



**STATE OF WASHINGTON
DEPARTMENT OF COMMERCE**

**REQUEST FOR APPLICATIONS (RFA)
RFA NO. CEF ETS 2022**

NOTE: *If you download this RFA from the Department of Commerce website, you are responsible for sending your name, address, e-mail address, and telephone number to the RFA Coordinator in order for your organization to receive any RFA amendments or bidder questions/agency answers.*

PROJECT TITLE: Electrification of Transportation Systems – Clean Energy Fund 5

PHASE ONE APPLICATION DUE: September 15th, 2022 at 5:00pm, Pacific Time, Olympia, WA

FULL APPLICATION DUE: November 21st, 2022 at 5:00pm, Pacific Time, Olympia, WA

ESTIMATED TIME PERIOD FOR CONTRACT: 24 to 36 months from contract execution date

APPLICANT ELIGIBILITY: This procurement is open to those applicants that satisfy the minimum qualifications stated herein and that are available for work in Washington State. These entities include:

1. Small Retail Utilities as defined in [RCW 19.29A.010](#) that serve customers in Washington State
2. Federally Recognized Tribal Governments
3. Washington State agencies
4. Local Governments in Washington

CONTENTS OF THE REQUEST FOR APPLICATIONS:

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2. General Information for Applicants
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Washington State
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- C. Workers' Rights Certification
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1. INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The Washington State Department of Commerce, hereafter called "COMMERCE," is initiating this Request for Applications (RFA) to solicit applications for the Electrification of Transportation Systems (ETS) Grant Program (program).

The Washington State Legislature created the Clean Energy Fund (CEF) to provide a public benefit to the citizens of Washington state through the deployment of clean energy technologies that save energy and reduce energy costs, reduce harmful air emissions, or otherwise increase energy independence for the state. The ETS Program is funded as part of CEF 5 enacted in section 1064 (11) of [Substitute House Bill 1080](#). Funding authorized in Substitute House Bill 1080 will be competitively awarded through two separate solicitations. This RFA outlines the first round only. The second round will be initiated later in 2022 and will provide funds for electric vehicle supply equipment (EVSE) infrastructure gaps in rural communities. The purchase and installation of EVSE charging infrastructure is reserved for the next round of CEF ETS funding and is not included in this RFA.

To meet Washington's climate emission reduction goals for the transportation sector, the [2021 State Energy Strategy](#) (2021 SES) recommends both rapid electrification of all transportation markets and deep reductions to vehicle miles traveled (VMT). As the clean energy transition accelerates, small utilities (as defined in [RCW 19.29A.010\(25\)](#)), Federally Recognized Tribal Governments, local governments, and public agencies in vulnerable communities often lack the resources to fully plan for, participate in and benefit from the clean energy transition. Further, the [Energy and Climate Policy Advisory Committee \(ECPAC\) report](#) recommends that COMMERCE use the CEF to support the innovation and infrastructure adoption necessary for a successful and equitable clean energy transition.¹ COMMERCE will use funding in this RFA to implement the 2021 SES by awarding projects for early stage transportation market electrification adoption and planning. Funding will be awarded for innovative projects that prepare communities to construct and/or expand EVSE, and to applicants who have not previously been able to access related funding or initiate related efforts.

Funding through this RFA may be used to identify, design, or install capital assets and/or infrastructure upgrades necessary to support EV charging infrastructure. Projects do not necessarily need to include the purchase of capital assets or infrastructure upgrades, but must at least design or identify needed capital asset investments and/or infrastructure upgrades to build out EVSE. Priority is given to projects benefiting communities with limited capacity for early stage market transformation and in areas where gaps in EVSE infrastructure exist. Priority is also given to projects involving partnerships of multiple eligible applicants, and that make communities more competitive to receive future funding to implement plans and continue work initiated through this RFA. A list of eligible costs for grant funds and match can be found in SECTION 1.2 OBJECTIVES AND SCOPE OF WORK.

This program strives to increase equitable participation in electric transportation markets by expanding the capacity for Washington communities to install EVSE. It also intends to reduce environmental health disparities by providing tangible benefit to vulnerable communities burdened by air pollution, climate change impacts, or lack of transportation systems.

Any award going to contract is contingent on the Applicant successfully meeting all requirements outlined in these documents, submitting application materials, competitive evaluation of the application and securing minimum financial match requirements.

COMMERCE intends to award multiple contracts to provide the services described in this RFA.

1.2 OBJECTIVES AND SCOPE OF WORK

¹ Washington Dept. of Commerce. Energy and Climate Policy Advisory Committee: *Report on Clean Energy Fund Recommendations*. November, 2020. Page 7. Accessed from: [Legislative Report v1.6 \(wa.gov\)](#)

The primary purpose of these projects must be the design or installation of capital assets and/or infrastructure upgrades or early stage development and planning to identify capital assets and/or infrastructure upgrades that:

- Integrate and manage load using behavioral, software, hardware, or other demand-side management technologies for on-road end-uses and non-maritime off-road end-uses;
- Provide enduring benefits to vulnerable communities disproportionately burdened by air pollution, climate change impacts or lack of transportation systems;

Specific load management and integration strategies, and related capital assets or upgrades, are intentionally flexible to provide room for communities to propose solutions that address their specific needs. All strategies must be focused on demand-side load integration and management technologies to prepare for increased electrical load from EV charging and EVSE infrastructure. **EVSE charging infrastructure itself is not an eligible expense.** Innovative, community-based solutions are encouraged and will be more competitive if they demonstrate enduring benefits to vulnerable communities disproportionately burdened by air pollution, climate impacts and/or lack of access to transportation systems. All project applications must include a description of the intended equity outcomes as described in the equity narrative contained in SECTION 3.3 PHASE TWO APPLICATION INSTRUCTION AND CONTENT.

Examples of eligible technologies to manage and/or integrate load include, but are not limited to:

- Battery EV supply equipment.
- On-site generation or storage, where the technology directly supplies electricity to the EVSE.
- Electric grid distribution system infrastructure upgrades, where the upgrade is needed as a result of installed EVSE.
- Other demand response, time-of-use rates, or behavioral programming strategies and related assets/infrastructure.

Commerce is prioritizing the following types of projects, as reflected in the scoring criteria:

- Projects that demonstrate community input, desire, and need for the project, especially from vulnerable communities.
- Projects that benefit vulnerable communities disproportionately burdened by air pollution, lack of economic opportunities, climate change impacts, or lack of transportation services.
- Applications from multiple eligible applicants working in partnerships and regional planning projects.
- Applications from applicants who have not previously received awards from Commerce CEF ETS solicitations.
- Projects serving communities who have not yet initiated market transformation efforts. Additional consideration will be given to applications that demonstrate a strong and clear need for funding from Commerce in order to do the proposed work.
- Projects that make communities more competitive to receive synergistic transportation electrification funding opportunities from the Washington State Department of Transportation, Department of Ecology, Federal sources and any future State funding sources. Priority will be given to applicants demonstrating long-term planning for the work started with these funds.
- Projects for early stage development and planning in communities where rural gaps in EVSE infrastructure exist.

Two strategies in this RFA are meant to minimize the administrative and financial burden on target communities and help more equitably distribute funding:

- Reduced match is available to minimize the opportunity cost for communities with limited capacity to begin the work funded through this RFA. It is also intended to promote pilot projects and innovative approaches that meet community-specific needs.
- A two-phase application process, outlined in SECTION 3 APPLICATION PROCESS AND CONTENTS, is intended to reduce the opportunity cost of applying for applicants with limited capacity and resources.

Examples of eligible, reimbursable expenditures include:

- Consultant studies and/or other early stage planning to identify needed upgrades or capital asset investments.
- Direct capital asset investments or infrastructure upgrades.
- Engineer designs for asset investments and/or infrastructure upgrades.
- Expenses for the documenting, reporting and administrative requirements of this RFA during the lifecycle of the grant.
- Internal early stage planning and development to identify needed upgrades or capital asset investments.
- All other expenses for personnel, time, or equipment related to early stage market transformation planning and development for on-road end-uses and non-maritime off-road end-uses.
- Education and engagement efforts with local communities.

Funding for the purchase and installation of EVSE charging infrastructure is reserved for the second round of CEF ETS funding and is not included in this RFA. This round focuses exclusively on communities that are not yet ready to install additional charging infrastructure without completing the work outlined in this RFA. Examples of ineligible, non-reimbursable expenditures include:

- Planning or direct expenses related to maritime end-uses.
- Planning, investments, and related expenses for load integration and management infrastructure and/or capital assets not related directly to, or not directly necessary for, increased EV supply and new EVSE.
- Purchasing of electric vehicles or electric vehicle charging infrastructure.
- On-site generation from fossil fuel energy sources.

