

**Interlocal Agreement  
between the City of Everson  
and  
Whatcom County**

This Agreement is made and entered into by and between the City of Everson, a Washington city (hereinafter referred to as the "City") and Whatcom County, a Washington county (hereinafter referred to as the "County"). The City and the County may be referred to collectively herein as the "Parties".

**WHEREAS**, the County is the recipient of grant funding from the Washington State Department of Commerce under the Emergency Rapid Response Grant Program.

**WHEREAS**, the purpose of the funding is to support essential community services and recovery assistance after a local or state declared disaster.

**WHEREAS**, the grant was awarded as a result of the November 2021 state and federally declared flood disaster.

**WHEREAS**, during the November 2021 state and federally declared flood disaster, the City of Everson experienced hazardous conditions in connection with the flooded road conditions on Main Street.

**WHEREAS**, the City of Everson determined that the installation of road gates would aid in the efforts to protect citizens from entering flooded roads.

**WHEREAS**, the road gates were installed in the fall of 2023.

**WHEREAS**, the Washington State Department of Commerce has approved the use of the Emergency Rapid Response Grant Program for the reimbursement of the installation.

**NOW, THEREFORE**, the Parties agree as follows:

**1. Purpose.** The purpose of this Agreement is to set forth the terms and conditions upon which the City may maintain and repair the road gates.

**2. Scope of Services.** The road gates were installed by Stremler Gravel, Inc. The invoice is attached as Exhibit A.

**3. Compensation.** The County shall reimburse the City \$47,534.22 for the installation completed by Stremler Gravel, Inc.

**4. Term.** The City must make payment to the vendor and submit for reimbursement on or before June 30, 2024.

**5. Indemnification.** Each party agrees to protect, defend, appear, save harmless, and indemnify each other party from and against all claims, suits, and actions arising from the intentional or negligent acts or omissions of such party, its agents or employees in the performance of this Agreement. Notwithstanding the foregoing, the City shall not be responsible to WCSO for any liabilities or losses incurred as a result of equipment malfunction allegedly caused in whole or in part by the City's work (or lack thereof) on such equipment. The City's obligations under this paragraph are further limited by Paragraphs 11 and 12 of this Agreement.

**6. Entire Agreement.** This agreement contains all of the terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this agreement.

**7. Modification.** No changes or modifications of this Agreement shall be valid or binding upon either party to this Agreement unless such changes or modifications be in writing and executed by authorized representatives of both parties.

**8. 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.

**9. No Further Obligation.** The County has no obligation to maintain or operate the road gates, and makes no warranties concerning the condition or operability of same.

**10. Compliance with Grant Terms.** By signing this interlocal agreement, the City represents it is familiar with the terms of Washington State Department of Commerce Grant #24-62511-001-02 (Exhibit B), and will comply with such terms to the extent those terms are applicable to the City.

**Each signatory below to this Letter of Agreement warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.**

**City of Everson:**

  
\_\_\_\_\_  
John Perry, Mayor

2/27/2024  
\_\_\_\_\_  
Date

**Whatcom County:**

Recommended for Approval

\_\_\_\_\_  
Holly Woll-Salkeld Date  
Interim Deputy Director



**EXHIBIT "A"**  
(STREMLER GRAVEL, INC. INVOICE #144690)

This page is left intentionally blank, Stremler Gravel, Inc. Invoice #144690 follows.

**General Contractor Application For Payment**

General Contractor: **Stremler Gravel, Inc.** Phone: 360-354-8585  
 Project Manager: **Pat Kramme** Fax: 360-354-8504  
 Address: **PO Box 527** Email:  
**Lynden, WA 98264**

Owner or Construction Management: **City of Everson** Phone: 360-325-2964  
 C/O: **Dave Schoonover** Fax:  
 Address: **111 W. Main ST** Email: [DSCHOONOVER@CI.EVERSON.WA.US](mailto:DSCHOONOVER@CI.EVERSON.WA.US)  
**Everson, WA**

G.C. Project Number: **1060** Todays Date: **12/21/2023**  
 G.C. Project Name: **Flood Gates** Invoice #: **144690**  
 Project Address: **W. Main St** Pay Request #: **1**  
**Everson, WA**

