

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.  
201805015 – 5

Originating Department:	85 Health
Division/Program: (i.e. Dept. Division and Program)	8550 Human Services / 855040 Housing Program
Contract or Grant Administrator:	Barbara Johnson-Vinna
Contractor's / Agency Name:	Opportunity Council

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 #: 201805015

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): \_\_\_\_\_ CFDA#: \_\_\_\_\_

Is this contract grant funded? Yes  No  If yes, Whatcom County grant contract number(s): 201708006

Is this contract the result of a RFP or Bid process? Contract \_\_\_\_\_  
 Yes  No  If yes, RFP and Bid number(s): \_\_\_\_\_ Cost Center: 122600

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.
- Contract work is for less than \$100,000.
- Contract work is for less than 120 days.
- Interlocal Agreement (between Governments).
- Contract for Commercial off the shelf items (COTS).
- Work related subcontract less than \$25,000.
- Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):  
 \$ 1,200,350.50  
 This Amendment Amount:  
 \$ 1,429,113  
 Total Amended Amount:  
 \$ 2,629,463.50

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:**

- Exercising an option contained in a contract previously approved by the council.
- Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
- Bid or award is for supplies.
- Equipment is included in Exhibit "B" of the Budget Ordinance
- Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.

Summary of Scope: The Contractor will be responsible for programmatic and administrative services associated with the operation of the Housing and Essential Needs Program and for distributing rental and utility assistance subsidies to eligible participants and to those no longer eligible for HEN and awaiting admission to the State's Aged, Blind and Disabled Program.

Term of Contract: 1 Year Expiration Date: 06/30/2020

Contract Routing:

1. Prepared by:	JT	Date:	03/05/2019
2. Health Budget Approval:	KR	Date:	06/17/2019
2. Attorney signoff:		Date:	7-3-19
3. AS Finance reviewed:	M Caldwell	Date:	6/21/19
4. IT reviewed (if IT related):		Date:	
5. Contractor signed:		Date:	
6. Submitted to Exec.:		Date:	
7. Council approved (if necessary):		Date:	
8. Executive signed:		Date:	
9. Original to Council:		Date:	

**WHATCOM COUNTY HEALTH DEPARTMENT CONTRACT AMENDMENT**

**Whatcom County # 201805015**

**PARTIES:**

**Whatcom County  
Whatcom County Courthouse  
311 Grand Avenue  
Bellingham, WA 98225**

**AMENDMENT NUMBER: 5**

**CONTRACT PERIODS:**

**Original:**

**Amendment #1: 07/01/2018 – 06/30/2019**

**Amendment #2: 10/01/2018 – 06/30/2019**

**Amendment #3: 01/01/2019 – 06/30/2019**

**Amendment #4: 03/15/2019 – 06/30/2019**

**Amendment #5: 07/01/2019 – 06/30/2020**

**AND CONTRACTOR:**

**Opportunity Council  
1111 Cornwall Avenue  
Bellingham, WA 98225**

**THE CONTRACT IDENTIFIED HEREIN, INCLUDING ANY PREVIOUS AMENDMENTS THERETO, IS HEREBY AMENDED AS SET FORTH IN THE DESCRIPTION OF THE AMENDMENT BELOW BY MUTUAL CONSENT OF ALL PARTIES HERETO**

**DESCRIPTION OF AMENDMENT:**

1. Extend the duration and other terms of this contract for one year, as per the original contract "General Terms, Section 10.2, Term".
2. Amend Exhibit A to remove the Bridge to Home Program funding and associated requirements; revised Exhibit A is attached.
3. Increase the total households served with HEN and utility assistance annually from 150 to 170 based on an increase in funding of \$313,762 from the CHG HEN funding.
4. Add Exhibit D – Special Terms and Conditions for Commerce Grants.
5. Funding for this contract period (07/01/2019 – 06/30/2020) is not to exceed \$1,429,113.
6. Funding for the total contract period (07/01/2018 – 06/30/2020) is not to exceed \$2,629,463.50.
7. All other terms and conditions remain unchanged.
8. The effective start date of the amendment is 07/01/2019.

ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND ANY PREVIOUS AMENDMENTS THERETO REMAIN IN FULL FORCE AND EFFECT. ALL PARTIES IDENTIFIED AS AFFECTED BY THIS AMENDMENT HEREBY ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THIS AMENDMENT. Signature is required below.

