost			43.0	\$9,666
6	Mitigation Planning Report	Kayla Nollette	6.0	\$1,404
		Drew Holstad	10.0	\$1,890
Task 6- Mitigation Planning Report Total Hours & Cost			16.0	\$3,294
7	Phase 2 Scoping	Kayla Nollette	4.0	\$936
Task 7- Phase 2 Scoping Total Hours & Cost			4.0	\$936

	Total Labor Hours	Total Labor Cost
SCJ Alliance Labor Estimate	1,101.5	\$227,084
ESA Subconsultant Labor Estimate	185	\$41,590
Total Labor Estimate	1,286.5	\$268,674

EXHIBIT "C"
(COMPLETION DEADLINES)

Completion deadlines have been established for the sole purpose of ensuring that the Consultant provides deliverables to the County in a timeframe that allows the County to submit these deliverables to the State Department of Commerce in time to receive State grant funding for Whatcom County Contract 202507019.

All deliverables for Phase 1 shall be provided to Whatcom County by June 30, 2027. Task 6- Final Mitigation Planning Report will be due on June 11th, 2027 to meet the WA Department of Commerce grant deliverable submission timeline.

Notwithstanding the completion deadlines, it is anticipated that Consultant tasks/ work items will progress and deliverables will be provided to the County in accordance with the project schedule mutually developed by the County and the Consultant to meet project objectives.

Task- Deliverable Name	Grant Deliverable Requirement (See Whatcom County Contract 202507019)	Completion Deadline
Task 6- Final Mitigation Planning Report	Produce report on planning activities detailing methodology, data gathered, data analysis, and study conclusions on feasible projects that would reduce future Nooksack River flood damage in and around the City of Sumas.	June 11 th , 2027

EXHIBIT "D"
(GRANT AGREEMENT)

Enclosed is the fully executed grant agreement between the FCZD Board of Supervisors and the Washington State Department of Commerce to provide Community Development Block Grant- Disaster Recovery (CDBG-DR) funding for flood mitigation planning in Sumas, Nooksack, and Everson.

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

Originating Department:	Public Works / Flood Control Zone District (FCZD)
Division/Program: (i.e. Dept. Division and Program)	River and Flood - 907525
Contract or Grant Administrator:	Paula Harris, Flood Planning and Mitigation Manager
Contractor's / Agency Name:	SCJ Alliance
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☒ Yes ☒ No ☐ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes ☒ No ☐ If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes ☒ No ☐ If yes, grantor agency contract number(s): <u>NA</u> CFDA#: _____	
Is this contract grant funded? Yes ☒ No ☐ If yes, Whatcom County grant contract number(s): <u>#202507019</u>	
Is this contract the result of a RFP or Bid process? Contract _____ Yes ☐ No ☒ If yes, RFP and Bid number(s): <u>25-79</u> Cost Center: <u>19082578 & 19082579</u>	
Is this agreement excluded from E-Verify? No ☐ Yes ☒ If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: ☐ Professional services agreement for certified/licensed professional. ☐ Goods and services provided due to an emergency ☐ Contract work is for less than \$100,000. ☐ Contract for Commercial off the shelf items (COTS). ☐ Contract work is for less than 120 days. ☐ Work related subcontract less than \$25,000. ☒ Interlocal Agreement (between Governments). ☐ Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>1,310,000</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____ Summary of Scope:	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: 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.
This grant provides \$1,310,000 in CDBG funding to advance two objectives of the FCZD flood hazard reduction program: 1) to determine the feasibility of the Everson and Nooksack berms and understand the tasks and funding needed to implement the project, and 2) to devise future flood mitigation measures to lead the City of Sumas to a flood-resilient solution.	
Term of Contract:	Expiration Date: 06/30/2027

Contract Routing:	1. Prepared by: <u>Julie Anderson</u>	Date: <u>6/4/2025</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>6/5/2025</u>
	3. AS Finance reviewed: <u>bbennett</u>	Date: <u>06/20/2025</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Executive contract review: <u>Jlogan</u>	Date: <u>7/20/2025</u>
	7. Council approved, if necessary: <u>AB2025-495</u>	Date: <u>7/8/2025</u>
	8. Executive signed: <u>SSidhu</u>	Date: <u>7/21/2025</u>
	9. Original to Council: _____	Date: _____

