

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.

201907036

Originating Department:	Planning & Development Services
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Long Range Planning 2620/262025/2527
Contract or Grant Administrator:	Matt Aamot
Contractor's / Agency Name:	Washington State Department of Commerce
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input type="radio"/> No <input checked="" type="radio"/>	
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval?    Yes <input checked="" type="radio"/> No <input type="radio"/> 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 <input checked="" type="radio"/> No <input type="radio"/> If yes, grantor agency contract number(s): <u>Not assigned yet</u> CFDA#: _____	
Is this contract grant funded?	
Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): <u>Not assigned yet</u>	
Is this contract the result of a RFP or Bid process?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____    Contract Cost Center: <u>2527</u>	
Is this agreement excluded from E-Verify?    No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:	
<input type="checkbox"/> Professional services agreement for certified/licensed professional.	
<input type="checkbox"/> Contract work is for less than \$100,000.	
<input type="checkbox"/> Contract work is for less than 120 days.	
<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).	
<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>450,000</u>	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> :
This Amendment Amount: \$ _____	1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Total Amended Amount: \$ _____	
Summary of Scope:	
Interagency agreement to receive funding from the State of Washington to develop the "Review and Evaluation" (buildable lands) program.	
Term of Contract:	Expiration Date: June 30, 2021

Contract Routing:	1. Prepared by: <u>BB</u>	Date: <u>7/1/19</u>
	2. Attorney signoff: _____	Date: <u>7-24-19</u>
	3. AS Finance reviewed: <u>bbennett</u>	Date: <u>7/29/19</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: <u>7-30-19</u>
	7. Council approved (if necessary): _____	Date: <u>8/7/19</u>
	8. Executive signed: _____	Date: <u>8/8/19</u>
	9. Original to Council: _____	Date: <u>8-26-19</u>

COUNTY ORIGINAL

WHATCOM COUNTY  
CONTRACT NO.  
201907036



# Department of Commerce

## **Interagency Agreement with**

Whatcom County

through

Washington State Department of Commerce  
Local Government Division  
Growth Management Services

## **For**

Buildable Lands Grants  
2019-21 Biennium

## **Start date:**

July 1, 2019

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**Attachment A, Scope of Work**

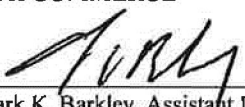
**Attachment B, Budget**

**FACE SHEET**

Contract Number: 20-63312-007

**Washington State Department of Commerce  
Local Government Division  
Growth Management Services**

**2019-21 Buildable Lands Grants**

<b>1. Contractor</b> Whatcom County Planning and Development Services 5280 Northwest Drive Bellingham, WA 98226		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative</b> Matt W. Aamot Senior Planner Whatcom Co. Planning and Development Services (360) 778-5939 <a href="mailto:maamot@co.whatcom.wa.us">maamot@co.whatcom.wa.us</a>		<b>4. COMMERCE Representative</b> Valerie Smith Senior Planner (360) 725-3062 <a href="mailto:ike.nwankwo@commerce.wa.gov">ike.nwankwo@commerce.wa.gov</a> PO Box 42525 Olympia, WA 98504-2525	
<b>5. Contract Amount</b> \$450,000	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> July 1, 2019	<b>8. End Date</b> June 30, 2021
<b>9. Federal Funds (as applicable)</b> N/A	<b>Federal Agency:</b> N/A	<b>CFDA Number</b> N/A	
<b>10. Tax ID #</b> N/A	<b>11. SWV #</b> SWV0002425-17	<b>12. UBI #</b> 371-010-246	<b>13. DUNS #</b> N/A
<b>14. Contract Purpose</b> Funding assistance for the review and evaluation program (Buildable Lands program), and to implement chapter 16, Laws of 2017 3rd sp. sess. (E2SSB 5254), under the Growth Management Act (Chapter 36.70A RCW).			
<b>15. Signing Statement</b> COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents hereby incorporated by reference: Attachment "A" – Scope of Work, Attachment "B" – Budget.			
<b>FOR CONTRACTOR</b>  <i>(see following page)</i> _____ Jack Louws, County Executive Whatcom County  _____ Date		<b>FOR COMMERCE</b>   _____ Mark K. Barkley, Assistant Director Local Government Division  8/19/2019 _____ Date  <b>APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL 6/11/2019. APPROVAL ON FILE.</b>	