The following application for payment is for work completed as of **11/9/2023**

Fixed Price Contract Amount	\$36,720.00	
Approved Change Orders / Force Accounts to Date	\$7,050.00	
Contract Sum to Date	\$43,770.00	
Percent Complete	100.00%	
Current Progress Draw		\$43,770.00
Previous Progress Draws	\$0.00	
Total Draws to Date	\$43,770.00	
Subtotal Due		\$43,770.00
Down Payment (Unapplied)	\$0.00	\$0.00
Retainage	0%	\$0.00
Sales Tax (Sales Tax Schedule & Taxable C/O's)	8.60%	\$3,764.22
Total Due (Subtotal - Down Payment (Unapplied) - Retainage + Sales Tax)		<u>\$47,534.22</u>
<b>Total Due This Request</b>		<b>\$47,534.22</b>

SCHEDULE OF VALUE	APPROX VALUE	% COMPLETE	COMP. TO DATE	PREV DRAWS	AMOUNT DUE
INSTALLATION OF ROADWAY GATE SET	\$30,400.00	100%	\$30,400.00		\$30,400.00
TEMPORARY EROSION & SEDIMENT CONTROL (F/A)		0%	\$0.00		\$0.00
FLAGBERS	\$5,120.00	100%	\$5,120.00		\$5,120.00
PROJECT TEMPORARY TRAFFIC CONTROL	\$1,200.00	100%	\$1,200.00		\$1,200.00
			\$0.00		\$0.00
			\$0.00		\$0.00
	\$0.00		\$0.00		\$0.00
<b>Subtotal Sales Tax Schedule</b>	<b>\$36,720.00</b>		<b>\$36,720.00</b>	<b>\$0.00</b>	<b>\$36,720.00</b>
<b>Sales Tax (8.6%)</b>	<b>\$3,157.92</b>		<b>\$3,157.92</b>	<b>\$0.00</b>	<b>\$3,157.92</b>
<b>Approved Change Orders</b>					
	\$7,050.00	100%	\$7,050.00		\$7,050.00
	\$0.00		\$0.00		\$0.00
	\$0.00		\$0.00		\$0.00
<b>Approved Change Order Sub Total</b>	<b>\$7,050.00</b>		<b>\$7,050.00</b>	<b>\$0.00</b>	<b>\$7,050.00</b>
<b>Sales Tax (8.6%)</b>	<b>\$606.30</b>		<b>\$606.30</b>	<b>\$0.00</b>	<b>\$606.30</b>
<b>TOTAL (N/WSST)</b>	<b>\$43,770.00</b>		<b>\$43,770.00</b>	<b>\$0.00</b>	<b>\$43,770.00</b>
<b>WSST (Sales Tax Sched. &amp; Sales Taxable C/O's)</b>	<b>\$3,764.22</b>		<b>\$3,764.22</b>	<b>\$0.00</b>	<b>\$3,764.22</b>
<b>TOTAL (Including WSST)</b>	<b>\$47,534.22</b>		<b>\$47,534.22</b>	<b>\$0.00</b>	<b>\$47,534.22</b>



P.O. Box 527  
Lynden, WA 98264-0527

## Invoice

DATE	INVOICE #
12/21/2023	144690

BILL TO
City of Everson PO Box 315 Everson, WA 98247

		PROJECT	P.O. NO.		TERMS
		1060 - City of Everson Flood Gates	1060		Net 30
QUANTITY	U/M	DESCRIPTION	RATE	SERVICED	AMOUNT
		Pay Estimate #1			
1	LS	Installation of Roadway Gate Set	30,400.00		30,400.00T
1	LS	Flaggers	5,120.00		5,120.00T
1	LS	Project Temporary Traffic Control	1,200.00		1,200.00T
1	LS	Change Order - Gate Extensions	7,050.00		7,050.00T
		Subtotal			43,770.00
PHONE: (360) 354-8585 EMAIL: OFFICE@STREMLERGRAVEL.NET			<b>Subtotal</b>		\$43,770.00
A 3.5% Processing Fee Will Be Applied To Credit Card Payments In Excess Of \$3,000.00			<b>Sales Tax (8.6%)</b>		\$3,764.22
			<b>Total</b>		\$47,534.22
			<b>Payments/Credits</b>		\$0.00
			<b>Balance Due</b>		\$47,534.22

**EXHIBIT "B"**

(WASHINGTON STATE DEPARTMENT OF COMMERCE CONTRACT 24-62511-001-02)

This page is left intentionally blank, Washington State Department of Commerce contract follows.



