

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

202311007

Originating Department:	Planning & Development Services
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Long Range Planning
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? Contract Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Cost Center: <u>2592</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"/> Goods and services provided due to an emergency <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>700,000</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope: _____	
Interagency agreement to receive funding from the State of Washington for the 2025 Comprehensive Plan, Urban Growth Area, and development regulations update.	
Term of Contract:	Expiration Date: June 30, 2025

Contract Routing:	1. Prepared by: <u>MA</u>	Date: <u>7/25/2023</u>
	2. Attorney signoff: <u>Royce Buckingham</u>	Date: <u>7/25/2023</u>
	3. AS Finance reviewed: <u>Andrew Tan</u>	Date: <u>7/26/2023</u>
	4. IT reviewed (if IT related): <u>N/A</u>	Date: _____
	5. Contractor signed: <input checked="" type="checkbox"/>	Date: <u>11/2/23</u>
	6. Executive contract review: _____	Date: _____
	7. Council approved, if necessary: <u>AB2023-496</u>	Date: <u>8/8/23</u>
	8. Executive signed: <input checked="" type="checkbox"/>	Date: <u>11/1/23</u>
	9. Original to Council: _____	Date: _____

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

Memorandum

July 26, 2023

TO: The Honorable Satpal Sidhu, Whatcom County Executive
The Honorable Whatcom County Council

FROM: Matt Aamot, Senior Planner

THROUGH: Steve Roberge, Assistant Director

RE: Interagency Agreement with the State / 2025 Comp Plan Update Grant

Requested Action

The Growth Management Act requires Whatcom County to review and update the Comprehensive Plan and development regulations by June 30, 2025. The State has allocated \$700,000 to Whatcom County for state fiscal years 2024 and 2025 (July 1, 2023 – June 30, 2025) for the update. This request is to enter into an Interagency Agreement to accept the grant money from the State for the update.

Background and Purpose

Whatcom County will use these state funds in the Comprehensive Plan update process to address:

1. Population and housing projections;
2. Employment projections;
3. Land capacity analysis;
4. SEPA environmental analysis;
5. Housing element revisions;
6. Tribal cultural resources and participation;
7. 40-Year planning strategy;
8. Whatcom County Council priorities (Resolution 2022-036);
9. Mineral Resource Lands assessment;
10. Whatcom County 20-Year Capital Facilities Plan update;
11. Subarea plans;
12. The Columbia Valley UGA – Planned Light Impact Industrial area;
13. Open space within and between UGAs;
14. Limited areas of more intensive rural development;
15. Essential public facilities;
16. Public participation plan;
17. Critical Areas Ordinance; and
18. Project management.

We would note the County Council Committee of the Whole approved a motion on July 11 to support the detailed scope of work for the 2025 Comprehensive Plan and development regulations update (AB2023-332). This detailed scope of work has been inserted in the request for consultant proposals. The Interagency Agreement with the State Department of Commerce for the Comp Plan update grant, the subject of this agenda bill, has an abbreviated scope of work with deliverables that will be submitted to Commerce to receive grant money from the State. Additionally, the climate change provisions from the detailed scope of work endorsed by Council on July 11 are not in the current Interagency Agreement with the Department of Commerce, as the State will have a second grant to address these provisions at a later date.

Funding Amount and Source

Thank you for your review and consideration of the proposed Interagency Agreement between Whatcom County and the State Department of Commerce. We request that Council approve a motion on August 8, 2023 authorizing the County Executive to sign the Agreement that will provide \$700,000 in State funding to the County for the 2025 Comprehensive Plan update.

WHATCOM COUNTY
CONTRACT NO.
202311007



Interagency Agreement with

Whatcom County

through

Growth Management Services

**Contract Number:
24-63335-051**

For

**GMA Periodic Update Grant
2025 Jurisdiction (SFY24-SFY25)**

Dated: Date of Execution



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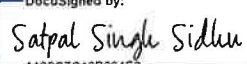