1.3 MINIMUM QUALIFICATIONS

Applicant Qualifications

- 1) The primary eligible Applicant, who may partner with other organizations, must be one of the following:
 - a) **Small Retail Electric Utility serving Washington State:** For the purposes of this RFA "Small Retail Electric Utility" means any electrical company, public utility district, irrigation district, port district, electric cooperative, or municipal electric utility with twenty-five thousand or fewer electric meters in service, or that has an average of seven or fewer customers per mile of distribution line, that is engaged in the business of distributing electricity to retail electric customers in the state, per [RCW 19.29A.010](#).
 - b) **Federally Recognized Tribal Government:** For the purposes of this RFA "Federally Recognized Tribal Government" means the government of any federally recognized Indian tribe whose traditional lands and territories included parts of Washington, designated subdivisions and agencies (such as a Tribal Housing Authority), or any other entities or authorities of a federally recognized Tribal government in corporate form or otherwise.
 - (1) Tribal Governments may apply as either a utility or a Tribal government as desired. Even if applying as a utility, Tribes will still be eligible for reduced match requirements as outlined in SECTION 1.4 FUNDING.
 - c) **Washington State Agency:** For the purposes of this RFA "Washington State Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of Washington state government, as defined in [RCW 42.52.010](#).
 - d) **Local Government:** For the purposes of this RFA "Local government" means any governmental entity other than the state, federal agencies, or an operating system established under chapter [43.52](#) RCW. It includes, but is not limited to cities, counties, school districts and special purpose districts.
- 2) Applicant(s) must be licensed to do business in the State of Washington or submit a statement of commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.
- 3) Applicants must be in good standing with all applicable federal, state, and local laws and requirements, including with COMMERCE.

- 4) Applicants must be responsive to communications from COMMERCE. Failure to reply by specified deadlines may result in elimination.

Project Qualifications

- 1) Specific strategies may vary but must install, design, or identify needed capital assets and/or infrastructure upgrades.
- 2) All projects must propose strategies that manage or integrate electrical load using behavioral, software, hardware, or other demand-side management technologies.
- 3) Applications must be for projects that manage or integrate electrical load explicitly for EVSE and EV expansion.
- 4) The project must be located in Washington.
- 5) Projects must serve a minimum of one of the following:
 - a) On road end-uses
 - b) Non-maritime off-road end-uses
- 6) Applications must be for projects not already receiving funding from the Washington State Legislature and not already mandated by the Legislature.
 - c) Match provided by a local government or state agency does not count as current Washington State legislative funding and will not disqualify projects as long as it was not already committed to the proposed project prior to this RFA.
 - d) General climate action planning and/or recommendations that call for increased EVSE infrastructure or market transformation work generally do not disqualify a project, unless the particular project work included in an application for this RFA has been specifically legislatively mandated by the Washington State Legislature.
- 7) Applications must demonstrate community input, desire, and need for the project, especially from vulnerable communities, as part of project development.
- 8) Applications exceeding the maximum allowable award will be considered non-responsive and will not be evaluated.

Equipment Qualifications

- 1) Projects must install, design, or produce plans that identify capital assets or infrastructure upgrades needed to manage and/or integrate electrical load from increased EVSE and EVs.
- 2) Charging infrastructure itself does not count as an eligible capital asset or infrastructure upgrade. Assets and upgrades must be for load integration and management in order to build out EVSE.
- 3) Capital assets and infrastructure upgrades to manage increased electrical load must have a lifespan of at least 5 YEARS.
- 4) Capital assets and/or infrastructure upgrades must be related to electrical load from EV on-road end-uses and non-maritime off-road end-uses.

Applications that do not clearly meet or exceed all minimum qualifications listed above are non-responsive and will not be evaluated.

1.4 FUNDING

There is currently up to \$3,000,000 in state funding available from the Clean Energy Fund Electrification of Transportation Systems program as authorized by section 1064 (11) of [Substitute House Bill 1080, in the 2021 Capital Budget](#).

In this round, \$970,000 in Washington State will be competitively awarded.

Funding Source	Amount available to be awarded
BIENNIA Capital Budget	\$1,000,000
Commerce 3% Administrative Deduction	\$(30,000)
Total Awardable Funds	\$970,000

Additional funds may become available through other sources including but not limited to:

- State funds available under 2021 Capital Budget Substitute House Bill 1080
- State funds available from previous grant rounds
- Federal funds available from previous grant rounds
- Additional funding as authorized by the legislature

Funds that are from a federal source will have additional requirements.

COMMERCE intends to award as many eligible contracts as funding allows as described in this RFA. The minimum award amount is \$100,000 and the maximum award is \$400,000. Higher awards are primarily reserved for partnership projects between multiple eligible applicants.

Applications that do not include letters of support from at least one additional eligible applicant may apply for a minimum award of \$100,000 and a maximum award of \$150,000.

Projects involving multiple applicants working in partnership, demonstrated by letters of support included with the PHASE TWO application, may apply for a minimum award of \$100,000 and a maximum award of \$400,000. Partnership projects will also be more competitive during application evaluation.

Applications exceeding the maximum allowable award will be considered non-responsive and will not be evaluated. COMMERCE reserves the right to negotiate with successful applicants on award amounts.

Contracts will be performance based, with final payment made upon successful completion of the scope of work. Progress payments for completed milestones can be negotiated during contract development.

Any contract awarded as a result of this procurement is contingent upon the availability of funding and no successful protests.

Match Requirements:

Match will be determined based on the primary applicant and any documented partnerships as follows:

- If the primary applicant is a Federally Recognized Tribal Government the project is subject to a 1:10 match ratio. Federally Recognized Tribal Governments may apply as a utility if desired and will still be eligible for a 1:10 reduced match ratio. In this case, Commerce will commit to providing \$10 for every \$1 provided by the applicant.
- If the primary applicant is a local government, small utility or state agency with a letter of support declaring a partnership with at least one other small utility or Federally Recognized Tribal Government the project is subject to a 1:5 match ratio. In this case, Commerce will provide \$5 for every \$1 provided by the applicant.
- If the primary applicant is a local government, small utility, or state agency without any letter(s) of support from other small utilities or Federally Recognized Tribal Governments the project is subject to a 1:1 match ratio. In this case, Commerce will provide \$1 for every \$1 provided by the applicant.

To qualify for reduced partnership match, applicants must include letters of support from all relevant project partners when submitting the PHASE TWO application. During PHASE ONE, applicants are only asked to list any partners with whom they will be working, but are not required to submit a support letter. Partnerships will be evaluated according to the criteria in SECTION 4.2 EVALUATION BREAKDOWN. During a PHASE ONE application, applications will be evaluated based on existing or planned partnerships listed in the PHASE ONE application, but will not be subject to full evaluation at described in SECTION 4.2 EVALUATION BREAKDOWN until PHASE TWO.

Match funds must be cash that is committed and available at the time of contract execution. Applicants have six (6) months from award to finalize and secure match funds. Extensions may be

granted on a case-by case basis. COMMERCE reserves the right to reduce award amounts to ensure minimum match requirements are met.

Match funds cannot be in-kind costs, incentives, or rebates for the project. Funds claimed as match for this program cannot be claimed as match for any other funding sources. Funds claimed as match must be eligible costs as described in SECTION 1.2, OBJECTIVES AND SCOPE OF WORK. Funds claimed as match may not come from any other State sources, unless the applicant is a local government or state agency

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFA is tentatively scheduled to begin on or about March 2023 and to end 24 to 36 months from contract execution date. Amendments extending the period of performance, if any, shall be at the sole discretion of COMMERCE.

COMMERCE reserves the right to extend the contract for two one-year periods.

1.6 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. Applicants should familiarize themselves with the requirements prior to submitting an application that includes current or former state employees.

1.7 DEFINITIONS

Definitions for the purposes of this RFA include:

Apparent Successful Contractor: The applicant selected as the entity to perform the anticipated services, subject to completion of contract negotiations and execution of a written contract.

Applicant: Eligible individual, firm, organization, company, or other entity or group of entities interested in the RFA and that submits an application in order to attain a contract with COMMERCE.

Application: A formal offer submitted in response to this solicitation.

Capital Asset/Infrastructure Upgrade: Tangible or intangible assets held and used which have a service life of more than five years and meet the state's capitalization policy. Capital assets include infrastructure, leasehold improvements, furnishings, equipment and all other tangible and intangible assets that are used in operations.

Contractor: Applicant(s) whose application has been accepted by COMMERCE and is awarded a fully executed, written contract.

COMMERCE or AGENCY: The Department of Commerce is the agency of the state of Washington that is issuing this RFA.

Electric Vehicle (EV): Any craft, vessel, automobile or equipment that operates, either partially or exclusively, on electrical energy from an off-board source that is stored on-board for motive purpose.