**Amendment Face Sheet**

**Contract Number:** 24-62511-001-02  
**Amendment Number:** A

**Washington State Department of Commerce  
 Local Government Division  
 Community Development & Assistance  
 Emergency Rapid Response**

<b>1. Grantee</b> County of Whatcom DBA WHATCOM CNTY SHERIFF OFF DEM BELLINGHAM, WA 98225		<b>2. Grantee Doing Business As (optional)</b> N/A	
<b>3. Grantee Representative</b> Stephanie Webster, Financial Accountant (360) 778-7169 SVWebster@co.whatcom.wa.us		<b>4. COMMERCE Representative</b> Lanee Egolf, Project Manager PO Box 42525/1011 Plum St SE, Olympia, WA 98504-2525 (360) 725-3058   lanee.egolf@commerce.wa.gov	
<b>5. Original Grant Amount</b> \$1,879,999.00	<b>6. Amendment Amount</b> \$-29,391.00	<b>7. New Grant Amount</b> (and any previous amendments) \$1,850,608.00	
<b>8. Amendment Funding Source</b> Federal: State: <input checked="" type="checkbox"/> Other:	<b>9. Amendment Start Date</b> Date of Execution	<b>10. Amendment End Date</b> 06/30/2024	
<b>11. Federal Funds (as applicable):</b> N/A	<b>Federal Agency:</b> N/A	<b>CFDA#</b> N/A	
<b>12. Amendment Purpose:</b> The purpose of this amendment is to remove \$29,391 of unused funding, add project description for installation of emergency flood gates and to add a clause to the contract to allow the transfer of equipment.			
COMMERCE, defined as the Department of Commerce, and the Grantee, as defined above, acknowledge and accept the terms of this Grant As Amended and attachments and have executed this Grant Amendment on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant As Amended are governed by this Grant Amendment and the following other documents incorporated by reference: Attachment "A" –Scope of Work and Budget for Amendment A. A copy of this Grant Amendment shall be attached to and made a part of the original Grant between COMMERCE and the Grantee. Any reference in the original Grant to the "Grant" shall mean the "Grant as Amended".			
<b>FOR GRANTEE</b>  _____ The Honorable Satpal Sidhu, Whatcom County Executive  _____ Date		<b>FOR COMMERCE</b>  _____ Mark K. Barkley, Assistant Director Local Government Division  _____ Date  <b>APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE</b>	





**Grant Agreement with**

Whatcom County

**Through**

Emergency Rapid Response Grant Program

**Contract Number:**  
24-62511-001-02

**For**

Funding to support essential community services and recovery assistance  
after a local or state declared disaster.

**Dated:** Date of execution

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## **Special Terms and Conditions**

### **1. CONTRACT MANAGEMENT**

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

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

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

### **2. COMPENSATION**

COMMERCE shall pay an amount not to exceed the amount identified on the Face Sheet of this Grant for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Grantee's compensation for services rendered shall be based on the schedule set forth in Attachment A: Scope of Work and Budget.

### **3. BILLING PROCEDURES AND PAYMENT**

COMMERCE will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly nor less than quarterly via the Commerce Contracts Management System.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The Grantee shall evidence the costs claimed on each voucher by including copies of each invoice received from vendors providing goods or services covered by Attachment A: Scope of Work and Budget. The Grantee shall also provide Commerce with a copy of the cancelled check or electronic funds transfer, as applicable, which confirms that they have paid each expenditure being claimed. The cancelled checks or electronic funds transfers may be submitted to COMMERCE at the time the voucher is initially submitted, or within thirty (30) days thereafter. The invoice shall include the Contract Number identified on the Face Sheet of this Grant.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term, material or condition of this Contract.

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

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

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

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

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

#### **Duplication of Billed Costs**

The Grantee shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Grantee, if the Grantee is entitled to payment or has been or will be

paid by any other source, including grants, for that service.

Disallowed Costs

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

COMMERCE may, in its sole discretion, withhold the final ten percent (10%) of the total grant amount until acceptance by COMMERCE of project completion.

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

**5. HISTORICAL OR CULTURAL ARTIFACTS**

Prior to approval and disbursement of any funds awarded under this Contract, Grantee shall complete the requirements of Governor's Executive Order 21-02, where applicable, 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 Contract.

In addition to the requirements set forth in this Contract, Grantee shall, in accordance with Governor's Executive Order 21-02 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 Contract.

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 subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Contract, 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 Permit.