APPROVAL AS TO PROGRAM: Pay Money for Anne Deacon 7/3/19  
Anne Deacon, Human Services Manager Date

DEPARTMENT HEAD APPROVAL: Regina A Delahunt 7/3/19  
Regina A. Delahunt, Health Department Director Date

APPROVAL AS TO FORM: [Signature] 7-3-19  
Royce Buckingham, Civil Deputy Prosecuting Attorney Date

FOR THE CONTRACTOR: Sheri Emerson  
[Signature] ASSOCIATE DIRECTOR JUL 02 2019  
Contractor Signature Print Name and Title Date

STATE OF WASHINGTON )  
COUNTY OF WHATCOM )

On this 2nd day of July, 2019, before me personally appeared Sheri Emerson, to me known to be the Associate Director and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]  
NOTARY PUBLIC in and for the State of Washington  
Residing at Bellingham



My Commission expires: 05/31/21

**FOR WHATCOM COUNTY:**

\_\_\_\_\_  
Jack Louws, County Executive Date

STATE OF WASHINGTON )  
COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
Residing at Bellingham.

My Commission expires: \_\_\_\_\_

**EXHIBIT "A" – Amendment #5**  
(SCOPE OF WORK)

**I. Background**

The Housing and Essential Needs (HEN) is one of three programs created by Engrossed Senate House Bill 2082 which terminated the Disability Lifeline (DL) Program. HEN funds are part of Washington State Department of Commerce (Commerce) Consolidated Homeless Grant (CHG) and are intended to provide rental assistance, case management, utility assistance and essential needs for Medical Care Services recipients whose eligibility is determined by the Department of Social and Health Services (DSHS). The Opportunity Council's Whatcom Homeless Service Center (WHSC) is a housing services program that serves as the coordinated entry for homelessness prevention and re-housing services for Whatcom County residents. The Community Services Division of the Opportunity Council oversees and administers housing case management and related programs. The WHSC administers HEN rental and utility assistance in coordination with Community Services. Community Services administers case management services for the HEN Program and the purchasing and distribution of Essential Needs products for HEN eligible clients. The WHSC manages the Homeless Management Information Services (HMIS) for the County and is responsible for the HMIS requirements of the HEN Program. People eligible to receive HEN rental and utility assistance, and Essential Needs items, will be served as long as funding is available and within the designated program requirements.

**II. Project Description and Design**

Housing and Essential Needs funds are limited to providing rental assistance, case management, utility assistance and essential needs for Washington Apple Health (Medicaid) recipients who are experiencing homelessness, or at substantial risk of becoming homeless and whose eligibility is determined by DSHS. The HEN Program is not intended to provide long term support for households, nor will it be able to address all the financial and supportive service needs of households that affect housing stability, nor will it be able to serve all those who are eligible. WHSC serves as the administrative entity for the rental and utility assistance, while the Community Services Division administers case management and the purchasing and distribution of essential needs products and transportation assistance, for eligible individuals. The WHSC and Community Services will staff the program with program operations and case management staff that are funded by the Contract and are responsible for program implementation. An additional case management position (1 FTE) was previously included in the budget for the purpose of providing HEN Program clients with assistance accessing housing using HEN rental assistance, as well as other services supporting housing stability and retention.

Due to a change in state law in March of 2018, expansion of HEN eligibility now includes Aged, Blind, or Disabled (ABD) recipients, and those who DSHS has determined to be incapacitated due to substance use. Although eligibility for HEN has expanded, HEN funding has not increased. HEN providers are expected to prioritize those who are HEN-eligible who have the greatest need, including prioritizing people experiencing homelessness. HEN-eligible clients are remaining eligible for the program for longer periods of time, and therefore, fewer clients are able to be served. Guidance from Commerce on prioritization of HEN-eligible clients indicates the following factors must be used to determine greatest need to include, but not be limited to: unsheltered homelessness, chronic homelessness, and length of time homeless. Additional guidance on prioritization is available in the Washington State Coordinated Entry Guidelines, Section 4, and within the Consolidated Homeless Grant guidelines.

**III. Statement of Work**

**A. HEN Rental & Utility Assistance and Case Management Services**

The Contractor will be responsible for programmatic and administrative services associated with the operation of the HEN Program. Programmatic and administrative services include all activities necessary to operate the WHSC and Community Services in accordance with the requirements set forth in the Administrative Requirements and Guidelines for the CHG as more fully described in Section IV: Special Conditions, below.