Electric Vehicle Supply Equipment (EVSE) (Also referred to as Electric Vehicle Charging Station or Charging Infrastructure): A unit of fueling infrastructure that supplies electric energy for the recharging of electric vehicles.

Federally Recognized Tribal Government: The government of any Federally Recognized Indian Tribe whose traditional lands and territories included parts of Washington, designated subdivisions and agencies (such as a Tribal Housing Authority), or any other entities or authorities of a Federally Recognized Tribal Government in corporate form or otherwise.

Local Government: Cities, towns, counties, special and school districts, transportation authorities, municipal corporations, port districts or authorities, Tribal governments, political subdivision of any type, or any other entities or authorities of local government in corporate form or otherwise.

Maintenance: Includes, but is not limited to: upkeep, repair and/or replacement of capital assets or infrastructure to ensure it is functional and useable.

Market Transformation: The strategic process of intervening in a market to create lasting change in market behavior by removing identified barriers or exploiting opportunities to accelerate the adoption of electric transportation as a matter of standard practice.²

Median household income: The median divides the income distribution into two equal parts: one-half of the cases falling below the median income and one-half above the median. For households and families, the median income is based on the distribution of the total number of households and families including those with no income.³

Public Transportation: A fleet of motorized vehicles, vessels, or trains that are owned or leased and operated by the state, any public agency, any city or county or any municipal corporation of the state, with the duty or purpose of moving members of the public.

Request for Applications (RFA): Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFA is to permit the applicant community to suggest various approaches to meet the need at or below a given funding level.

Rural Community: Projects not located in a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town, as defined by the [USDA Rural Energy Pilot Program](#).

Small Retail Electric Utility: Any consumer-owned utility with twenty-five thousand or fewer electric meters in service, or that has an average of seven or fewer customers per mile of distribution line. [\(As defined in RCW 19.29A.010\)](#)

State Agency: Any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government.

Vulnerable Communities: Population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, including but is not limited to racial or ethnic minorities, low-income populations, populations disproportionately impacted by environmental harms and populations of workers experiencing environmental harms.

1.8 ADA

COMMERCE complies with the Americans with Disabilities Act (ADA). Applicants may contact the RFA Coordinator to receive this Request for Applications in Braille or on tape.

² Adopted from ACEEE's definition of "market transformation." See <https://aceee.org/portal/market-transformation>

³ See <https://www.census.gov/quickfacts/fact/note/US/INC110218>

2. GENERAL INFORMATION FOR APPLICANTS

2.1 RFA COORDINATOR

The RFA Coordinator is the sole point of contact in COMMERCE for this procurement. All communication between the Applicant and COMMERCE upon release of this RFA shall be with the RFA Coordinator, as follows:

Name	Nick Manning
E-Mail Address	cef@commerce.wa.gov
Program Website	https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/electrification-of-transportation/
Phone Number	(564) 200-4324

Any other communication will be considered unofficial and non-binding on COMMERCE. Applicants are to rely on written statements issued by the RFA Coordinator. Communication directed to parties other than the RFA Coordinator may result in disqualification of the Applicant.

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Applications	August 1st, 2022
Question & answer period PHASE ONE	August 1st, 2022- September 8th, 2022
Pre-Application Conference	August 8th, 2022 at 2:30pm PDT
Answers to Q&A PHASE ONE posted no later than	Every two weeks until September 12th, 2022
Application PHASE ONE due	September 15th, 2022 at 5:00pm PDT
Applicants sent “encourage” or “discourage” emails	October 10th, 2022
Application PHASE TWO opens	October 10th, 2022
Question and answer period PHASE TWO	October 10th, 2022 – October 24th, 2022
Application PHASE TWO due – full application	November 21st, 2022
Conduct oral interviews with finalists, if required	Scheduled as needed
Announce “Apparent Successful Contractor” and send notification via e-mail to unsuccessful Applicants	End of January, 2023
Hold debriefing conferences (if requested)	Beginning February 1, 2023
Negotiate contract	Starting February 6, 2023

COMMERCE reserves the right to revise the above schedule.

2.3 PRE-APPLICATION CONFERENCE

A pre-application conference is scheduled to be held at the date and time listed in RFA SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES. The pre-application conference will be virtual only. The meeting link is available on the Application Portal Web Access page listed in SECTION 2.1 RFA COORDINATOR. All prospective Applicants are encouraged attend; however, attendance is not mandatory.

COMMERCE will be bound only to COMMERCE written answers to questions. Questions arising at the pre-application conference or in subsequent communication with the RFA Coordinator will be documented and answered in written form. A copy of the questions and answers will be posted on the website portal listed in SECTION 2.1 RFA COORDINATOR.

2.4 SUBMISSION OF APPLICATIONS

ELECTRONIC APPLICATIONS:

The application must be received by the RFA Coordinator no later than the deadline stated in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES.

Applications must be submitted electronically as an attachment to an e-mail to the RFA Coordinator, at the e-mail address listed in SECTION 2.1 RFA COORDINATOR.

- All attachments must be submitted in 11 point, single space Arial font.
- Page Margins must not be narrower than 1 inch on all sides.
- Page counts assume single sided documents on standard, letter size pages.
- Applications must be written in English.

Attachments to e-mail shall be in Microsoft Word format unless another format is specified in the application instructions. Zipped files cannot be received by COMMERCE and cannot be used for submission of applications. The Certifications and Assurances form must have a scanned signature of the individual within the organization authorized to bind the Applicant to the offer. COMMERCE does not assume responsibility for problems with Applicant's e-mail. If COMMERCE email is not working, appropriate allowances will be made.

Applications may not be transmitted using facsimile transmission or via hard copy.

Applicants should allow sufficient time to ensure timely receipt of the application by the RFA Coordinator. **Late applications will not be accepted and will be automatically disqualified from further consideration**, unless COMMERCE e-mail is found to be at fault at COMMERCE'S sole determination. Requests for deadline extensions will not be granted. All applications and any accompanying documentation become the property of COMMERCE and will not be returned.

2.5 DISCLAIMER

COMMERCE will not be liable for any costs incurred by the Applicant in preparation of an application submitted in response to this RFA in conduct of a presentation, or any other activities related to responding to this RFA.

This solicitation does not commit COMMERCE to award any funds, pay any costs incurred in preparing an application, or procure or contract for services or supplies.

Only applications with responses meeting all Mandatory Eligibility Criteria in PHASE ONE will be approved for further evaluation in the PHASE TWO Application. COMMERCE reserves the right to determine at its sole discretion whether the Applicant's responses to the Mandatory Eligibility Criteria is sufficient for the application to proceed for further review. COMMERCE also reserves the right to disqualify any project at any time for any reason. COMMERCE reserves the right to modify award amount from that requested, negotiate with qualified applicants, cancel or reissue at any time without obligation or liability, or change the application guidelines for subsequent funding rounds. Updates

will be made to the RFA and the webpage.

2.6 PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

Applications submitted in response to this competitive procurement shall become the property of COMMERCE. All applications received shall remain confidential until the Apparent Successful Contractor is announced; thereafter, the applications shall be deemed public records as defined in [Chapter 42.56 of the Revised Code of Washington \(RCW\)](#).

Any information in the application that the Applicant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of your document, must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Applicant is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right hand corner of the page. Marking the entire application exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Applicant has marked as "Proprietary Information," COMMERCE will notify the Applicant of the request and of the date that the records will be released to the requester unless the Applicant obtains a court order enjoining that disclosure. If the Applicant fails to obtain the court order enjoining disclosure, COMMERCE will release the requested information on the date specified. If an Applicant obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 42.56 RCW, or other state or federal law that provides for nondisclosure, COMMERCE shall maintain the confidentiality of the Applicant's information per the court order.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFA Coordinator is required. All requests for information should be directed to the RFA Coordinator.

2.7 REVISIONS TO THE RFA

In the event it becomes necessary to revise any part of this RFA, amendments will be provided via the program portal listed in SECTION 2.1 RFA COORDINATOR. Addenda will also be published on Washington's Electronic Bid System (WEBS). The website can be located at <https://fortress.wa.gov/ga/webs/>. For this purpose, the published questions and answers and any other pertinent information shall be provided as an addendum to the RFA and will be placed on the website. Such addenda will also be published on an Agency page, located at <http://www.commerce.wa.gov/serving-communities/current-opportunities/>.

COMMERCE also reserves the right to cancel or to reissue the RFA in whole or in part, prior to execution of a contract.