WHATCOM COUNTY
CONTRACT NO.
2023 11007

Face Sheet

Contract Number: 24-63335-051

Local Government Division Growth Management Services

1. Contractor Whatcom County Planning and Development Services 5280 Northwest Dr. Bellingham, WA 98226		2. Contractor Doing Business As (as applicable) N/A	
3. Contractor Representative Matt Aamot Senior Planner (360) 778-5939 maamot@co.whatcom.wa.us		4. COMMERCE Representative Lexine Long Senior Planner (360) 480-4498 lexine.long@commerce.wa.gov	
5. Contract Amount \$700,000	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>		7. Start Date Date of Execution
8. End Date June 30, 2025			
9. Federal Funds (as applicable) N/A		Federal Agency: N/A	
10. Tax ID # N/A		11. SWV # SWV0002425	12. UBI # 371-010-246
13. UEI # N/A			
14. Contract Purpose Grant funding to assist Whatcom County with planning work for the completion the Growth Management Act (GMA) requirement to review and revise the comprehensive plan and development regulations under RCW 36.70A.130(5).			
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 incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work and Budget			
FOR CONTRACTOR DocuSigned by:  Satpal Singh Sidhu, County Executive Whatcom County 11/1/2023 4:39 PM PDT Date APPROVED AS TO FORM ONLY BY WHATCOM COUNTY PROSECUTING ATTORNEY'S OFFICE /s/ Royce Buckingham		FOR COMMERCE DocuSigned by:  Mark K. Barkley, Assistant Director Local Government Division 11/2/2023 5:40 AM PDT Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	



Special Terms and Conditions

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 **seven hundred thousand dollars (\$700,000)**, for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in Attachment A - Scope of Work and Budget.

4. 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 nor less than quarterly.

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 24-63335-051. 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.

State Fiscal Year Compensation

COMMERCE will reimburse Contractor a maximum of \$350,000 for State Fiscal Year 2024 (July 1, 2023 - June 30, 2024) and a maximum of \$350,000 for State Fiscal Year 2025 (July 1, 2024 - June 30, 2025).

Grant Start Date

COMMERCE will pay the Contractor for costs incurred beginning July 1, 2023, for services and deliverables described under this Agreement.



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 Contractor 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 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.

Modification of the Project Budget

- A. Notwithstanding any other provision of this contract, the Contractor may, at its discretion, make modifications to line items in the Budget, hereof, that will not increase the line item by more than fifteen percent (15%).
- B. The Contractor shall notify COMMERCE in writing (by email or regular mail) when proposing any budget modification or modifications to a line item in the 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 3 of this contract, nor does this section allow any proposed changes to the Scope of Work, including Tasks/Work Items and Deliverables under Attachment A, without specific written approval from COMMERCE by amendment to this contract.

5. 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 Contract performed by subcontractors and the portion of Contract 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.

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.



7. FRAUD AND OTHER LOSS REPORTING

Contractor 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



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 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" or "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, 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. "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. 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 the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

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

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.



Attachment A: Scope of Work and Budget

Task/Work Item	SFY 2024 Funds	SFY 2025 Funds	Deliverable
Population and Housing Projections and Allocations Anticipated completion date: April 15, 2024	\$28,000	\$0	Consultant report addressing population, housing unit, & household projections and allocations.
Employment Projections and Allocations Anticipated completion date: April 15, 2024	\$19,000	\$0	Consultant report addressing employment projections and allocations.
Land Capacity Analysis (LCA) Methodologies Anticipated completion date: June 30, 2024	\$17,000	\$0	Draft land capacity analysis methodologies for permanent housing needs and emergency housing & shelter.
Land Capacity Analysis (LCA) Anticipated completion date: June 15, 2025	\$0	\$8,000	Draft land capacity analysis for permanent housing needs and emergency housing & shelter.
SEPA Environmental Analysis Anticipated completion date: June 30, 2024	\$66,500	\$0	Preliminary draft Draft EIS (not including climate sections that will be funded by climate planning grant).
SEPA Environmental Analysis Anticipated completion date: June 15, 2025	\$0	\$32,000	Preliminary draft Final EIS (not including climate sections that will be funded by climate planning grant).
Transportation Model Analysis Anticipated completion date: December 31, 2024	\$0	\$1,000	Draft Transportation Model Analysis



Housing - Existing and Projected Housing Needs Anticipated completion date: June 30, 2024	\$22,000	\$0	Draft inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to accommodate existing unmet needs and manage projected growth throughout the County (within each UGA and on land outside UGAs).
Housing Element Anticipated completion date: June 15, 2025	\$0	\$25,500	Draft Whatcom County Comp Plan – Housing Element Revisions.
Tribal Cultural Resources Anticipated completion date: June 30, 2024	\$7,000	\$0	Draft countywide planning policies relating to protection of cultural resources.
Tribal Participation in Planning Anticipated completion date: June 15, 2025	\$0	\$3,000	Draft memorandum of agreement (MOA) with Tribes that voluntarily choose to participate in the planning process and documentation of consultant assistance implementing the MOA.
40-Year UGA Planning Strategy Anticipated completion date: June 15, 2025	\$0	\$6,000	Draft document setting forth recommendations to address an additional twenty year supply of residential and employment capacity to support growth from 2045-2065 (e.g. UGA reserves or potential future regulatory changes).
Project Management Anticipated completion date: June 30, 2024	\$2,000		Two quarterly consultant progress reports (\$1,000 for each report).