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

ELIZABETH KOSA
DIRECTOR



River and Flood Division
322 N Commercial St.
Bellingham, WA 98225
Phone: 360-778-6230

MEMORANDUM

TO: The Honorable Members of the Whatcom County Flood Control Zone
District Board of Supervisors

THROUGH: Elizabeth Kosa, Public Works Director

FROM: Gary Stoyka, Natural Resources Manager *GS*
Julie Anderson, River and Flood Manager *JHA*

RE: CDBG-DR Resiliency Planning Grant Agreement with Washington State Department
of Commerce

DATE: June 3, 2025

Enclosed is a grant agreement between the Whatcom County Flood Control Zone District (FCZD) and the Washington State Department of Commerce for your review and signature.

Requested Action

Public Works respectfully requests that the FCZD Board of Supervisors authorize the County Executive to enter into a Grant Agreement between the FCZD and the Washington State Department of Commerce to provide funding for flood mitigation planning in Sumas, Nooksack and Everson.

Background and Purpose

Whatcom County FCZD and the Floodplain Integrated Planning (FLIP) team is engaged in an on-going effort to implement and update the Comprehensive Flood Hazard Management Plan. The intent of this funding is to advance two important objectives of the FCZD flood hazard reduction program:

- 1) To determine the feasibility of the Everson and Nooksack berms and understand the tasks and funding needed to implement the project
- 2) To develop future flood mitigation measures to lead the City of Sumas to become a flood-resilient community.

Funding Amount and Source

The total cost of this grant agreement is \$1,310,000 with \$1,310,000 (100%) provided by the Department of Commerce and no match required by the FCZD. A supplemental budget request will be required to incorporate this work into the 2025 budget.

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



Federal General Grant with

Whatcom County

through

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

Grant Number: 26-64211-008

For

Nooksack Overflow Corridor Flood Resiliency Planning

Dated: Upon Final Signature



Table of Contents

FACE SHEET	4
SPECIAL TERMS AND CONDITIONS	5
1. RECITALS	5
2. ACKNOWLEDGEMENT OF FEDERAL FUNDING	5
3. GRANT MANAGEMENT	6
4. COMPENSATION	6
5. STATE PUBLIC WORKS	6
6. SITE CONTROL	6
7. DOCUMENTATION AND SECURITY	6
8. BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES 7	
9. EXPENDITURES ELIGIBLE FOR REIMBURSEMENT	7
10. BILLING PROCEDURES AND PAYMENT	7
11. PROGRAM INCOME	8
13. RECORD KEEPING AND ACCESS TO RECORDS	9
14. SUBGRANTEE/SUBCONTRACTOR DATA COLLECTION	10
15. INSURANCE	10
16. HISTORICAL AND CULTURAL ARTIFACTS	12
17. TERMINATION FOR FRAUD OR MISREPRESENTATION	13
18. FRAUD AND OTHER LOSS REPORTING	13
19. CLOSEOUT	13
20. PUBLIC RECORDS ACT	14
21. APPLICABILITY OF COPYRIGHT PROVISIONS TO ARCHITECTURAL/ENGINEERING DESIGN WORK	14
22. TREATMENT OF ASSETS	14
23. ORDER OF PRECEDENCE	14
GENERAL TERMS AND CONDITIONS	15
1. DEFINITIONS	15
2. ACCESS TO DATA	15
3. ADVANCE PAYMENTS PROHIBITED	15
4. ALL WRITINGS CONTAINED HEREIN	16
5. AMENDMENTS	16
6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35 16	
7. ASSIGNMENT	16
8. ATTORNEYS' FEES	16
9. AUDIT	16
10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION- PRIMARY AND LOWER TIER COVERED TRANSACTIONS	16
11. CODE REQUIREMENTS	17
12. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION	17
13. CONFORMANCE	18
14. CONFLICT OF INTEREST	18
15. COPYRIGHT PROVISIONS	18
16. DISPUTES	19
17. DUPLICATE PAYMENT	19
18. GOVERNING LAW AND VENUE	19
19. INDEMNIFICATION	19
20. INDEPENDENT CAPACITY OF THE GRANTEE	19
21. INDIRECT COSTS	20