2.8 DIVERSE BUSINESS INCLUSION PLAN

Applicants are required to submit a Diverse Business Inclusion Plan with their application. In accordance with legislative findings and policies set forth in [RCW 39.19](#), the state of Washington encourages participation in all contracts by firms certified by the office of Minority and Women's Business Enterprises (OMWBE), set forth in [RCW 43.60A.200](#) for firms certified by the Washington State Department of Veterans Affairs, and set forth in [RCW 39.26.005](#) for firms that are Washington Small Businesses. Participation may be either on a direct basis or on a subcontractor basis. However, no preference on the basis of participation is included in the evaluation of Diverse Business Inclusion Plans submitted, and no minimum level of minority- and women-owned business enterprise (MWBE), Washington Small Business, or Washington State certified Veteran Business participation is required as a condition for receiving an award. Any affirmative action requirements set forth in any federal governmental rules included or referenced in the contract documents will apply.

COMMERCE has the following agency goals:

- 10% participation by Minority Owned Business
- 6% participation by Women Owned Business
- 5% participation by Veteran Owned Business
- 5% participation by Small Businesses

2.9 ACCEPTANCE PERIOD

Applications must provide 60 days for acceptance by COMMERCE from the due date for receipt of applications.

2.10 COMPLAINT PROCESS

Applicants may submit a complaint to COMMERCE based on any of following:

- The solicitation unnecessarily restricts competition;
- The solicitation evaluation or scoring process is unfair; or
- The solicitation requirements are inadequate or insufficient to prepare a response.

A complaint may be submitted to COMMERCE at any time prior to 5 days before the bid response deadline. The complaint must meet the following requirements:

- The complaint must be in writing;
- The complaint must be sent to the RFA Coordinator in a timely manner;
- The complaint should clearly articulate the basis for the complaint; and
- The complaint should include a proposed remedy.

The RFA Coordinator will respond to the complaint in writing. The response to the complaint and any changes to the solicitation will be posted on WEBS. The Director of COMMERCE will be notified of all complaints and will be provided a copy of COMMERCE'S response. The complaint may not be raised again during the protest period. COMMERCE'S action or inaction in response to the complaint will be final. There will be no appeal process.

2.11 RESPONSIVENESS

All applications will be reviewed by the RFA Coordinator to determine compliance with administrative requirements and instructions specified in this RFA. The Applicant is specifically notified that failure to comply with any part of the RFA may result in disqualification of the application as incomplete and/or non-responsive.

Disqualified Applicants will be notified at or about the time of disqualification.

Disqualified Applicants will be afforded a Debriefing consistent with Section 4.5 DEBRIEFING OF UNSUCCESSFUL APPLICANTS.

COMMERCE reserves the right at its sole discretion to waive minor administrative irregularities.

2.12 MOST FAVORABLE TERMS

COMMERCE reserves the right to make an award without further discussion of the application submitted. Therefore, the application should be submitted initially on the most favorable terms which the Applicant can propose. There will be no best and final offer procedure. COMMERCE reserves the right to contact an Applicant for clarification of its application.

The Apparent Successful Contractor should be prepared to accept this RFA for incorporation into a contract resulting from this RFA. Contract negotiations may incorporate some, or all, of the

Applicant's application. It is understood that the application will become a part of the official procurement file on this matter without obligation to COMMERCE.

Recipients of funding will be expected to report to COMMERCE no less than quarterly regarding progress of the funded project. A final Fact Sheet summarizing project successes, lessons learned, and other information requested by COMMERCE will be required prior to processing the final invoice. Information deemed proprietary may be viewed, but not downloaded, via Skype or Google docs, to demonstrate milestone completion.

All Apparent Successful Grantees will be required to adhere to all laws pertaining to the funding source(s).

All Apparent Successful Contractors will be required to adhere to all state laws pertaining to capital funding, including but not limited to, compliance with [Executive Order 21-02](#).

2.13 CONTRACT GENERAL TERMS & CONDITIONS

The Apparent Successful Contractor will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit D. This sample contract is for information and review only and should not be returned with your application. In no event is an Applicant to submit its own standard contract terms and conditions in response to this solicitation. The Applicant may submit exceptions as allowed in the Certifications and Assurances form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances form. COMMERCE will review requested exceptions and accept or reject the same at its sole discretion.

2.14 COSTS TO PROPOSE

COMMERCE will not be liable for any costs incurred by the Applicant in preparation of an application submitted in response to this RFA, travel to or conduct of a presentation, or any other activities related to responding to this RFA.

2.15 NO OBLIGATION TO CONTRACT

This RFA does not obligate the state of Washington or COMMERCE to contract for services specified herein.

2.16 REJECTION OF APPLICATIONS

COMMERCE reserves the right at its sole discretion to reject any and all applications received without penalty and not to issue a contract as a result of this RFA.

2.17 COMMITMENT OF FUNDS

The Director of COMMERCE or delegate is the only individual who may legally commit COMMERCE to the expenditures of funds for a contract resulting from this RFA. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.18 ELECTRONIC PAYMENT

The state of Washington prefers to utilize electronic payment in its transactions. The successful contractor will be provided a form to complete with the contract to authorize such payment method.

2.19 INSURANCE COVERAGE

The Contractor is to furnish COMMERCE, upon request, with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth within the contract.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish, upon request, evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to COMMERCE within fifteen (15) days of the contract effective date. Standard insurance requirements are included within the sample contract and its special terms and conditions attached as Exhibit F.

3. APPLICATION PROCESS AND CONTENTS

Applications should be submitted following the process found in SECTION 3.1 TWO PHASE APPLICATION PROCESS. Additional details can be found in the application documents.

Application questions and detailed instructions are provided in the application forms. Items marked “MANDATORY” must be included as part of the application for it to be considered responsive, however, these items are not necessarily scored. Items marked “SCORED” are those that have a point system as part of the evaluation conducted by the evaluation team.

3.1 TWO PHASE APPLICATION PROCESS

The application process consists of Two Phases. There are different applications and supporting documents for each phase. Please refer to the table below, and to the application documents for details. Application documents are available on the ETS website listed in SECTION 2.1 RFA COORDINATOR.

Phase	Application Contents
Phase One	Part A: Applicant Information
	Part B: Project Information
	Part C: Project Narrative
Phase Two	Part A: Broader Impacts and Equity
	Part B: Technical Proposal and Cost Proposal
	Part C: Management Proposal and Match

Phase One Process:

- PHASE ONE: Part A and B will be screened for minimum qualifications. COMMERCE staff will review PHASE ONE: Part A and B to determine whether it was properly completed, submitted on time, and whether it addresses and aligns with the minimum qualifications described in RFA SECTION 1.3 MINIMUM QUALIFICATIONS.
- PHASE ONE: Part A and B applications that do not pass the minimum qualifications screening will receive an email indicating they were administratively disqualified. If the project meets the minimum thresholds, the PHASE ONE: Part C application will be evaluated.
- An evaluation Team will review PHASE ONE applications in their entirety and assign a numerical score based on the criteria listed in SECTION 4.2 EVALUATION BREAKDOWN. COMMERCE staff will use the scores to issue “ENCOURAGE” or “DISCOURAGE” notices to applicants but will not release individual scores as part of the determination.
 - Favorably reviewed applicants will be notified via email with a recommendation of “Encouraged to submit PHASE TWO Application”
 - Unfavorably reviewed applicants will be notified via email a recommendation of “Discouraged to submit PHASE TWO Application.”
- Applicants will not receive feedback on the recommendation. Applicants will not be provided an opportunity for project presentations or to request meetings or phone calls to discuss the projects at this stage. Applicants who were “Discouraged” can submit a PHASE TWO Application. However, the Evaluation Team will only review a limited number of PHASE TWO applications, and will prioritize reviewing the applicants receiving an “Encouraged”. Discouraged applicants who chose to submit an application are not guaranteed an application review. The “Encouraged” or “Discouraged” decision is intended to minimize the time and effort to develop a PHASE TWO Application for projects that do not meet the intent of the program or have a low chance of success.

Phase Two Process:

- Applicants will have approximately 42 calendar days from the receipt of the “Encouraged” or “Discouraged” email to submit a PHASE TWO Application. As stated in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES, COMMERCE reserves the right to revise the schedule at any time, and applicants may have fewer than 42 calendar days to

prepare the PHASE TWO Application. Submitting a PHASE ONE Application does not obligate the applicant to submit a PHASE TWO Application. However, applicants must submit a PHASE ONE Application to be eligible for consideration for the PHASE TWO application.

- An Evaluation Team will evaluate PHASE TWO of Encouraged Applicants, including reviewing PHASE ONE part C for context.
- Scores, comments, and recommendations will be provided to COMMERCE for consideration when determining awards. COMMERCE will make all final funding decisions. Notification of Electrification of Transportation Systems Program grant awards, along with notification of unsuccessful applications, will take place approximately according to the schedule in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES.
- Successful applicants will enter into contract negotiations starting according to the schedule in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES.

3.2 PHASE ONE APPLICATION INSTRUCTIONS AND CONTENTS

PHASE ONE Application must be received by the RFA Coordinator by the date specified in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES. PHASE ONE Applications not received by the deadline will be disqualified. The application is posted on the Program Website listed in SECTION 2.1 RFA COORDINATOR. Refer to the application for detailed instructions and contents.