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 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.

## 6. INSURANCE

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

The Grantee shall submit to COMMERCE within fifteen (15) calendar days of a written request by COMMERCE, a certificate of insurance which outlines the coverage and limits defined in this insurance section, as applicable to this project. During the term of the Contract, if required or requested, the Grantee shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days' advance written notice of cancellation.

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows or as applicable to this project:

**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 contract activity but no less than \$1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that any Subrecipient provide adequate insurance coverage for the activities arising out of subcontracts.

**Automobile Liability.** In the event that performance pursuant to this Contract involves the use of vehicles, owned or operated by the Grantee or its Subrecipient, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

**Professional Liability, Errors and Omissions Insurance.** The Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain 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, its agents, officers, and employees need not be named as additional insureds under this policy.

**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:

- A. The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
- B. Subrecipient that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subrecipient pursuant to this paragraph shall name the Grantee as beneficiary.

**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, 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.

**7. 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 Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

**8. ORDER OF PRECEDENCE**

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

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work and Budget

**9. COMPETITIVE BIDDING REQUIREMENTS**

The Grantee and Contractor shall comply with the provisions of state and local laws, as applicable, regarding competitive bidding requirements for projects assisted in whole or in part with money from this grant contract.

**10. PREVAILING WAGE LAW**

The Project funded under this Grant may be subject to state prevailing wage law (Chapter 39.12 RCW). 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.

**11. REPORTS**

The Grantee and Contractor shall furnish COMMERCE, upon request as applicable to this project, with:

- A. Project Status Reports with each Invoice Voucher;
- B. Project Quarterly Reports (if no funds have been reimbursed in the quarter) and/or Quarterly Expenditures Report;
- C. Quarterly Projection Invoice Reports;
- D. Certified Project Completion Report at project completion (as described in Section 1.13);
- E. Pictures of various stages of the project, and
- F. Other reports as COMMERCE may require.

**12. CONTRACT SUSPENSION**

In the event that the Washington State Legislature fails to pass and the Governor does not authorize funding for this program under Commerce's Operating Budget by June 30 of each biennium, the Washington State Constitution Article 8 and RCW 43.88.130 and RCW 43.88.290 prohibit expenditures or commitments of state funds in the absence of appropriation.

In such event, all work under this Contract will be suspended effective July 1. The Grantee shall immediately suspend work under this Contract 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 lifting of the Contract suspension.

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

The "Copyright Provisions", Section 13 of the General Terms and Conditions, are not intended to apply to any architectural and engineering design work funded by this Contract.

**14. EXPENDITURES ELIGIBLE FOR REIMBURSEMENT**

The GRANTEE may be reimbursed, at the rate set forth elsewhere in this contract, for Project expenditures in the following cost categories:

- A. Real property, and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the Project;
- B. Design, engineering, architectural, and planning;
- C. Construction management and observation (from external sources only);
- D. Construction costs including, but not limited to, the following:
  - Site preparation and improvements;
  - Permits and fees;
  - Labor and materials;
  - Taxes on Project goods and services;
  - Capitalized equipment;
  - Information technology infrastructure; and
  - Landscaping.
- E. Staffing costs including:
  - Staff payroll;
  - Travel, Grantee shall receive compensation for travel expenses at [current state travel reimbursement rates](#).
- F. Other expenses as identified in the Scope of Work or as authorized in advance by COMMERCE as reimbursable.

**15. OWNERSHIP OF PROJECT/CAPITAL FACILITIES**

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this contract and does not assert and will not acquire any ownership interest in or title to any capital facilities and/or equipment constructed or purchased with state funds under this contract; provided, however, that COMMERCE may be granted a security interest in real property, to secure funds awarded under this contract. This provision does not extend to claims that COMMERCE may bring against the GRANTEE in recapturing funds expended in violation of this contract.



**16. TRANSFER OF COMMERCE-OWNED PROPERTY**

COMMERCE may, in its sole discretion and in writing, transfer title of equipment reimbursed under this contract to Grantee. Such equipment shall be used for the purpose of purposes stated elsewhere in this contract and GRANTEE shall include this requirement in the event GRANTEE transfers title of such equipment.

**17. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY**

- A. The GRANTEE understands and agrees that any and all real property or facilities owned by the GRANTEE that are acquired, constructed, or otherwise improved by the GRANTEE using state funds under this contract, shall be held and used by the GRANTEE for the purpose or purposes stated elsewhere in this contract.
- B. This provision shall not be construed to prohibit the GRANTEE from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this contract.
- C. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to the Recapture provisions.