The Contractor will:

1. Commit to efforts to reducing and ending homelessness in Whatcom County by:
  - a. Prioritizing unsheltered homeless households for services (as per CHG Guidelines).

- b. Assessing each household's housing needs and facilitating housing stability with the goal of obtaining or maintaining permanent housing (as per CHG Guidelines).
  - c. Employing a progressive engagement service model.
2. Provide direct services to individuals whose eligibility is noted in the DSHS Benefits Verification System (BVS).
  3. Document client eligibility in client files.
  4. Authorize and issue rental and utility assistance subsidies in a timely manner.
  5. Track and report rental and utility assistance subsidies.
  6. Coordinate with existing housing providers and landlords to identify and secure permanent housing placements for clients.
  7. Cultivate and maintain relationships with local landlords who agree to participate in the program.
  8. Make client referrals for Essential Needs Services, housing and other community resources.
  9. Coordinate with the Community Service Office of DSHS regarding client service delivery.
  10. Comply with HMIS requirements including data entry and reporting responsibilities.
  11. Commit to reporting complete quality data that is timely, truthful and accurate (as per CHG/HEN Guidelines and HMIS User Agreement).
  12. Ensure compliance with State confidentiality laws and regulations.
  13. Complete all other activities identified by Whatcom County and Commerce as necessary to implement and manage the rental and utility assistance portion of the HEN Program.

**B. Essential Needs and Move-in Supplies Assistance**

The Contractor, specifically the Community Services Division of the Opportunity Council, will be responsible for administration and distribution of essential needs products, to include personal health and hygiene items, cleaning supplies, move-in supplies, or bus passes, and will accordingly:

1. Purchase and distribute essential needs products and move-in supplies to clients eligible for the Housing and Essential Needs (HEN) program.
2. Document client eligibility using DSHS Benefits Verification system.
3. Have written and available Applicant Denial and Grievance and Termination and Grievance policies and/or procedures.
4. Maintain an inventory tracking and tracking of client usage system.

**IV. Special Conditions**

- A. The Contractor will comply with program requirements, policies and procedures contained in the "Department of Commerce Guidelines for Consolidated Homeless Grant" hereafter referred to as CHG Guidelines located at: <http://www.commerce.wa.gov/serving-communities/homelessness/consolidated-homeless-grant/>. Changes to the CHG Guidelines may be made without contract amendment. The CHG Guidelines will be updated periodically in compliance with changing State requirements. Whenever a revised edition of the CHG Guidelines is available, the County will provide an email notification.

Consequences of non-compliance with CHG Guidelines, as per the Department of Commerce for Grantees, are listed below and will be passed on to CHG Subgrantees:

1. If Commerce determines that a Grantee is failing to comply with the Guidelines, Terms and Conditions, Commerce will notify Grantee that Grantee will receive technical assistance and be required to respond to a corrective action plan to address and remedy the noncompliance. The technical assistance and corrective action plan to address and remedy the noncompliance will be passed on to the Subgrantee by the County.

2. If the Grantee is still out of compliance after the technical assistance, Commerce may move the Grantee into a probationary period with a second corrective action plan and may reduce the grant total by 20%. The second corrective action plan will be passed on to the Subgrantee by the County.
  3. If the Grantee remains out of compliance after the probation period, Commerce may terminate the grant, per the General Terms and Conditions TERMINATION FOR CAUSE.
- B. Comply with RCW 43.185C.210 requiring grantees and sub-grantees receiving \$500,000 during the previous calendar year in housing surcharge fees and state housing-related funding sources to apply for the Washington State Quality Award once every three years. State housing funding sources are inclusive of the CHG.

#### **V. Program Outcomes**

During this contract period, the Contractor is expected to meet the following outcomes:

- A. The Contractor will provide assistance to all HEN eligible households that seek assistance during the contract term providing that HEN rent and utility assistance funds are available. Based on the previous 12 month period, the program is expected to serve an estimated 170 households between 7/1/2019 – 6/30/2020.
- B. The Contractor will provide assistance to approximately 425 HEN-eligible households through the purchase and distribution of essential needs items and cleaning and move-in supplies as the budget for this purpose so allows.