Applications must be written in English and submitted electronically to the RFA Coordinator in the order noted below:

APPLICATION PHASE ONE CONTENTS

A. PHASE ONE: PART A: Applicant Information (Mandatory)

- Organization name and mailing address (Mandatory, Not scored)
- Organization contact information (Mandatory, Not scored)
- Organization primary official contact information and title (Mandatory, Not scored)
- Applicant type (Mandatory, Not scored)
- New Awardee (Mandatory, Scored)

B. PHASE ONE: PART B: Project Information (Mandatory)

- Project title (Mandatory, Not scored)
- Project location description (Mandatory, Scored)
- Administrative criteria and minimum requirements (Mandatory, Pass/Fail)
- Planned or current partners (Optional, Scored)
- Estimated dollar amount of funding request (Mandatory, Not Scored)

PHASE ONE applications that do not meet the minimum requirements outlined in PART ONE A and B will be considered non-responsive.

C. PHASE ONE: PART C: Project Narrative (Mandatory, Scored)

- Proposed work and project description (Mandatory, Scored)
- Project's benefits to vulnerable communities (Mandatory, Scored)
- Community engagement and identified needs (Mandatory, Scored)
- Previous market transformation work and need for funding (Mandatory, Scored)
- Long-term planning (Mandatory, Scored)

3.3 PHASE TWO APPLICATION INSTRUCTIONS AND CONTENTS

Applications must be written in English and submitted electronically to the RFA Coordinator in the order noted below:

APPLICATION PHASE TWO CONTENTS

A. PHASE TWO: PART A: Equity Narrative, Regional Collaboration and Long Term Planning (Mandatory, Scored)

- Equity Narrative: (Mandatory, Scored)
 - New Awardee (Mandatory, Scored)
 - Economic Benefits (Mandatory, Scored)
 - Emissions Reductions and Environmental Exposures (Mandatory, Scored)
 - Clean Transportation Access/Cost (Mandatory, Scored)
 - Community Engagement and Benefits (Mandatory, Scored)
 - Need for funding (Mandatory, Scored)
 - Previous Market Transformation Efforts and Gaps (Mandatory, Scored)
- Regional Collaboration and Long term planning (Mandatory, Scored)
 - Partnerships (Optional, Scored)
 - Project Area (Mandatory, Scored)
 - Long-term Planning (Mandatory, Scored)
 - Synergy with State and Federal Priorities (Optional, Scored)

B. PHASE TWO: PART B: Technical Proposal and Cost proposal: (Mandatory, Scored)

- Technical Proposal (Mandatory, Scored)
 - Project Approach/Methodology (Mandatory, Scored)
 - Work Plan (Mandatory, Scored)
 - Project Schedule (Mandatory, Scored)
 - Outcomes and Performance Measurement (Mandatory, Scored)
 - Deliverables (Mandatory, Scored)
 - Utilization Plan (Mandatory, Scored)
 - Scalability (Mandatory, Scored)
- Cost Proposal (Mandatory, Not Scored)
 - Detailed Project Budget (Mandatory, Not Scored)
 - Match (Mandatory, Not Scored)

C. PHASE TWO: PART C: Management Proposal (Mandatory, Scored)

- Management Proposal (Mandatory, Scored)
 - Experience of the Applicant (Mandatory, Scored)
 - Team and Project Management (Mandatory, Scored)

D. PHASE TWO: PART D: RFA Exhibits (Mandatory, Scored)

- Exhibit A Certifications and Assurances (Mandatory, Not Scored)
- Exhibit B Diverse Business Inclusion Plan (Mandatory, Not Scored)
- Exhibit C Workers' Rights Certification (Mandatory, Scored)
- Exhibit D Assurances or Documentation of Secured Match (Mandatory, Not Scored)
- Exhibit E Project Site Information (Mandatory, Scored) (Template provided in PHASE TWO application)

4. EVALUATION AND CONTRACT AWARD

4.1 EVALUATION PROCEDURE

Responsive applications will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of applications shall be accomplished by an evaluation team(s), to be designated by COMMERCE, which will determine the ranking of the applications.

COMMERCE, at its sole discretion, may elect to invite the top-scoring Applicants as finalists for an oral presentation.

The RFA Coordinator may contact the Applicant for clarification of any portion of the Applicant’s application. Applicants are not permitted to submit, or resubmit, any materials of any kind after the date and time stated in section 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES.

4.2 EVALUATION BREAKDOWN

The following weighting will be assigned to the application for evaluation purposes:

A. PHASE ONE: WEIGHTING

	Criteria	Points available
Part A: Applicant Information	Eligible Applicant Type	Pass/Fail
	New Awardees	20
Part B: Project Information	Project Location/Region, EVSE Gaps	20
	Minimum Qualification and Administrative Criteria	Pass/Fail
	Partnerships	20
Part C: Project Narrative	Proposed work and project description	50
	Project’s Benefits to Vulnerable Communities	40
	Community Engagement and Identified Needs	40
	Initiating Market Transformation Work and Need For Funding	40
	Long-Term Planning	20
	Phase One Total Available Points	250

The weights for PHASE ONE are guidelines for applicants on which questions the review team will prioritize. PHASE ONE will have a numerical score determined by reviewers and not shared publicly, but used to issue an “Encouraged” or “Discouraged” determination.

PHASE-ONE EVALUATION (ENCOURAGE/DISCOURAGE)

- **New Awardees (20 points available):** Applicants will receive full points if they have never successfully applied for and received an award from a previous COMMERCE CEF ETS program.
- **Project Area/EVSE Gaps (20 points available):** Projects will receive points in rural communities where gaps in EVSE infrastructure exist. Regional projects benefiting multiple communities will receive points.
- **Partnerships (20 points available):** Applications will receive points from partnerships of eligible applicants. To qualify, a primary applicant must submit letters of support from each party with PHASE TWO of their application. Applicants are not required to submit letters of support with a PHASE ONE application but should identify any partnerships for which a

description and letter will be turned in during PHASE TWO. Full evaluation of stated partnerships is reserved for PHASE TWO.

- **Proposed Work and Project Description (50 points available):** Applications will be evaluated based on how they meet the goals of this RFA for early stage market transformation. Descriptions should include all planned work, investments and/or strategies for demand-side load integration and management.
- **Project’s Benefits to Vulnerable Communities (40 points available):** Additional consideration will be awarded to projects benefiting vulnerable communities disproportionately burdened by air pollution, climate change impacts, lower median household income and limited access to transportation services and/or high cost of transportation. Points are available for projects that help communities become more resilient to climate impacts and/or generate renewable energy. Full points are reserved for responses that include specific metrics related to local health disparities, median income, cost of transportation, or identified specific climate impacts. Guidance on reporting these metrics can be found in EXHIBIT E: Project Site Information. However, a full project site information form is not required until PHASE TWO.
- **Community Engagement and Identified Needs (40 points available):** Projects that demonstrate community input, desire, and need for the project, especially from highly impacted and vulnerable communities, will receive points. Full points are reserved for applications that describe multiple existing or planned avenues of engagement with community members, how feedback has or will be collected, and how project managers have or will incorporate said feedback.
- **Initiating Market Transformation Work and Need for Funding (40 points available):** Applications will receive points if they can demonstrate gaps in early stage market transformation efforts in communities served by the project. Additional points are available for strong justification for the need for funding from COMMERCE to complete the project work.
- **Long-term Planning (20 points available):** Projects will be evaluated based on any identified plans to carry forward work initiated through this program. This could include identifying any further funding sources to implement developed plans, and/or any management and implementation planning beyond the lifecycle of this program.

B. PHASE TWO: WEIGHTING

	Criteria	Points available
Part A	Equity Narrative	70
	Regional Collaboration and Long Term Planning	70
Part B	Technical Proposal (SCORED), Cost Proposal/Match (NOT SCORED)	50
Part C	Management Proposal (SCORED)	40
Exhibit C	Worker’s Rights Certification without individual arbitration clause	5% Bonus to Overall Score
	Phase Two Total Available Points	241.5

PHASE-TWO EVALUATION

- **Equity Narrative (70 points available)**
 - **New Awardees (Mandatory, Scored):** Applicants will receive full points if they have never successfully applied for and received an award from a previous COMMERCE CEF ETS program.
 - **Economic Benefits (Mandatory, Scored):** Lower Median Household Income in communities in the project area, submitted as a component of the PHASE TWO application site information attachment, will receive more points. Applications will be further evaluated based on any expected local economic benefits to communities in the project site area(s).