22.	INDUSTRIAL INSURANCE COVERAGE	20
23.	LAWS.....	20
24.	LICENSING, ACCREDITATION AND REGISTRATION	20
25.	LIMITATION OF AUTHORITY	20
26.	NONDISCRIMINATION	20
27.	PAY EQUITY	21
28.	POLITICAL ACTIVITIES.....	21
29.	PREVAILING WAGE LAW	21
30.	PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS	22
31.	PUBLICITY.....	22
32.	RECAPTURE	22
33.	RECORDS MAINTENANCE	23
34.	REGISTRATION WITH DEPARTMENT OF REVENUE AND SECRETARY OF STATE	23
35.	RIGHT OF INSPECTION	23
36.	SAVINGS.....	23
37.	SEVERABILITY	23
38.	SITE SECURITY	23
39.	SUBGRANTING/SUBCONTRACTING	24
40.	SURVIVAL	24
41.	TAXES	24
42.	TERMINATION FOR CAUSE.....	24
43.	TERMINATION FOR CONVENIENCE	25
44.	TERMINATION OR SUSPENSION FOR LOSS OR REDUCTION OF FUNDING	25
45.	TERMINATION PROCEDURES	25
46.	TREATMENT OF ASSETS	26
47.	WAIVER	27

ATTACHMENT A: SCOPE OF WORK AND BUDGET..... ERROR! BOOKMARK NOT DEFINED.

ATTACHMENT B: CDBG-DISASTER RECOVERY REQUIREMENTS FOR FEDERAL AWARDS28

1.	GENERAL COMPLIANCE	29
2.	2 CFR 200	29
3.	DUPLICATION OF BENEFITS.....	29
4.	DRUG-FREE WORKPLACE	29
5.	PROHIBITED ACTIVITIES	29
6.	NATIONAL OBJECTIVES	29
7.	GRANTEE PERFORMANCE	30
8.	PROPERTY STANDARDS.....	30
9.	FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)	30
10.	RELOCATION, REAL PROPERTY ACQUISITION, AND ONE-FOR-ONE HOUSING REPLACEMENT	30
11.	NONDISCRIMINATION	30
12.	LABOR STANDARDS AND EMPLOYMENT	32
13.	SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968	32
14.	CONDUCT.....	33
15.	RELIGIOUS ACTIVITY.....	34
16.	ENVIRONMENTAL CONDITIONS.....	34
17.	SUBCONTRACTS	35

ATTACHMENT C: CONTRACT ADDENDUM FOR HOUSING ACTIVITIES.....37

1.	AFFORDABILITY – MULTI-FAMILY RENTAL HOUSING	37
2.	GREEN BUILDING STANDARDS.....	37
3.	BROADBAND INFRASTRUCTURE (PROJECTS WITH 5+ UNITS)	38



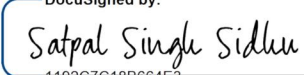
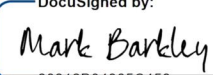
Face Sheet