Whatcom County

Approved

By: [Signature]

Title: Whatcom County Executive

Date: 8/8/19

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Whatcom )

On this 8th day of August, 2019 before me personally appeared Jack Louws to me know to be the County Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



Suzanne M. Milder

NOTARY PUBLIC in and for the State of Washington, residing at:

Bellingham  
My commission expires 12-31-22

Approved as to form:

[Signature]  
Prosecuting Attorney

7-24-19  
Date

**SPECIAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
STATE FUNDS**

**1. AUTHORITY**

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

**2. 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 Contractor and their contact information are identified on the Face Sheet of this Contract.

**3. COMPENSATION**

COMMERCE shall pay an amount not to exceed four hundred fifty thousand dollars (\$450,000) for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

**4. EXPENSES**

Contractor shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Contractor shall receive compensation for travel expenses at current state travel reimbursement rates.

Ineligible expenses include, but are not necessarily limited to: capital expenses, such as land acquisition or construction costs; purchase of machinery; hosting expenses, such as meals, lodging, or transportation incurred by persons other than staff and volunteers working directly on the project; lobbying or political influencing; and other costs which are not directly related to the project.

**5. BILLING PROCEDURES AND PAYMENT**

COMMERCE will pay Contractor upon acceptance of services and deliverables provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number 20-63312-007. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

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

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

COMMERCE may withhold 10 percent from each payment until acceptance by COMMERCE of the deliverable received for that payment request.

**State Fiscal Year Payments**

COMMERCE will reimburse Contractor a maximum of \$225,000 for State Fiscal Year 2020 (July 1, 2019 - June 30, 2020) and a maximum of \$225,000 for State Fiscal Year 2021 (July 1, 2020 - June 30, 2021).

**SPECIAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
STATE FUNDS**

**Line Item Transfers**

The total amount of transfers of funds between line item budget categories shall not exceed ten percent (10%) of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed ten percent, the total budget shall be subject to justification and negotiation of a contracts amendment by the Contractor and COMMERCE.

**Duplication of Billed Costs**

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

**Disallowed Costs**

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

**6. SUBCONTRACTOR DATA COLLECTION**

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

**7. 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
- Attachment B – Budget

**GENERAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
STATE FUNDS**

**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 Department of Commerce.
- C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the Contractor, including any attachments, 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. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "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.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

**2. 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.

**3. 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.

**4. ASSIGNMENT**

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

**5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION**

- A. "Confidential Information" as used in this section includes:
  - i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
  - ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
  - iii. All personal information in the possession of the Contractor that may not be disclosed under state or federal law.
- B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor 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 Contractor 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 Contractor shall provide COMMERCE with its policies and procedures on confidentiality.



**GENERAL TERMS AND CONDITIONS  
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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 Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

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

**6. COPYRIGHT**

Unless otherwise provided, all Materials produced under this 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 Contractor 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 Contractor 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 Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Contractor 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 Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor 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 Contractor.

**7. DISPUTES**

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

**8. GOVERNING LAW AND VENUE**

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

**GENERAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
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**9. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The Contractor 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 Contractor 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 Contractor.

**10. LICENSING, ACCREDITATION AND REGISTRATION**

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

**11. RECAPTURE**

In the event that the Contractor 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 Contractor 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.

**12. RECORDS MAINTENANCE**

The Contractor 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 Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the 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.

**13. 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 calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

**14. 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.

**15. SUBCONTRACTING**

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

If COMMERCE approves subcontracting, the Contractor 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 Contractor to amend its subcontracting procedures as they

**GENERAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
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relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor 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 Contractor to COMMERCE for any breach in the performance of the Contractor'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 Subcontractor's performance of the subcontract.