#### **VI. Reporting Requirements**

System-wide performance measures and benchmarks specific to intervention type (HMIS project type), are outlined in the table found at the link below. CHG Grantees must meet or demonstrate progress towards established performance measure targets by meeting the indicated benchmarks. Targeted Prevention performance measures are exempted from the "Consequences of non-compliance" as per Commerce, listed in Section IV: Special Conditions above, wherein "Grantee" refers to the County being the CHG recipient.

Updates to the CHG System-Wide Mandatory Performance Measures table will be provided periodically by Commerce. Updates will be posted on the Whatcom County Health Department website which can be accessed at: <http://whatcomcounty.us/910/Housing-Program>. Additionally, the Opportunity Council will receive written notification from the County upon notification of updates from Commerce.

The Contractor will submit the following reports on a monthly basis to the County:

- A. Number of HEN eligible households assisted during the current month and how many have been assisted year to date.
- B. Average amount of subsidy per HEN household.
- C. Number of HEN eligible households declined..
- D. Projects falling under the following intervention types and funded by the Consolidated Homeless Grant (CHG), which includes HEN, will be expected to meet or demonstrate progress towards system-wide performance measures as set by the Washington State Department of Commerce.

Reporting for purchase and distribution of essential needs requires:

- A. The Contractor will submit an Essential Needs Report to the County, at which time it is due as required by Consolidated Homeless Grant guidelines, that identifies the number of people that received Essential Needs products and services each month. The report must answer this question: How many people did you serve with Essential Needs this month? Duplication of people is expected and will be acceptable.

**EXHIBIT "B" – Amendment #5**  
(COMPENSATION)

**I. Budget and Funding**

The source of funding for this contract, in an amount not to exceed \$1,429,113, is from the Washington State Department of Commerce, Housing and Essential Needs (HEN) Grant.

The budget for this contract is as follows:

<b>HEN PROGRAM BUDGET 07/01/2019 – 06/30/2020</b>		
<b>Cost Description</b>	<b>Documents Required with Each Invoice</b>	<b>Budget</b>
Personnel (HMIS, Case Managers, Coordinated Entry, Support )	Expended General Ledger (GL) report for the period billed	\$246,325
50% Fringe Benefit Rate	Expanded GL based on federally approved fringe rate	\$123,163
Rent and Utility Assistance – HEN	Expanded GL with Client ID, payee, amount	882,404
Director Program Supplies – Office Space, Telephone, Insurance	Expanded GL report for the period billed	\$21,000
Mileage	Mileage log to include: name of staff member, date of travel, starting point and destination of travel, number of miles traveled. Mileage will be reimbursed at the GSA rate (per <a href="http://www.gsa.gov">www.gsa.gov</a> ).	\$5,400
Travel/Training	Include name of traveler, date, start & end point, and purpose. Receipts required for transportation costs, registration fees, etc. Lodging and meal costs follow federal guidelines ( <a href="http://www.gsa.gov">www.gsa.gov</a> ). Receipts for meals are not required.	\$5,000
	<b>SUBTOTAL</b>	<b>\$1,283,292</b>
	7% Indirect	\$89,830
	<b>TOTAL</b>	<b>\$1,373,122</b>
<b>ESSENTIAL NEEDS ASSISTANCE BUDGET 07/01/2019 – 06/30/2020</b>		
<b>Cost Description</b>	<b>Documents Required Each Invoice</b>	<b>Budget</b>
Personnel	GL detail	\$6,128
Hygiene Product, Cleaning and Move-in Supplies, and Transportation Assistance	GL detail and receipts	\$45,800
Insurance/Supplies/Mortgage/Rent	GL detail	\$400
	<b>SUBTOTAL</b>	<b>\$52,328</b>
Indirect Costs – 7% **		\$3,663.
	<b>Essential Needs TOTAL</b>	<b>\$55,991.</b>
	<b>TOTAL CONTRACT AMOUNT</b>	<b>\$1,429,113</b>

\*\*The Contractor may transfer funds among budget line items within each program budget in an amount up to 10% of the total program budget. In no instance shall the indirect cost or fringe benefit rate exceed the current approved indirect cost allocation plan. All allocated direct costs must be based on approved cost allocation plan.