- **Emissions Reductions and Environmental Exposures (Mandatory, Scored):** Higher [Washington Environmental Health Disparities](#) Ranks at project site(s), submitted as a component of the PHASE TWO application site information attachment, will receive more points. Applications will be further evaluated based on any other reductions in local pollution.
- **Climate Resilience and Mitigation (Mandatory, Scored):** Applications will be awarded points if they also help communities served by the project site(s) become more resilient to climate change impacts and/or contribute to mitigation strategies such as renewable energy generation.
- **Clean Transportation Access/Cost (Mandatory, Scored):** Higher transportation costs in the project area as qualified in the PHASE TWO application site information attachment, submitted as a component of the PHASE TWO application site information attachment, will receive more points. Applications will be further evaluated based on increased community access to transportation or expected cost reductions for community members.
- **Community Engagement and Benefits (Mandatory, Scored):** Applications will be evaluated based on demonstrated community engagement as part of project development. Projects that demonstrate community input, desire, and need for the project, especially from highly impacted and vulnerable communities, will receive points. Full points are reserved for applications that describe multiple completed or planned avenues of engagement with community members, how feedback has been or will be collected, and how project managers have or will incorporate said feedback.
- **Need for Funding (Mandatory, Scored):** Applications will be evaluated based on how well they demonstrate the need for funds from this program to complete project work. Descriptions may include budgetary information, entity size, the existence of any other funding opportunities, or any other reasonable argument to demonstrate that the project work could not be completed absent Commerce funding.
- **Initiating Market Transformation Efforts and Gaps (Mandatory, Scored):** Applications will receive points if the project site(s) are or will be located in communities who have not yet started any early-stage market transformation work.
- **Regional Collaboration and Long-term Planning (70 points available)**
 - **Partnerships (Optional, Scored):** Applications will receive points based on the number of partnerships with other eligible applicants, as well as a description of the nature of the partnership(s) including information about each partner's role in the project and demonstrated support. Applications will be evaluated based on the number of eligible partners and the relative involvement and commitment of each party, as well as benefits of the partnership to all partners and the project. Applicants must attach letters of support for each partner outlining their involvement and commitment included with the PHASE TWO application.
 - **Project Area (Mandatory, Scored):** Applications will receive additional points for regional planning projects based on the geographical size and number of vulnerable communities involved or impacted. Applications will also receive points if site(s) are located in rural communities where gaps in EVSE exist.
 - **Long-term Planning (Mandatory, Scored):** Applications will receive points if they include information about any long term plans to continue work after the lifecycle of the grant. This may include but is not limited to: Any other sources of public funding applicants intend to pursue to implement plans developed through this program, any private sector investments or plans for ongoing maintenance and operations, and/or any other information demonstrating a long-term strategy to continue program work.
 - **Synergy with State and Federal Priorities (Optional, Scored):** Applications will receive points if they can describe how the proposed project aligns with Washington State or Federal transportation electrification strategies and funding opportunities. Applications that identify plans to synergize with those opportunities will be more competitive.
- **Technical Proposal (50 Points available)**
 - **Project Approach/Methodology (Mandatory, Scored):** Applications must include a complete description of the Applicant's proposed approach and methodology for the

project. This section should convey Applicant's understanding of the high-level objectives and minimum qualifications of this RFA and how their project relates to these objectives. If the objectives described, including as a result of project development, engagement, implementation, or operation, is innovative, the Applicant may choose to highlight how they are innovative and why this innovation is important in the broader context of EVSE deployment in the state. If this project will be a catalyst for market transformation, the Applicant must include a description of the supportive research, data collection and projected results.

- **Work Plan (Mandatory, Scored):** Applications must include all project requirements including the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFA. The work plan must include detail concerning technical implementation of the project, as well as a complete plan for stakeholder education and outreach. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Applicant's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of COMMERCE staff.
- **Project Schedule (Mandatory, Scored):** Applications must include a project schedule indicating when the elements of the work will be completed. Include any design, consultation, construction, community engagement and ongoing maintenance and utilization milestones. The project schedule should use calendar dates based on the expected award date and must ensure that any deliverables requested are met within the proposed project performance period.
- **Outcomes and Performance Measurement (Mandatory, Scored):** Applications must describe in concrete terms the impacts/outcomes the Applicant proposes to achieve as a result of the delivery of these services including how these outcomes would be monitored, measured and reported to the state agency.
- **Deliverables (Mandatory, Scored):** Applications must include a clear description of all planned deliverables to COMMERCE during the grant lifecycle.
- **Utilization Plan (Mandatory, Scored):** This plan should reflect the Applicant's grasp of the market or end-use sector where their project type will be used, with a preference for quantitative or qualitative data. The plan should be consistent with any high-level utilization info presented in the project narrative, and include projected use and strategies included to sustain and improve utilization.
- **Cost Proposal**
 - The evaluation process is designed to award this solicitation not necessarily to the Applicant of least cost, but rather to the Applicant whose application best meets the requirements of this RFA. However, Applicants are encouraged to submit applications which are consistent with state government efforts to conserve state resources.
 - **Detailed Project Budget (Mandatory, Not Scored):** Applications must identify and justify all project costs.
 - **Match (Mandatory, Not Scored):** Applications must include all planned match expenses and a breakdown of financial responsibilities from each project partner, if applicable.
- **Management Proposal (40 points available)**
 - **Experience of the Applicant (Mandatory, Scored):** Applications must indicate the experience of the applicant and any subcontractors in the following areas: education and outreach to end user groups and impacted communities, understanding of the State and Federal priorities regarding transportation electrification, and any other relevant experience that indicates the qualifications of the applicant and any subcontractors for the performance of the proposed project.
 - **Team and Project Management (Mandatory, Scored):** Applications must provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any partners or subcontractors. Applications must also identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. The Applicant must commit that staff identified in its application will actually perform the assigned work. The Applicant will inform

COMMERCE of any staff substitution.

- **Worker's Rights Certification (Mandatory, Scored):** Those Applicants that certify they Do Not require their employees to sign an individual arbitration clause as a condition of employment will receive an extra 5% added to their score.

COMMERCE reserves the right to award the contract(s) to the Applicant(s) whose application(s) is (are) deemed to be in the best interest of COMMERCE and the State of Washington.

COMMERCE reserves the right to consider geographic diversity when awarding funding.

4.3 ORAL PRESENTATIONS MAY BE REQUIRED

After evaluating the written applications COMMERCE may elect to schedule oral presentations of the finalists. Should oral presentations become necessary, COMMERCE will contact the top-scoring Applicant(s) from the written evaluation to schedule a date, time and location. Commitments made by the Applicant at the oral interview, if any, will be considered binding.

The scores from the written evaluation and the oral presentation combined together will determine the Apparent Successful Contractor.

4.4 NOTIFICATION TO APPLICANTS

COMMERCE will notify the Apparent Successful Contractor(s) of their selection in writing upon completion of the evaluation process. Applicants who were not selected for further negotiation or award will be notified separately by e-mail.

4.5 DEBRIEFING OF UNSUCCESSFUL APPLICANTS

Any Applicant who has submitted an application and received notice that they were not selected for contract award may request a debriefing. The request for a debriefing conference must be received by the RFA Coordinator within three (3) business days after the Unsuccessful Applicant Notification is e-mailed to the Applicant. Debriefing requests must be received by the RFA Coordinator no later than 5:00 PM, local time, in Olympia, Washington, on the third business day following the transmittal of the Unsuccessful Applicant Notification. The debriefing must be scheduled within three (3) business days of the request.

Discussion at the debriefing conference is strictly limited to the following:

- Evaluation and scoring of that Applicant's application;
- Any written comments from evaluators;
- Review of Applicant's final score in comparison with the other final scores without identifying the other Applicants or reviewing their applications.

Comparisons between applications or evaluations of the other applications is not allowed.

Debriefing conferences may be conducted on the telephone or by other electronic means and will be scheduled for a maximum of thirty (30) minutes.

4.6 PROTEST PROCEDURE

Protests may be made only by Applicants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Applicant is allowed five (5) business days to file a protest with the RFA Coordinator. Protests must be received by the RFA Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the fifth business day following the debriefing. Protests must be submitted by email.

Applicants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Applicants under this procurement.

All protests must be in writing, addressed to the RFA Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFA number, the grounds for the protest from the list below with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination, or conflict of interest on the part of an evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in this solicitation document or COMMERCE policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of an application or 2) COMMERCE'S assessment of its own and/or other agencies' needs or requirements.

Upon receipt of a protest, a protest review will be held by COMMERCE. The COMMERCE Director or an employee delegated by the Director who was not involved in the solicitation will consider the record and all available facts and issue a decision within ten (10) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Applicant that also submitted an application, such Applicant will be given an opportunity to submit its views and any relevant information on the protest to the RFA Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold COMMERCE'S action; or
- Find only technical or harmless errors in COMMERCE'S process and determine COMMERCE to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide COMMERCE options which may include:
 - Correct the errors and re-evaluate all applications, or
 - Reissue the solicitation document and begin a new process, or
 - Make other findings and determine other courses of action as appropriate.