**16. 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.

**17. TERMINATION FOR CAUSE**

In the event COMMERCE determines the Contractor 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 Contractor 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 Contractor 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 Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (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.

**18. 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.

**19. TERMINATION PROCEDURES**

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor 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 Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor 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.

**GENERAL TERMS AND CONDITIONS  
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COMMERCE may withhold from any amounts due the Contractor 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 Contractor 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 Contractor 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 Contractor and in which the Authorized Representative has or may acquire an interest.

**20. TREATMENT OF ASSETS**

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor 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 Contractor. Title to other property, the cost of which is reimbursable to the Contractor 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 Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

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

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**21. 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.

## PRELIMINARY DRAFT - Scope of Work

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Task 1	<b>Public Participation – Develop and implement public participation approach for the Review and Evaluation Program</b>	June 30, 2021
Action(s)	<ol style="list-style-type: none"> <li>1. Develop a coordinated County/City public participation approach for the Review and Evaluation Program, consistent with Whatcom County's Public Participation Plan.</li> <li>2. The public participation approach will include a proposed schedule of County and City public participation activities.</li> </ol>	
Deliverable(s)	<ol style="list-style-type: none"> <li>1. Written document outlining the coordinated County/City public participation approach.</li> </ol>	
Task 2	<b>City/County Coordination - County/City collaboration to develop a unified Review and Evaluation Program approach</b>	June 30, 2021
Action(s)	<ol style="list-style-type: none"> <li>1. County/City collaboration, including City/County Planners' Group meetings, to develop a unified approach to buildable land requirements.</li> <li>2. GIS coordination.</li> <li>3. Finalize methods to resolve disputes among jurisdictions.</li> </ol>	
Deliverable(s)	<ol style="list-style-type: none"> <li>1. City/County Planners' Group meeting agendas.</li> <li>2. Copies of any County/City interlocal agreements related to the buildable lands program.</li> <li>3. Final dispute resolution methods.</li> </ol>	

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Task 3	<b>Countywide Planning Policies - Develop and adopt County-wide Planning Policies (CWPPs), in consultation with cities, to establish the buildable lands program</b>	June 30, 2021
Action(s)	<ol style="list-style-type: none"> <li>1. County and city approval of interlocal agreement to establish interim procedures for amending the CWPPs.</li> <li>2. County/City collaboration, including City/County Planners' Group meetings, to develop proposed CWPPs.</li> <li>3. County Planning Commission review of CWPPs. Will include public hearing.</li> <li>4. County Council review and adoption of CWPPs.</li> <li>5. City ratification of CWPPs.</li> </ol>	
Deliverable(s)	<ol style="list-style-type: none"> <li>1. Adopted CWPPs establishing the buildable lands program.</li> </ol>	
Task 4	<b>Data Collection and Analysis - Collect annual data to the extent necessary to assess achieved development densities and land suitable for development and conduct preliminary analysis of data</b>	June 30, 2021
Action(s)	<ol style="list-style-type: none"> <li>1. County/City coordination</li> <li>2. Collection of residential development data, including building permits and residential subdivisions.</li> <li>3. Collection of commercial and industrial development data, including building permits.</li> <li>4. Collection of land use data.</li> <li>5. Continued development and utilization of the data reporting and evaluation tool, including preliminary analysis of the data collected.</li> </ol>	
Deliverable(s)	<ol style="list-style-type: none"> <li>1. The Final Review and Evaluation Program Report (see Task 6 below) will include a summary of data collected and analysis of the data.</li> </ol>	