**18. MODIFICATION TO THE PROJECT BUDGET**

- A. Notwithstanding any other provision of this contract, the GRANTEE may, at its discretion, make modifications to line items in the Project Budget (Attachment A), hereof, that will not increase the line item by more than fifteen percent (15%).
- B. The GRANTEE shall notify COMMERCE in writing (by email or regular mail) when proposing any budget modification or modifications to a line item in the Project Budget (Attachment A,) hereof, that would increase the line item by more than fifteen percent (15%). Conversely, COMMERCE may initiate the budget modification approval process if presented with a request for payment under this contract that would cause one or more budget line items to exceed the 15 percent (15%) threshold increase described above.
- C. Any such budget modification or modifications as described above shall require the written approval of COMMERCE (by email or regular mail), and such written approval shall amend the Project Budget. Each party to this contract will retain and make any and all documents related to such budget modifications a part of their respective contract file.
- D. Nothing in this section shall be construed to permit an increase in the amount of funds available for the Project, as set forth in Section 2 of this contract.

**19. SIGNAGE, MARKERS AND PUBLICATIONS**

If, during the period covered by this contract, the GRANTEE displays or circulates any communication, publication, or donor recognition identifying the financial participants in the Project, any such communication or publication must identify "The Taxpayers of Washington State" as a participant.

**20. 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 contract, COMMERCE reserves the right to terminate or amend this contract accordingly, including the right to recapture all funds disbursed to the GRANTEE under the Grant.

**21. PUBLIC RECORDS ACT**

Notwithstanding General Terms and Conditions Section 10, COMMERCE is a public agency subject to the Public Records Act, Chapter 42.56 RCW (the "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 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 11, COMMERCE will 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.

## **General Terms and Conditions**

**1. DEFINITIONS**

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Washington Department of Commerce.
- C. "Contract" or "Agreement" or "Grant" means the entire written agreement between COMMERCE and the Grantee, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Grantee.
- E. "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).
- F. "State" shall mean the state of Washington.
- G. "Subrecipient/ Subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Contract under a separate contract with the Grantee. The terms "Subrecipient" and "Subrecipients" mean Subrecipient(s) in any tier.

**2. ALLOWABLE COSTS**

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

**3. ALL WRITINGS CONTAINED HEREIN**

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

**4. AMENDMENTS**

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

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

The 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.

**6. APPROVAL**

This contract shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

**7. ASSIGNMENT**

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

**8. ATTORNEYS' FEES**

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

**9. 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.

**10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

A. "Confidential Information" as used in this section includes:

- i. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
- ii. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
- iii. All Personal Information in the possession of the Grantee that may not be disclosed under state or federal law.

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Contract 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 Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

- C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

#### 11. **CONFORMANCE**

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

#### 12. **CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, COMMERCE may, in its sole discretion, by written notice to the Grantee terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the Grantee in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Grantee and their Subrecipient(s) must identify any person employed in any capacity by the state of Washington that worked with the COMMERCE program executing this Contract, including but not limited to formulating or drafting the legislation, participating in procurement planning and execution, awarding contracts, and monitoring contract, during the 24-month period preceding the start date of this Contract. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by Commerce that a conflict of interest exists, the Grantee may be disqualified from further consideration for the award of a Contract.

In the event this contract is terminated as provided above, Commerce shall be entitled to pursue the same remedies against the Grantee as it could pursue in the event of a breach of the contract by the Grantee. The rights and remedies of Commerce provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which Commerce makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

#### 13. **COPYRIGHT**

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by 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 Contract, but that incorporate pre-existing materials not produced under the Contract, 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 Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The 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 Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

**14. DISALLOWED COSTS**

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

**15. DISPUTES**

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

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

The Director or designee shall review the written statements and reply in writing to both parties within ten (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 Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

**16. DUPLICATE PAYMENT**

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

**17. GOVERNING LAW AND VENUE**

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

**18. INDEMNIFICATION**

To the fullest extent permitted by law, the 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 contract. "Claim" as used in this contract, 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.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any Subrecipient 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 Subrecipients, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Grantee or its Subrecipients, agents, or employees.

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

**19. INDEPENDENT CAPACITY OF THE GRANTEE**

The parties intend that an independent Grantee relationship will be created by this Contract. The Grantee and its employees or agents performing under this Contract 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.