Grant Number: 26-64211-008

Project Name: **Nooksack Overflow Corridor Flood Resiliency Planning**

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

Research & Development: ☐ Yes ☒ No☒ Subrecipient☐ Contractor

1. Grantee Whatcom County DBA PUBLIC WORKS BELLINGHAM, WA 98225-4042		2. Grantee Doing Business As (as applicable) N/A	
3. Grantee Representative Paula Harris, (360) 778-6285 pharris@co.whatcom.wa.us		4. Commerce Representative Seamus Davis, Project Manager PO Box 42525/1011 Plum St SE, Olympia, WA 98504-2525 (360) 485-2386 seamus.davis@commerce.wa.gov	
5. Grant Amount \$1,310,000.00	6. Funding Source Federal: ☒ State: ☐ Other: ☐	7. Start Date Upon Final Signature	8. End Date 06/30/2027
9. Federal Funds (as applicable) \$1,310,000.00	Federal Agency: U.S. Department of Housing and Urban Development (HUD)		ALN 14.228 Indirect Rate
10. Tax ID # On File	11. SWV # SWV0002425-52	12. UBI # 600358208	13. UEI # NT6RMN8THTN7
14. Grant Purpose For disaster recovery activities responding to FEMA Disaster Declaration #4635 as further described in Exhibit A – Scope of Work and Budget.			
COMMERCE, defined as the Washington State Department of Commerce, and the GRANTEE, as defined above, acknowledge and accept the terms of this Grant Agreement and attachments and have executed this Grant Agreement on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant Agreement are governed by this Grant Agreement and the following other documents incorporated by reference: Grantee Terms and Conditions including Attachment “A” – Scope of Work and Budget, Attachment “B” - CDBG-Disaster Recovery Requirements for Federal Awards, Attachment “C” – Contract Addendum for Housing Activities.			
FOR GRANTEE DocuSigned by:  119267618B664E3... Satpal Sidhu, 7/16/2025 4:17 PM PDT _____ Date		FOR COMMERCE DocuSigned by:  80312B04865C438... Mark K. Barkley, Assistant Director Local Government Division 7/22/2025 11:47 AM PDT _____ Date TEMPLATE APPROVED AS TO FORM ONLY _____ Lisa Koperski ASSISTANT ATTORNEY GENERAL Date 05-01-2025	



Special Terms and Conditions

1. RECITALS

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

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

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

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

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

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

2. ACKNOWLEDGEMENT OF FEDERAL FUNDING

Federal Award Date: 05/24/2022 & 01/18/2023

Federal Award Identification Number (FAIN): B-21-DF-53-0001 & B-22-DF-53-0001

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

Total amount of federal funds obligated to this Subrecipient for this program: \$1,310,000

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

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

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

The GRANTEE agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the GRANTEE describing programs or projects funded in whole or in part with federal funds under this Grant Agreement, shall contain the following statements:

"This project was supported by Grant No. **B-21-DF-53-0001 & B-22-DF-53-0001** awarded by the U.S. Department of Housing and Urban Development. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Housing and Urban Development. Grant funds are administered by the Community Development Block Grant – Disaster Recovery, Washington State Department of Commerce."



3. GRANT MANAGEMENT

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

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

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

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

4. COMPENSATION

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

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

5. STATE PUBLIC WORKS

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

6. SITE CONTROL

GRANTEES who receive grants for construction, purchase or renovation of facilities must provide written evidence of and maintain site control, either through outright ownership of the subject property or a long-term lease, for a minimum of 10 years after the later of: (1) final grant payment; or (2) the date when the facility is made usable to the public or project beneficiaries as described in the scope of work, including GRANTEE having secured all required licenses, certifications, and/or permits. GRANTEES must provide written evidence of continuing site control as may be requested by COMMERCE.

7. DOCUMENTATION AND SECURITY

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

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

B. Term of Deed of Trust. The Deed of Trust shall remain in full force and effect for a minimum period of 10 years following the later of: (1) final payment of state funds to the GRANTEE under this Grant Agreement; or (2) the date when the facility improved or acquired with grant funds; the scope of work is made usable to the public or project beneficiaries. Upon satisfaction of the term requirement and all



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

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

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

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

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

9. **EXPENDITURES ELIGIBLE FOR REIMBURSEMENT**

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

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

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

10. **BILLING PROCEDURES AND PAYMENT**

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



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

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

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

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

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

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

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

11. PROGRAM INCOME

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

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

12. ACQUISITION AND DISPOSITION OF ASSETS

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

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



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

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

13. RECORD KEEPING AND ACCESS TO RECORDS

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

14. SUBGRANTEE/SUBCONTRACTOR DATA COLLECTION

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

15. INSURANCE

A. Insurance Requirements for Reimbursable Activities

The GRANTEE must have insurance coverage that is substantially similar to the coverage described in Section 15B below for all periods in which GRANTEE performed work for which it will seek reimbursement. The intent of the required insurance is to protect the State of Washington should there be any Claims, suits, actions, costs, damages or expenses arising from any loss or negligent or intentional act or omission of the GRANTEE or subgrantee/subcontractor, or agents of either, while performing under the terms of this Grant Agreement.