If COMMERCE determines that the protest is without merit, COMMERCE will enter into a contract with the Apparent Successful Contractor(s). If the protest is determined to have merit, one of the options above will be taken.

4.7 SUCCESSFUL APPLICANTS

The following requirements will apply to successful Applicants who are awarded funds. In all cases, the most restrictive requirements apply.

REQUIREMENTS OF SUCCESSFUL APPLICANTS:

- Must maintain good standing with all applicable federal, state, local, and utility laws and requirements, including COMMERCE.
- Will maintain responsibility for the project for the duration of the contract and performance period.
- Is responsible for compliance with the contract for the duration of the performance period.
- Must follow all state and/or local procurement requirements that apply.
- The Applicant bears the responsibility in ensuring understanding and compliance, with all utility, local, state and federal requirements.
- Comply with contract, audit, and monitoring requirements, including scheduled site visits.
- Utilize the online invoicing process for reimbursement.
- Are responsible for all costs incurred prior to the execution of a contract and not have the expectation for reimbursement of those costs.
- Must comply with and ensure that all Grantees, Consultants and Partners comply with:
 - All applicable federal, state, local, and utility laws and requirements, including the requirements of this contract.
 - The applicable requirements of this Program and any resulting contract.

- Must ensure that all Grantees, Consultants and Partners:
 - Are responsible and qualified Applicants.
 - Are eligible to bid on public works projects (not debarred).
 - Are in and maintain good standing with all applicable federal, state, local, and utility laws and requirements, including COMMERCE.
- The Applicant bears the responsibility of ensuring all subcontractors and consultants understand and comply with all requirements.
- Must accurately and honestly represent the project within the application. COMMERCE reserves the right to revoke awards or terminate contracts inclusive of recuperating funding for projects that were misrepresented or fail to implement the project proposed during application.

PROJECT REQUIREMENTS:

- Project construction and operation must comply with applicable federal, state, local and utility laws and requirements.
- Project construction and operation must comply with State Cultural and Historic Resource requirements and Tribal consultation as required by [Governor's Executive Order 21-01](#).
- Must serve the intended purpose of the contract for the duration of the performance period.
- Must be completed within 24 months of execution of the grant agreement, exceptions may be negotiated on a case-by-case basis.
- All entities involved must comply with [Washington State Prevailing Wage](#).
- Comply with [Washington State Environmental Policy Act \(SEPA\)](#).

REPORTING REQUIREMENTS:

- Report on all pass-through funding using the provided reportable expense template under the [Governor's Diverse Business Inclusion Plan](#).
- All project data and its use will be:
 - Available to COMMERCE upon formal request.
 - Stored in a secure and reliable manner for at least six years from end of contract.
- Minimum data required to be provided quarterly as applicable are:
 - Updates on project outcomes and/or end-use data, as appropriate and negotiated between the grantee and COMMERCE.
- Shared with COMMERCE on recurring basis in a format agreed upon during contract negotiation.
- Recipients of funding must report to COMMERCE no less than quarterly regarding progress of the funded project, project outcomes upon completion of the project, budget projections and other information upon request by COMMERCE. Upon project completion, a final summary of the project is required.

5. RFA EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Diverse Business Inclusion Plan
- Exhibit C Workers' Rights Certification
- Exhibit D Assurances or Documentation of Secured Match Sample Letter
- Exhibit E Project Site Information
- Exhibit F Service Contract Format with General Terms and Conditions

EXHIBIT A: CERTIFICATIONS AND ASSURANCES

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the application to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract:

1. I/we declare that all answers and statements made in the application are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single application.
3. The attached application is a firm offer for a period of 60 days following receipt, and it may be accepted by COMMERCE without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this application, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this application or prospective contract, and who was assisting in other than his or her official, public capacity. If there are exceptions to these assurances, I/we have described them in full detail on a separate page attached to this document.
5. I/we understand that COMMERCE will not reimburse me/us for any costs incurred in the preparation of this application. All applications become the property of COMMERCE, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this application.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Applicant and will not be knowingly disclosed by him/her prior to opening, directly or indirectly, to any other Applicant or to any competitor.
7. I/we agree that submission of the attached application constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Applicant to induce any other person or firm to submit or not to submit an application for the purpose of restricting competition.
9. I/we grant COMMERCE the right to contact references and others who may have pertinent information regarding the ability of the Applicant and the lead staff person to perform the services contemplated by this RFA.
10. If any staff member(s) who will perform work on this contract has retired from the State of Washington under the provisions of the 2008 Early Retirement Factors legislation, his/her name(s) is noted on a separately attached page.
11. I/we are not debarred from doing business with the state of Washington or the United States.

We (check one):

- are** submitting proposed Contract exceptions. (See Section 2.13, Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.
- are not** submitting proposed Contract exceptions (*default if neither are checked*).

On behalf of the Applicant submitting this application, my signature below attests to the accuracy of the above statement as well as my authority to bind the submitting organization.

Signature of Applicant

Date

EXHIBIT B: DIVERSE BUSINESS INCLUSION PLAN

DIVERSE BUSINESS INCLUSION PLAN

	Yes	No
Do you anticipate using, or is your organization, a State Certified Minority Business?	<input type="checkbox"/>	<input type="checkbox"/>
Do you anticipate using, or is your organization, a State Certified Women's Business?	<input type="checkbox"/>	<input type="checkbox"/>
Do you anticipate using, or is your organization, a State Certified Veteran Business?	<input type="checkbox"/>	<input type="checkbox"/>
Do you anticipate using, or is your organization, a Washington State Small Business?	<input type="checkbox"/>	<input type="checkbox"/>

If you answered No to all of the questions above, please explain:

Please list the approximate percentage of work to be accomplished by each group:

Minority ___%
Women ___%
Veteran ___%
Small Business ___%

Please identify the person in your organization who will manage your Diverse Inclusion Plan responsibility:

Name: _____
Phone: _____
E-Mail: _____



EXHIBIT C: WORKERS' RIGHTS CERTIFICATION

**CONTRACTOR CERTIFICATION
EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS
WASHINGTON STATE GOODS & SERVICES CONTRACTS**

Pursuant to the Washington State Governor's Executive Order 18-03 (dated June 12, 2018), the Washington State Department of Commerce is seeking to contract with qualified entities and business owners who certify that their employees are not, as a condition of employment, subject to mandatory individual arbitration clauses and class or collective action waivers.

Solicitation No.: CEF ETS 2022

I hereby certify, on behalf of the organization identified below, as follows (check one):

- NO MANDATORY INDIVIDUAL ARBITRATION CLAUSES AND CLASS OR COLLECTIVE ACTION WAIVERS FOR EMPLOYEES. This organization does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

OR

- MANDATORY INDIVIDUAL ARBITRATION CLAUSES AND CLASS OR COLLECTIVE ACTION WAIVERS FOR EMPLOYEES. This organization requires its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

OR

- This organization certifies it has no employees.



I hereby certify, under penalty of perjury under the laws of the State of Washington, that the certifications herein are true and correct and that I am authorized to make these certifications on behalf of the organization listed herein.

NAME: _____
Print full legal entity name of organization

By: _____
Signature of authorized person Printed Name

Title: _____ Place: _____
Title of person signing certificate Print city and state where signed

Date: _____

Return to RFA Coordinator as part of your complete response.



EXHIBIT D: ASSURANCES OR DOCUMENTATION OF REQUIRED MATCH SAMPLE LETTER

ASSURANCES OR DOCUMENTATION OF REQUIRED MATCH SAMPLE

Submit letters on letterhead of business and/or organization with the non-state funding you are seeking to match.

Text can be modified but needs to address the following basic information.

Non-state Funding Letter of Intent to Commit

(date)

(applicant name, title and address)

Dear (applicant chief executive officer),

I am pleased to confirm our commitment of (\$xxxxxx) towards *(project title)*.

Please note (Additional instructions for items to address in the match funding commitment letter):

1. Please notify us once the match is fulfilled. You may subsequently draw upon our committed funds in whole or in part (revise per standard practice of funding organization).
2. (Add any unique conditions and/or expectations of non-state funding source here such as subject to completion of due diligence.)
3. Please sign and return a copy of this intent to commit letter to verify your acceptance of this offer and the conditions herein.