**II. Invoicing**

- The Contractor shall submit itemized invoices up to two times per month in a format approved by the County. Invoices should be received no later than the 15<sup>th</sup> of each month for the previous month expenditures. Invoices submitted for payment must include the documentation specified in "Documents Required with Each Invoice" above. Invoices and all invoice-related communication should be sent to [HL-BusinessOffice@co.whatcom.wa.us](mailto:HL-BusinessOffice@co.whatcom.wa.us) or mail to:

Attn: Business Office  
Whatcom County Health Department  
509 Girard Street  
Bellingham, WA 98225

2. End of year rent and utility assistance payments will be invoiced and reimbursed based on the date of the rent or utility assistance check issuance.
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from the Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this Contract.
4. Invoices must include the following statement, with an authorized signature and date:

**I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.**

5. Duplication of Billed Costs or Payments for Services: The Contractor shall not bill the Health Department for services performed or provided under this contract, and the Health Department shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.



**“EXHIBIT D”**  
(SPECIAL TERMS AND CONDITIONS FOR COMMERCE GRANTS)

The funds allocated for services performed under this contract are Washington State Department of Commerce funds. The terms included in this agreement and any additional agreements herein are a result of the grant funding requirements. Commerce and the State of Washington are not liable for claims or damages arising from the Contractor's performance of this subgrant.

**1. 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.

**2. 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.

**3. ACKNOWLEDGEMENT OF FEDERAL FUNDING**

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

"This project was supported by the (insert name or grant number) Grant awarded by the Department of Housing and Urban Development (HUD). Points of view in this document are those of the author and do not necessarily represent the official position or policies of the HUD. Grant funds are administered by the Housing Assistance Unit in the Community Services and Housing Division, Washington State Department of Commerce."

**4. AUDIT**

**A. General Requirements**

Grantee's are to procure audit services based on the following guidelines.

The Grantee shall maintain its records and accounts so as to facilitate audits and shall ensure that Sub-grantees also maintain auditable records.

The Grantee is responsible for any audit exceptions incurred by its own organization or that of its Sub-grantees.

COMMERCE reserves the right to recover from the Grantee all disallowed costs resulting from the audit.

Responses to any unresolved findings and disallowed or questioned costs shall be included with the audit report. The Grantee must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

**B. State Funds Requirements**

In the event an audit is required, if the Grantee is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Grantee.

The Grantee shall include the above audit requirements in any sub-grants.

In any case, the Grantee's records must be available for review by COMMERCE.

**C. Federal Funds Requirements-**

Grantees expending \$750,000 or more in a fiscal year (that begins after December 26, 2014) in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with 2 CFR Part 200. For fiscal years beginning prior to December 26, 2014, Grantees are required to have an audit conducted in accordance with Federal audit requirements. When state funds are also to be paid under this Agreement a Schedule of State Financial Assistance as well as the required schedule of Federal Expenditure must also be included. Both schedules include:

- Grantor agency name
- Federal agency
- Federal program name
- Other identifying contract numbers
- Catalog of Federal Domestic Assistance (CFDA) number (if applicable)
- Grantor contract number
- Total award amount including amendments (total grant award)
- Current year expenditures

If the Grantee is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Grantee in accordance with 2 CFR Part 200.

The Grantee shall include the above audit requirements in any SUBGRANTS/subcontracts. In any case, the Grantee's financial records must be available for review by COMMERCE.

**5. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

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

1. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
2. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
3. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that confidential information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

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

**6. 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 Grant if it is found after due notice and examination by COMMERCE that there is a

violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Grantee in the procurement of, or performance under this Grant.

In the event this Grant 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 Grant 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 Grant.

## **7. COPYRIGHT PROVISIONS**

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

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

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

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

## **8. LAWS**

The Grantee shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended including, but not limited to:

### **Washington State Laws and Regulations**

- A.** Affirmative action, RCW 41.06.020 (1).
- B.** Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C.** Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D.** Discrimination-human rights commission, Chapter 49.60 RCW.
- E.** Ethics in public service, Chapter 42.52 RCW.
- F.** Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G.** Open public meetings act, Chapter 42.30 RCW.
- H.** Public records act, Chapter 42.56 RCW.
- I.** State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

## **9. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Grant, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for

further Grants with COMMERCE. The Contractor 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.

**10. POLITICAL ACTIVITIES**

Political activity of Contractor 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.

**11. 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.

**12. RECORDS MAINTENANCE**

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

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, 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.

**13. REGISTRATION WITH DEPARTMENT OF REVENUE**

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

**14. RIGHT OF INSPECTION**

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.

**15. 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 the State includes any claim by Grantee's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subgrantee's/subcontractor's performance or failure to perform the Grant. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

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.