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

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

a. **Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of or related to this Grant Agreement but in no less than \$1,000,000 per occurrence. Additionally, the GRANTEE is responsible for ensuring that any subgrantee/subcontractor provide adequate insurance coverage for the activities arising out of or related to subgrants/subcontracts (if any). Commercial General Liability Insurance

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

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

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

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

c. **Professional Liability, Errors, and Omissions Insurance.** If GRANTEE will be providing any professional services to be reimbursed under this Grant Agreement, the GRANTEE shall maintain Professional Liability or Errors and Omissions Insurance with minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the GRANTEE and licensed staff employed or under contract to the GRANTEE. The State of Washington, the Department of Commerce, its agents, officers, and employees need not be named as additional insureds under this policy. This insurance must be maintained throughout the term of the deed of trust, if applicable. GRANTEE shall require that any subgrantees/subcontractors providing professional services that are reimbursable under this Grant Agreement maintain Professional Liability or Errors and Omissions Insurance at the coverage levels set forth in this subsection.

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

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



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

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

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

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

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

16. HISTORICAL AND CULTURAL ARTIFACTS

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

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



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

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

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

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

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

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

17. TERMINATION FOR FRAUD OR MISREPRESENTATION

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

18. FRAUD AND OTHER LOSS REPORTING

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

19. CLOSEOUT

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

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

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



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

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

20. PUBLIC RECORDS ACT

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

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

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

22. TREATMENT OF ASSETS

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

23. ORDER OF PRECEDENCE

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

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



General Terms and Conditions

1. DEFINITIONS

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

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

2. ACCESS TO DATA

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

3. ADVANCE PAYMENTS PROHIBITED

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



4. ALL WRITINGS CONTAINED HEREIN

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

5. AMENDMENTS

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

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

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

7. ASSIGNMENT

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

8. ATTORNEYS' FEES

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

9. AUDIT

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

Upon completion of each audit:

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

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

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

- A. GRANTEE, defined as the primary participant and its principals, certifies by signing this Grant Agreement that to the best of its knowledge and belief they:
 - i. Are not presently debarred, suspended, proposed for debarment, and declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
 - ii. Have not within a three-year period preceding this Grant Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;



- iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv. Have not within a three-year period preceding the signing of this Grant Agreement had one or more public transactions (federal, state, or local) terminated for cause of default.
- B. Where the GRANTEE is unable to certify to any of the statements in this Grant Agreement, the GRANTEE shall attach an explanation to this Grant Agreement.
- C. The GRANTEE agrees by signing this Grant Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The GRANTEE further agrees by signing this Grant Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- i. The lower tier GRANTEE certifies, by signing this Grant Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
 - ii. Where the lower tier GRANTEE is unable to certify to any of the statements in this Grant Agreement, such GRANTEE shall attach an explanation to this Grant Agreement.
- E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this Section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

11. CODE REQUIREMENTS

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

12. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
- B. All material provided to the GRANTEE by COMMERCE that is designated as "confidential" by COMMERCE;
 - C. All material produced by the GRANTEE that is designated as "confidential" by COMMERCE; and All Personal Information in the possession of the GRANTEE that may not be disclosed under state or federal law.
 - D. The GRANTEE shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The GRANTEE shall use Confidential Information solely for the purposes of this Grant Agreement and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The GRANTEE shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the GRANTEE shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant Agreement whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The GRANTEE shall make the changes within the time period specified by COMMERCE. Upon request, the GRANTEE shall immediately return to COMMERCE any Confidential Information that COMMERCE



reasonably determines has not been adequately protected by the GRANTEE against unauthorized disclosure.

- E. Unauthorized Use or Disclosure. The GRANTEE shall notify COMMERCE within 5 working days of any unauthorized use or disclosure of any Confidential Information and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

13. **CONFORMANCE**

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

14. **CONFLICT OF INTEREST**

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

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

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

15. **COPYRIGHT PROVISIONS**

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

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

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

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



16. DISPUTES

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

The request for a dispute hearing must:

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

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

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

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

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

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

17. DUPLICATE PAYMENT

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

18. GOVERNING LAW AND VENUE

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

19. INDEMNIFICATION

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

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

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

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

20. INDEPENDENT CAPACITY OF THE GRANTEE

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



agents of the State of Washington or COMMERCE. The GRANTEE will not hold itself out as or claim to be an officer or employee of COMMERCE or of the State of Washington by reason hereof, nor will the GRANTEE make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the GRANTEE.