Sincerely,

(name and title of person authorized to make offer)

Accepted by: _____ on _____
(name) *(date)*

Authorized Signature: _____

EXHIBIT E: PROJECT SITE INFORMATION

Project Site Information (Applicant must use template provided with PHASE TWO application): For the project site(s) and/or planning area as described by the applicant

- **Project Location:** Provide street addresses for all project sites. If the project spans across an area, please list the city or region in Washington, or provide an explanation. Be sure to include all information below for the full project area, including multiple towns or cities if applicable.
- **Median Income:** ACS 2018 5-year household median income levels for the city(s) or town(s) where the site is located
 - Go to <https://data.census.gov/cedsci/>.
 - Enter the name of your city or town and the word “income” in the search bar. If the project spans multiple cities or towns, please include information for all that are relevant.
 - Click on the first search result under the heading “Explore Data” near the top of the page.
 - Near the top of the page, use the “Product:” dropdown menu to select the “2018: ACS 5-Year Estimates Subject Tables” data set.
 - Scroll down to learn your municipality’s Estimate for Median Income (dollars) for Households.
 - Note: If an Applicant’s city- or town-level data is unavailable from the source provided above, an Applicant is permitted to substitute county-level ACS 5-Year Estimates instead. If city- or town-level data is available, the Applicant must use that data to determine eligibility for this reduced match option.
- **Environmental Health Disparities:** Environmental Health Disparities v1.1 rank for the census tract where the site is located
 - Based on the Washington Department of Health’s Washington Tracking Network tool
 - <https://fortress.wa.gov/doh/wtn/wtnibl/>
 - Click “Environmental Health Disparities V 1.1” on the left-hand column
 - Locate the exact location of the project’s site(s) and click that tract (optionally use the location tool to search for the site’s physical address)
 - The rank is shown in the left-hand column adjacent to “Environmental Health Disparities V 1.1”
- **Environmental Exposures:** The “Environmental Exposures” rank for the census tract where the site is located
 - Based on the Washington Department of Health’s Washington Tracking Network tool
 - <https://fortress.wa.gov/doh/wtn/wtnibl/>
 - Click “Environmental Health Disparities V 1.1” on the left-hand column, and then click “Environmental Exposures”
 - Locate the exact location of the project’s site(s) and click that tract (optionally use the location tool to search for the site’s physical address)
 - The rank is shown in the left-hand column adjacent to “Environmental Exposures”
- **Transportation Costs:** For each project site or region, enter the transportation cost rank based on the DOH WTN “transportation expense” rank:
 - Based on the Washington Department of Health’s Washington Tracking Network tool
 - <https://fortress.wa.gov/doh/wtn/wtnibl/>
 - Click “Environmental Health Disparities V 1.1” on the left-hand column, then click “Socioeconomic factors”, then click “Transportation Expense”
 - Locate the exact location of the project’s site(s) and click that tract (optionally use the location tool to search for the site’s physical address)
 - The rank is shown in the left-hand column adjacent to “Transportation Expense”



EXHIBIT F: SERVICE CONTRACT FORMAT WITH GENERAL TERMS AND CONDITIONS

Grant Agreement with

<Individual or Grantee organization here>

through

<Name of COMMERCE **program** issuing/administering Grant here>

For

<List project title, if applicable, and/or describe the primary purpose for the funding or the intended outcome/deliverables in approx. 25 words or less>

Start date: <Month> <Day>, <Year>

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Attachment A, Scope of Work

Attachment B, Budget

FACE SHEET

Contract Number: <Insert Number>

Washington State Department of Commerce

<Select Division, Board, or Commission>

<Insert Unit or Office>

<Insert Program(s) and/or Project(s)>

1. Grantee <Insert legal name> <Insert mailing address> <Insert physical address> <Insert location>		2. Grantee Doing Business As (optional) <Insert DBA name> <Insert DBA mailing address> <Insert DBA physical address> <Insert DBA location>	
3. Grantee Representative <Insert name> <Insert title> <Insert phone> <Insert FAX> <Insert e-mail>		4. COMMERCE Representative <Insert name> <Insert mailing address> <Insert title> <Insert physical address> <Insert phone> <Insert location> <Insert FAX> <Insert e-mail>	
5. Grant Amount <Insert \$ amount>	6. Funding Source Federal: <input type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date <Insert date>	8. End Date <Insert date>
9. Federal Funds (as applicable) <Insert \$ amount>	Federal Agency: <Insert name>		CFDA Number <Insert number>
10. Tax ID # <Insert number>	11. SWV # <Insert number>	12. UBI # <Insert number>	13. UEI # <Insert number>
14. Grant Purpose <Briefly describe Grant purpose>			
COMMERCE, defined as the Department of Commerce, and the Grantee, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grant Terms and Conditions including Attachment "A" - <insert title>, Attachment "B" - <insert title>, Attachment "C" - <insert title>, <etc.>			
FOR GRANTEE _____ <insert name>, <insert title> _____ Date		FOR COMMERCE _____ <insert name>, <insert title> _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	

Last revision 10/13/2020

**SPECIAL TERMS AND CONDITIONS
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1. GRANT MANAGEMENT

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

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

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

2. COMPENSATION

COMMERCE shall pay an amount not to exceed (\$) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Grantee's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

EXPENSES

Grantee shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Grantee for authorized expenses shall not exceed \$, which amount is included in the Grant total above.

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

3. BILLING PROCEDURES AND PAYMENT

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

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 Grant Number . 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 Grantee.

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

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

Invoices and End of Fiscal Year

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

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

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

Duplication of Billed Costs

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

Disallowed Costs

**SPECIAL TERMS AND CONDITIONS
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The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subgrants/subcontracts.

COMMERCE may, in its sole discretion, withhold ten percent (10%) from each payment until acceptance by COMMERCE of the final report or completion of the project, etc.

4. SUBCONTRACTOR DATA COLLECTION

Grantee will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant 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.

5. INSURANCE

The Grantee shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Grantee or Subgrantee/subcontractor, or agents of either, while performing under the terms of this Grant. Failure to maintain the required insurance coverage may result in termination of this Grant.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Grantee shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

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

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

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

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

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

Professional Liability, Errors and Omissions Insurance. The Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Grantee and licensed staff employed or under contract to the Grantee. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Grantee for the purpose of receiving or depositing funds into program accounts or issuing

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financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

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

6. FRAUD AND OTHER LOSS REPORTING

Contractor/Grantee shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

7. ORDER OF PRECEDENCE

In the event of an inconsistency in this Grant, 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

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1. DEFINITIONS

As used throughout this Grant, 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. "Grant" or "Agreement" means the entire written agreement between COMMERCE and the Grantee, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the Grantee.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subgrantee/subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms "subgrantee/subcontractor" refers to any tier.
- H. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- I. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the grant only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

2. ACCESS TO DATA

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

3. ADVANCE PAYMENTS PROHIBITED

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

4. ALL WRITINGS CONTAINED HEREIN

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

5. AMENDMENTS

This Grant 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.

**GENERAL TERMS AND CONDITIONS
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6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the “ADA” 28 CFR Part 35

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

7. ASSIGNMENT

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

8. ATTORNEYS’ FEES

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

9. 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.

10. CONFLICT OF INTEREST

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

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Grantee and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the Commerce program

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administering this Grant, including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held and separation date. If it is determined by COMMERCE that a conflict of interest exists, the Grantee may be disqualified from further consideration for the award of a Grant.

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

11. COPYRIGHT

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.

12. DISPUTES

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

The request for a dispute hearing must:

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

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

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

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

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

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

13. DUPLICATE PAYMENT

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

14. GOVERNING LAW AND VENUE

This Grant 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.

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 attorneys' fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

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

The 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.

16. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Grant. 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.

17. INDUSTRIAL INSURANCE COVERAGE

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

18. LAWS

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

19. LICENSING, ACCREDITATION AND REGISTRATION

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

20. LIMITATION OF AUTHORITY

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

21. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

22. PAY EQUITY

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

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

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

23. 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.

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24. 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.

25. RECAPTURE

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

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

26. 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.

27. REGISTRATION WITH DEPARTMENT OF REVENUE

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

28. 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.

29. SAVINGS

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

30. SEVERABILITY

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

31. SITE SECURITY

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

32. SUBGRANTING/SUBCONTRACTING

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

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

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

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

33. SURVIVAL

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

34. TAXES

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

35. TERMINATION FOR CAUSE

In the event COMMERCE determines the Grantee has failed to comply with the conditions of this Grant in a timely manner, COMMERCE has the right to suspend or terminate this Grant. Before suspending or terminating the Grant, COMMERCE shall notify the Grantee in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Grant may be terminated or suspended.

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

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

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

36. TERMINATION FOR CONVENIENCE

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

37. TERMINATION PROCEDURES

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

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

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

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

- A. Stop work under the Grant on the date, and to the extent specified, in the notice;
- B. Place no further orders or subgrants/subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Grantee under the orders and subgrants/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 subgrants/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 Grant had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this Grant, which is in the possession of the Grantee and in which COMMERCE has or may acquire an interest.

38. TREATMENT OF ASSETS

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

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

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- D.** The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant

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

39. WAIVER

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

Attachment A: Scope of Work

Attachment B: Budget