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Task 5	<b>Methodology - Develop Whatcom County Review and Evaluation (Buildable Lands) Program Methodology</b>	June 30, 2021
Action(s)	<ol style="list-style-type: none"> <li>1. Review the updated State Buildable Lands Guidelines when developing the Whatcom County Review and Evaluation (Buildable Lands) Program methodology.</li> <li>2. Review Whatcom County Land Capacity Analysis (LCA) Methodology (2015) and consider combining the LCA Methodology with the Review and Evaluation Program Methodology. The review and evaluation (buildable lands) analysis and the land capacity analysis will be two separate reports issued at different times. Given this approach, review and determine whether a single methodology and spreadsheet format can be used for both the review and evaluation (buildable lands) analysis and land capacity analysis, recognizing that the planning periods and some inputs into the spreadsheets will be different for these two separate reports.</li> <li>3. County/City collaboration, including City/County Planners' Group meetings, to develop a Review and Evaluation Program (Buildable Lands) Methodology.</li> <li>4. Consult with key stakeholders.</li> <li>5. Develop market factors for each jurisdiction. This may include mailing a survey to property owners or other appropriate methods to inform selection of market factors.</li> <li>6. Review methodology with the County Council.</li> </ol>	
Deliverable(s)	<ol style="list-style-type: none"> <li>1. Review and Evaluation (Buildable Lands) Program Methodology</li> </ol>	



TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Task 6	<b>Review and Evaluation Program Report</b>	June 30, 2021
Action(s)	<p>Develop and finalize the Review and Evaluation Program Report with all elements required by RCW 36.70A.215.</p> <p>(a) Determine whether there is sufficient suitable land, including land in UGAs, to accommodate the countywide population projection established in the existing Whatcom County Comprehensive Plan and city comprehensive plans.</p> <p>(b) The evaluation and identification of land suitable for development and redevelopment will include:</p> <ul style="list-style-type: none"> <li>• A review and evaluation of the land use designations and zoning/development regulations; environmental regulations (such as tree retention, stormwater, or critical area regulations) impacting development; and other regulations that could prevent planned densities from being achieved; and infrastructure gaps (including but not limited to transportation, water, sewer, and stormwater).</li> <li>• Use of reasonable market factors when evaluating land suitable to accommodate new development or redevelopment of land for residential, commercial, and industrial development.</li> </ul> <p>(c) Provide an analysis of county and/or city development assumptions, targets, and objectives contained in the countywide planning policies and the county and city comprehensive plans when growth targets and assumptions are not being achieved.</p> <p>(d) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan.</p> <p>(e) Based on the actual density of development, review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.</p> <p>(f) Identify reasonable measures that the County and/or Cities may consider, if necessary, during the next comprehensive plan and development regulation update to comply with the Review and Evaluation Program requirements of the Growth Management Act (RCW 36.70A.215).</p>	
Deliverable(s)	1. Final Review and Evaluation Program Report required by RCW 36.70A.215.	

TASKS , ACTIONS, & DELIVERABLES	DESCRIPTION	END DATE
Task 7	<b>Preliminary Draft Housing Element Revisions</b>	June 30, 2021
Action(s)	<ol style="list-style-type: none"> <li>1. Review "Housing Memorandum: Issues Affecting Housing Availability and Affordability" (State Department of Commerce, June 2019).</li> <li>2. Review the housing element of the Whatcom County Comprehensive plan.</li> <li>3. Review the housing elements in the seven city comprehensive plans.</li> <li>4. Formulate preliminary draft revisions to the housing elements, if needed, considering the Review and Evaluation Program Report and any reasonable measures identified in accordance with RCW 36.70A.070(2).</li> </ol>	
Deliverable(s)	<ol style="list-style-type: none"> <li>1. Preliminary draft revisions, if needed, to the housing element of the Whatcom County Comprehensive plan.</li> <li>2. Preliminary draft revisions, if needed, to the housing elements of the seven city comprehensive plans.</li> </ol>	
Task 8	<b>On-Going Implementation</b>	June 30, 2021
Action(s)	<ol style="list-style-type: none"> <li>1. Develop procedures and estimate resources needed for on-going implementation of the Review and Evaluation Program, including a user manual, projected staffing resources, and any software/equipment needs.</li> </ol>	
Deliverable(s)	<ol style="list-style-type: none"> <li>1. User manual for the Review and Evaluation Program, including identification of reports that will be required from permit tracking systems;</li> <li>2. Staffing resources needed to maintain the buildable lands program over time; and</li> <li>3. Software/equipment needs to maintain the buildable lands program.</li> </ol>	