21. INDIRECT COSTS

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

22. INDUSTRIAL INSURANCE COVERAGE

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

23. LAWS

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

24. LICENSING, ACCREDITATION AND REGISTRATION

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

25. LIMITATION OF AUTHORITY

Only the Authorized Representative or the Authorized Representative's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant Agreement. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Grant Agreement is not effective or binding unless made in writing and signed by the Authorized Representative.

26. NONDISCRIMINATION

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



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

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

27. PAY EQUITY

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

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

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

28. POLITICAL ACTIVITIES

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

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

29. PREVAILING WAGE LAW

The GRANTEE certifies that all subgrantees/subcontractors performing work on the Project shall comply with State Prevailing Wages on Public Works, RCW 39.12, as applicable to the Project funded by this Grant Agreement, including, but not limited to, the filing of the "Statement of Intent to Pay Prevailing Wages" and



"Affidavit of Wages Paid" as required by RCW 39.12.040. The GRANTEE shall maintain records sufficient to evidence compliance with RCW 39.12 and shall make such records available for COMMERCE's review upon request. The GRANTEE is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine whether prevailing wages must be paid. COMMERCE is not responsible for determining whether prevailing wage applies to this Project or for any prevailing wage payments that may be required by law.

30. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

All Grantees must establish procurement policies and procedures in accordance with 2 CFR Part 200, for all expenditures funded by this Grant Agreement.

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

- A.** A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of grants using federal funds.
- B.** Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
- C.** Minimum procedural requirements, as follows:
 - i.** Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
 - ii.** Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
 - iii.** Positive efforts shall be made to use small and minority-owned businesses.
 - iv.** The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Grantee, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
 - v.** Grants shall be made only with reasonable subgrantees who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
 - vi.** Some form of price or cost analysis should be performed in connection with every procurement action.
 - vii.** Procurement records and files for purchases shall include all of the following:
 - a.** GRANTEE selection or rejection.
 - b.** The basis for the cost or price.
 - c.** Justification for lack of competitive bids if offers are not obtained.
 - viii.** A system for grant administration to ensure Grantee conformance with terms, conditions and specifications of this Grant Agreement, and to ensure adequate and timely follow-up of all purchases.
- D.** GRANTEE and subgrantee/subcontractor must receive prior approval from COMMERCE for using funds from this Grant Agreement to enter into a sole source grant or a grant where only one bid or proposal is received when value of this grant is expected to exceed \$5,000.

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

31. PUBLICITY

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

32. RECAPTURE

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



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

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

33. RECORDS MAINTENANCE

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

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

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

34. REGISTRATION WITH DEPARTMENT OF REVENUE AND SECRETARY OF STATE

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

35. RIGHT OF INSPECTION

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

36. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant Agreement and prior to normal completion, COMMERCE may terminate the Grant Agreement under the "Termination for Convenience" clause, without the 10-calendar day notice requirement. In lieu of termination, the Grant Agreement may be amended to reflect the new funding limitations and conditions.

37. SEVERABILITY

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

38. SITE SECURITY

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



39. SUBGRANTING/SUBCONTRACTING

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

40. SURVIVAL

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

41. TAXES

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

42. TERMINATION FOR CAUSE

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



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

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

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

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

43. TERMINATION FOR CONVENIENCE

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

44. TERMINATION OR SUSPENSION FOR LOSS OR REDUCTION OF FUNDING

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

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

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

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

45. TERMINATION PROCEDURES

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

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



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

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

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

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

46. TREATMENT OF ASSETS

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

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



damage.

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

47. WAIVER

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



Attachment A – Scope of Work and Budget

Subrecipient: Whatcom County Flood Control Zone District | **Contract:** 26-64211-008

Project Description / Deliverable

The Department of Commerce will make up to \$1,310,000 in CDBG-DR funds available to Whatcom County Flood Control Zone District (WCFCZD) as Commerce's subrecipient for the [enter project name]. These funds will facilitate flood mitigation planning for communities at risk of future flooding of the Nooksack River, including studying the feasibility of flood mitigation berms in the towns of Everson and Nooksack and the identification of potential mitigation projects in the town of Sumas.