**20. INDUSTRIAL INSURANCE COVERAGE**

The 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 the 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 the Grantee by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Grantee.

**21. LAWS**

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

**22. LICENSING, ACCREDITATION AND REGISTRATION**

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

**23. LIMITATION OF AUTHORITY**

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

**24. LOCAL PUBLIC TRANSPORTATION COORDINATION**

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

**25. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

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

The funds provided under this contract may 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 contract.

**26. 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 Contract 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.

**27. 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.

**28. PREVAILING WAGE LAW**

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

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

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

**30. PUBLICITY**

The 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.

**31. RECAPTURE**

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

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

**32. RECORDS MAINTENANCE**

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

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 contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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

**33. REGISTRATION WITH DEPARTMENT OF REVENUE**

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

**34. RIGHT OF INSPECTION**

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

**35. SAVINGS**

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



**36. SEVERABILITY**

The provisions of this contract 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 contract.

**37. SUBCONTRACTING**

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

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

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

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

**38. SURVIVAL**

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

**39. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the 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.

**40. TERMINATION FOR CAUSE**

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

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

**41. TERMINATION FOR CONVENIENCE**

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

**42. TERMINATION PROCEDURES**

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

COMMERCE shall pay to the Grantee the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Grantee and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Grantee such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

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

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

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

**43. 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 contract, 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 contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract.
- E. All reference to the Grantee under this clause shall also include Grantee's employees, agents or Subrecipients.

**44. WAIVER**

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

**Attachment A: Scope of Work and Budget**  
**Grantee: Whatcom County**  
**Contract Number: 24-62511-001-02 Amendment A**

**Section A: Project Description / Deliverable**

Whatcom County is awarded \$1,850,608.00 in Emergency Rapid Response (ERR) Grant funding.

Funding up to 10 positions any any of the projects named below, and covering grant administration and overhead costs supporting the county's efforts to provide essential community services and recovery assistance following the November 2021 state and federally declared flood disaster.

Whatcom County: recovery manager, and two (2) recovery coordinators  
 Whatcom Long Term Recovery Group: client support director, lead disaster case manager, five (5) disaster case management  
 Six (6) flood warning sirens, five (5) automated sandbagging machines, and installation of emergency road gates

**Section B: Project Budget**

Emergency Rapid Response Funding		Leveraged Other Funding		Total Funding Involved
Budget Code & Description	Funding	Other Federal \$		
PI 61310 ERR Work/Program	\$1,850,608.00	Other State\$		
		Local Public \$		
		Private \$		
<b>Total Emergency Rapid Response Funds</b>	<b>\$1,850,608.00</b>	<b>Total Other Funds</b>	<b>\$0</b>	

**Section C: Project Activities and Milestones**

Project Activities	Milestones
<ul style="list-style-type: none"> <li>▪ Execute grant contract with Commerce.</li> <li>▪ Establish administrative, financial, reporting, and record keeping systems, including a system to prevent duplication of benefit.</li> </ul>	Before first payment request
<ul style="list-style-type: none"> <li>▪ Prepare and submit payment requests with supporting documentation to Commerce.</li> <li>▪ Document receipt of grant funds and reimbursement of eligible costs.</li> <li>▪ Follow state/ local procurement policies and procedures. Document procurement process and submit to Commerce.</li> </ul>	Not more than monthly
<ul style="list-style-type: none"> <li>▪ Complete applicable civil rights requirements.</li> <li>▪ Complete the environmental review and prepare an environmental review record in compliance with SEPA requirements.</li> <li>▪ Complete contract/program monitoring with Commerce Project Manager. Resolve all monitoring issues.</li> <li>▪ Accomplish all grant activities.</li> </ul>	Before final payment request
<ul style="list-style-type: none"> <li>▪ Allocate and manage public services funds as established in the approved Grantee agreement and budget</li> </ul>	Before contract end date



**For Commerce Internal Use Only**

Name/Title	Routing Step	Action	
Section Manager	1	(approval)	
Budget Authorization	2	(approval)	
Program Manager	1	(cc)	N/A
Grantee Contact	3	(cc)	N/A
Grantee Signatory	3	(signature)	See Facesheet
CDA Interim Managing Director	4	(approval)	
Deputy Assistant Director	5	(approval)	
Assistant Director	6	(signature)	See Facesheet