<b>TASKS , ACTIONS, &amp; DELIVERABLES</b>	<b>DESCRIPTION</b>	<b>END DATE</b>
<b>Project Management</b>	1. Quarterly status reports.	October 10, 2019 January 10, 2020 April 10, 2020 July 10, 2020 October 10, 2020 January 10, 2021 April 10, 2021
	2. Final closeout report.	July 16, 2021
	3. Develop/administer contracts with partner cities.	Ongoing (Copies to Commerce, when signed)
	4. Develop/administer contract with consultant(s).	Ongoing (Copies to Commerce, when signed)
	5. Scheduling / overall coordination.	Ongoing
	6. Invoicing.	Ongoing

## Budget

TASK	GRANT AMOUNT
<b>Task 1:</b> Public Participation – Develop and implement public participation approach for the Review and Evaluation Program	\$ 10,000
<b>Task 2:</b> City/County Coordination - County/City collaboration to develop a unified Review and Evaluation Program approach	\$ 90,000
<b>Task 3:</b> Countywide Planning Policies - Develop County-wide Planning Policies (CWPPs), in consultation with cities, to establish the buildable lands program	\$ 20,000
<b>Task 4:</b> Data Collection and Analysis - Collect annual data to the extent necessary to assess achieved development densities and land suitable for development and conduct preliminary analysis of data	\$ 140,000
<b>Task 5:</b> Methodology - Develop Whatcom County Review and Evaluation (Buildable Lands) Program Methodology	\$ 40,000
<b>Task 6:</b> Review and Evaluation Program Report	\$ 65,000
<b>Task 7:</b> Preliminary Draft Housing Element Revisions	\$ 55,000
<b>Task 8:</b> On-Going Implementation	\$ 10,000
<b>Project management</b>	\$ 20,000
<b>TOTAL:</b>	<b>\$ 450,000</b>

**WHATCOM COUNTY**  
Planning & Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-778-5900, TTY 800-833-6384  
360-778-5901 Fax



**Mark Personius**  
Director

**RECEIVED**

**JUL 30 2019**

**JACK LOUWS**  
**COUNTY EXECUTIVE**

**Memorandum**

June 22, 2019

**TO:** The Honorable Jack Louws, Whatcom County Executive  
The Honorable Whatcom County Council

**FROM:** Matt Aamot, Senior Planner *WA*

**THROUGH:** Mark Personius, Director *MP*

**RE:** Interagency Agreement with the State relating to the Review and Evaluation (Buildable Lands) Program Grant

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The Washington State Legislature approved Engrossed Second Substitute Senate Bill (E2SSSB) 5254 relating to the Growth Management Act's "Review and Evaluation Program" (buildable lands) requirements in 2017. This legislation imposes new requirements that Whatcom County must address, in close coordination with the cities, over the next several years including:

- Amending the countywide planning policies to establish the program;
- Developing a Review & Evaluation Program methodology;
- Collecting land development and regulatory data;
- Issuing a buildable lands report by June 30, 2021;
- Developing reasonable measures, if necessary, to reduce the difference between development assumptions and actual development patterns; and
- Considering the buildable lands report and any reasonable measures when conducting the next periodic update of the Comprehensive Plan, which must be completed by June 30, 2024.

The State has allocated \$450,000 to Whatcom County for state fiscal years 2020 and 2021 (July 1, 2019 – June 30, 2021). This request is to accept the grant money from the State to facilitate compliance with this new law. Whatcom County will use these state funds to:

1. Reimburse County staff time spent on this new state mandate;
2. Reimburse cities for time spent on this new state mandate;
3. Contract with a consultant to conduct work relating to the new legislation; and
4. Reimburse related expenses, as allowed by the interagency agreement.

Thank you for your review and consideration of the proposed interagency agreement between the State and Whatcom County. We look forward to discussing it with you.