Everson/Nooksack Berm Feasibility Study Produce report on planning activities detailing methodology, data gathered, data analysis, and study conclusions on feasibility of berm projects in and around the cities of Everson and Nooksack including the following tasks:

- Coordination with Communities and Property Owners
- Cultural resources assessment
- Base mapping
- Subsurface conditions analysis
- Hydraulic modeling and analysis
- FEMA floodplain mapping revisions assessment
- Roadway modifications analysis
- Utility modifications analysis
- Railroad modifications analysis
- Environmental permitting assessment
- Conceptual berm layouts and cost estimates

Sumas Mitigation Planning report - Produce report on planning activities detailing methodology, data gathered, data analysis, and study conclusions on feasible projects that would reduce future Nooksack River flood damage in and around the city of Sumas.

CDBG-DR planning activities are not required to achieve HUD's national objectives per 24 CFR 570.208. However, funded planning activities may assess potential projects' ability to meet a HUD national objective, as well as other CDBG-DR eligibility requirements.

Project Budget

CDBG Budget Code & Funding		Leveraged Other Funding		Total Funding
WCFCZD – Activity Delivery Costs	\$178,400	Other Federal \$	\$0.00	
Everson/Nooksack Berm Feasibility Study	\$567,600	Other State \$	\$0.00	
Sumas Mitigation Planning	\$559,000	Local Public \$	\$0.00	
Total CDBG Funds	\$1,300,000	Total Other Funds	\$0.00	
				\$1,300,000

Other Project Activities

Milestones

▪ Execute agreement with Commerce. ▪ Establish administrative, financial, reporting, and record keeping systems necessary for maintaining compliance with federal regulations and program policies, including: • Procurement of professional services • Subcontract management/monitoring • Documentation of expenses • Project management/progress tracking	Before first payment request for project administration
▪ Prepare and submit payment requests with supporting documentation to Commerce.	At least quarterly
▪ Complete applicable civil rights requirements and ensure nondiscrimination in project delivery. ▪ Monitor any subcontractor(s) to verify Program funding conditions are being met.	Before final payment request
▪ Resolve all monitoring issues with Commerce. ▪ Ensure all required documentation of compliance with Program requirements is present in Contractor records and available to Commerce staff.	Before requesting final reimbursement



ATTACHMENT B: CDBG-DISASTER RECOVERY REQUIREMENTS FOR FEDERAL AWARDS

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

1. GENERAL COMPLIANCE

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

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

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

2. 2 CFR 200

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

3. DUPLICATION OF BENEFITS

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

4. DRUG-FREE WORKPLACE

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

5. PROHIBITED ACTIVITIES

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

6. NATIONAL OBJECTIVES

The GRANTEE must ensure that all activities funded with CDBG-DR funds must meet the criteria for one of the CDBG program's National Objectives, as defined in 24 CFR 570.208. The GRANTEE will use demographic and income-driven information to document the National Objective, including the



collection and submission to COMMERCE of income verification information from all individuals benefitting from this grant, if applicable. This documentation will include the applicant's most recent IRS Form 1040 (long form), W2 Form, pay stubs for the last 3 months, signed statement from the employer stating wage and frequency of payment, or unemployment income documented by a current letter of benefits.

7. GRANTEE PERFORMANCE

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

8. PROPERTY STANDARDS

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

9. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

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

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

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

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

11. NONDISCRIMINATION

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



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

10.1 Architectural Barriers Act and the Americans with Disabilities Act

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

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

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

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

10.2.1 General Compliance

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

10.2.2 Assurances and Real Property Covenants

As a condition to the approval of this Agreement and the extension of any federal financial assistance, the GRANTEE assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to 24 CFR part 1.

If the federal financial assistance under this agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the GRANTEE's assurance



herein shall obligate the GRANTEE or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the GRANTEE retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the GRANTEE for the period during which federal financial assistance is extended pursuant to the contract or application.