<p>Project Management</p> <p>Anticipated completion date: June 15, 2025</p>		\$4,000	<p>Four quarterly consultant progress reports (\$1,000 for each report).</p>
<p>Commerce Periodic Update Checklist</p> <p>Anticipated completion date: February 15, 2024</p>	\$17,000	\$0	<p>Commerce Periodic Update Checklist.</p>
<p>Address Whatcom County Council priorities for the 2025 Update set forth in Resolution 2022-036.</p> <p>Anticipated completion date: June 30, 2024</p>	\$65,000	\$0	<p>Preliminary draft document relating to:</p> <ul style="list-style-type: none"> • Equity, environmental justice, and economic security • Habitats for fish and wildlife • Economic security and affordable housing • Agriculture, food system, and food security • Urban growth areas • Wetlands mitigation
<p>Address Whatcom County Council priorities for the 2025 Update set forth in Resolution 2022-036.</p> <p>Anticipated completion date: June 15, 2025</p>	\$0	\$65,000	<p>Final draft document relating to:</p> <ul style="list-style-type: none"> • Equity, environmental justice, and economic security • Habitats for fish and wildlife • Economic security and affordable housing • Agriculture, food system, and food security • Urban growth areas • Wetlands mitigation



<p>Countywide Mineral Resource Lands (MRL) Assessment</p> <p>Anticipated completion date: June 30, 2024</p>	\$7,000	\$0	Draft document with MRL designation alternatives.
<p>Whatcom County 20-Year Capital Facilities Plan Update</p> <p>Anticipated completion date: June 30, 2024</p>	\$30,000	\$0	Draft County revenue projections from 2026-2045.
<p>Whatcom County 20-Year Capital Facilities Plan Update</p> <p>Anticipated completion date: April 30, 2025</p>	\$0	\$64,700	Draft 20-Year Capital Facilities Plan.
<p>Review County Subarea Plans</p> <p>Anticipated completion date: June 15, 2025</p>	\$0	\$43,000	Document identifying any inconsistencies between the Lummi Island, Urban Fringe, Birch Bay Community Plan, Foothills, & Point Roberts subarea plans and the Whatcom County Comprehensive Plan.
<p>Columbia Valley UGA – Planned Light Impact Industrial</p> <p>Anticipated completion date: June 30, 2024</p>	\$16,000	\$0	Draft document identifying traffic impacts, infrastructure, utility, service needs and appropriate mitigation measures associated with a land use alternative that would rezone the Planned Light Impact Industrial area in the UGA to Light Impact Industrial.
<p>Essential Public Facilities</p> <p>Anticipated completion date: June 30, 2024</p>	\$7,200	\$0	Draft Whatcom County Comprehensive Plan and development regulations relating to “community facilities” (see Engrossed Substitute Senate Bill 5118, passed in 2021).



Open space within and between UGAs Anticipated completion date: June 15, 2025	\$0	\$9,800	Draft Comprehensive Plan amendments addressing open space in relation to existing and proposed UGA boundaries.
Limited Areas of More Intensive Rural Development (LAMIRDs) Anticipated completion date: June 30, 2024	\$19,300	\$0	Draft Comprehensive Plan and development regulation amendments to provide enhancement opportunities in LAMIRDs (under SESSB 5275).
Public Participation Plan Anticipated completion date: March 15, 2024	\$27,000	\$0	Draft public participation plan (not including components relating to climate planning that will be funded by climate planning grant).
Public Participation Plan Implementation Anticipated completion date: June 15, 2025	\$0	\$23,000	Documentation of consultant assistance implementing the public participation plan (not including participation relating to climate planning that will be funded by climate planning grant).
Critical Areas Ordinance – Best Available Science Anticipated completion date: March 30, 2025	\$0	\$15,000	Draft Best Available Science report.
Critical Areas Ordinance update Anticipated completion date: June 30, 2025	\$0	\$50,000	Draft Critical Areas Ordinance amendments.
Total Budget	\$350,000	\$350,000	
Control Number (Total Grant Available)	\$350,000	\$350,000	