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

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

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

12. LABOR STANDARDS AND EMPLOYMENT

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

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

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

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

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

- a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 75, which implement section 3. As evidenced by their execution of this contract, the parties to



this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

- c. The GRANTEE agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The GRANTEE agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subgrantee/subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subgrantee/subcontractor where the contractor has notice or knowledge that the subgrantee/subcontractor has been found in violation of the regulations in 24 CFR part 75.
- e. The GRANTEE will certify that any vacant employment positions, including training positions, that are filled (1) after the GRANTEE is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the GRANTEE's obligations under 24 CFR part 75.
- f. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

14. CONDUCT

14.1 Hatch Act

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

14.2 Conflict of Interest

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

14.3 Lobbying Certification

The GRANTEE hereby certifies that:



- a. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- c. It shall require that the language of paragraphs (a) and (b) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose; accordingly, and
- d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is required by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

15. RELIGIOUS ACTIVITY

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

16. ENVIRONMENTAL CONDITIONS

16.1 Prohibition on Choice Limiting Activities Prior to Environmental Review

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

16.2 Air and Water

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

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



16.3 Flood Disaster Protection

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

16.4 Lead-Based Paint

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

16.5 Historic Preservation

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

17. SUBCONTRACTS

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

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



- e. The GRANTEE shall include in any subcontracts that failure to adequately perform under this contract may result in penalties up to and including debarment from performing additional work for COMMERCE.
- f. The GRANTEE shall incorporate all required CDBG-DR and cross cutting requirements into subcontracts and all other lower-tier contracts executed in connection with this award.



ATTACHMENT C: CONTRACT ADDENDUM FOR HOUSING ACTIVITIES

1. AFFORDABILITY – MULTI-FAMILY RENTAL HOUSING

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

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

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

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

2. GREEN BUILDING STANDARDS

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

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

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

Commerce will utilize the UFAS Accessibility Checklist as a minimum standard for structures with five or more units to assist in the compliance of Section 504 of the Rehabilitation Act. The checklist will



be used when reviewing the design of all newly constructed residential structures (other than privately owned residential structures). The Fair Housing Act (including the seven basic design and construction requirements set forth in the Fair Housing Act) also applies to buildings with four or more units. Titles II and III of the Americans with Disabilities Act also applies to public housing.

3. BROADBAND INFRASTRUCTURE (projects with 5+ units)

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



Document Routing Sheet

Name/Title	Routing Step	Action	
Section Manager	1	(approval)	DS JG 7/16/2025 1:12 PM PDT
Budget Authorization	2	(approval)	DS MB 7/16/2025 1:37 PM PDT
Grantee Contact	3	(cc)	N/A
Grantee Reviewer	3	(approval)	Initial JL 7/16/2025 3:37 PM PDT
Grantee Signatory	4	(signature)	See Facesheet
Deputy Assistant Director	5	(approval)	DS TH 7/22/2025 10:49 AM PDT
Assistant Director	6	(signature)	See Facesheet



Certificate Of Completion

Envelope Id: 94C0B0B6-87B3-4A9A-9ADE-AE822D7DFE7D		Status: Completed
Subject: CDBG-DR Contract - Complete with DocuSign		
Division:		
Local Government		
Program: CDBG-DR		
ContractNumber: 26-64211-008		
DocumentType: Contract		
Source Envelope:		
Document Pages: 39	Signatures: 2	Envelope Originator:
Certificate Pages: 6	Initials: 4	Seamus Davis
AutoNav: Enabled		1011 Plum Street SE
Envelopeld Stamping: Enabled		MS 42525
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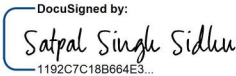
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JLogan@co.whatcom.wa.us		Viewed: 7/16/2025 2:59:57 PM
Administrative Secretary/Grant Coordinator		Signed: 7/16/2025 3:37:56 PM
Whatcom County		
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	Using IP Address: 216.57.213.187	

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Tony Hanson tony.hanson@commerce.wa.gov Deputy Assistant Dir Washington State Department of Commerce Security Level: Email, Account Authentication (None)	DS  Signature Adoption: Pre-selected Style Using IP Address: 174.231.137.231 Signed using mobile	Sent: 7/16/2025 4:17:32 PM Viewed: 7/22/2025 10:48:56 AM Signed: 7/22/2025 10:49:54 AM
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Completed	Security Checked	7/22/2025 11:47:40 AM
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