



**STATE OF WASHINGTON
DEPARTMENT OF COMMERCE**

REQUEST FOR PROPOSALS (RFP)

RFP NO. 24-96911-CBO

NOTE: Please read this entire document before submitting a response. Responses that do not meet one or more requirement stated herein may be disqualified and not scored. If you download this RFP from any source other than the Washington Electronic Business Solution (WEBS) website, you are responsible for sending your name and e-mail address to the RFP Coordinator to request that your organization receive any amendments and question and answer documents.

PROJECT TITLE: Community Based Organization Planning and Predesign Capital Equity Program

PROPOSALS DUE: August 2, 2024 at 11:59 PM, Pacific Time, Olympia, WA

ESTIMATED TIME PERIOD FOR CONTRACT: September 21, 2024 – June 30, 2025.

PROPOSER ELIGIBILITY: Proposers must meet all minimum qualifications; see page 8 for a detailed description of each requirement.

FUNDING SOURCE AND METHOD: This is state funding. Payments will be made on a **reimbursement basis** for deliverables accepted and/or allowable time and expenses.

CONTENTS OF THE REQUEST FOR PROPOSALS:

1. Introduction
2. General Information for Proposers
3. Proposal Contents
4. Evaluation and Award
5. Exhibits

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1. INTRODUCTION

1.1 PURPOSE AND BACKGROUND

Purpose

The Washington Department of Commerce, hereafter called "COMMERCE," is initiating this Request for Proposals (RFP) to solicit Proposals from qualified Community-Based Organizations (CBO) and Federally Recognized Tribes interested in applying for funding to assist them with planning, predesign, and preconstruction services necessary for them to subsequently apply and receive funds for a COMMERCE capital grant or loan program. COMMERCE intends to award multiple contract(s) to provide the services and end goals described in this RFP.

IMPORTANT NOTES: 1) this planning, predesign, and preconstruction grant is not a guarantee that an organization or Tribe that subsequently applies for a COMMERCE capital grant or loan will be awarded that capital funding; 2) the eligible organization types are listed in section 3.3; and 3) the anticipated award period is September 2024-June 2025.

Background

The Washington Legislature recognizes that organizations face various barriers when accessing COMMERCE's capital grant/loan policies and programs. CBOs, particularly those in small, rural, and marginalized or underserved communities, as well as Federally Recognized Tribes, are most affected by barriers to applying and receiving capital program funding.

One identified barrier is access to funds for and assistance in the planning, predesign, and preconstruction activities needed to win a competitive capital grant/loan successfully. Not all capital programs at COMMERCE offer funds for planning, predesign, preconstruction, or technical assistance, which creates systems where the same well-resourced organizations are consistently awarded capital grants/loans year after year. Therefore, access to planning, predesign and preconstruction funds is imperative to support CBOs, Tribes and marginalized/underserved communities' participation in state capital funding programs. This RFP seeks to provide planning, technical assistance, preconstruction, and predesign grants for eligible organizations that may have pipeline eligible projects for COMMERCE's capital grant/loan programs, which in turn would directly benefit populations and communities that have been historically excluded or underserved by capital grant/loan programs.

COMMERCE is offering this RFP as a partnership between the Planning and Predesign Capital Equity Program (in the Local Government Division) and the Capacity Building, Outreach program (in the Housing Division) in order to remove unnecessary barriers and encourage widespread applications. As a result, the RFP not only focuses on supporting organizations and Tribes with candidate affordable housing projects for consideration by COMMERCE's Housing Trust Fund and other affordable housing projects, but also those with candidate projects for other capital funding programs within COMMERCE as well.

This RFP seeks to support eligible organizations that are interested in pursuing capital funding utilizing the following COMMERCE programs:

COMMERCE State Affordable Housing Capital programs (grants and loans):

- [Apple Health and Home](#)
- [Housing Trust Fund – Homeownership and Multifamily Housing](#)
- [Housing Preservation Program](#)

COMMERCE Federal Affordable Housing Capital programs (grants and loans):

- [HOME Rental Development Program](#)
- [National Housing Trust Fund Program](#)

COMMERCE Community Capital Facilities Grants (grants):

- [Building Communities Fund](#)
- [Building for the Arts](#)
- [Youth Recreational Facilities](#)
- [Early Learning Facilities](#)

- [Behavioral Health Facilities](#)

Please note: this grant is not a guarantee an organization or Tribe will receive subsequent funding from the capital grants/loans listed above. This grant is intended to provide funding for the planning, predesign, and preconstruction activities necessary for an organization or Tribe to be prepared to apply for one of the capital grants/loans listed above.

GRANT WRITING ASSISTANCE FOR THIS RFP IS AVAILABLE

To reduce barriers to this grant, COMMERCE is offering grant writing virtual workshops for this RFP. This is a first come, first served basis. Please click [here](#) to register for grant writing assistance for this RFP. If you have questions regarding grant writing assistance for this RFP, please contact Alice Zillah Alice.Zillah@commerce.wa.gov

1.2 OBJECTIVES AND SCOPE OF WORK

The availability of the funds under this RFP is solely for CBOs and Tribes to conduct the planning, predesign, and preconstruction activities necessary to subsequently apply for a COMMERCE capital grant/loan. Therefore, the objectives and scope of work for this project are limited to the planning, predesign, and preconstruction activities in capital projects. The eligible planning, predesign, and preconstruction activities include, but are not limited to:

Eligible Activities

1. Project Management
2. Site Planning and Design
 - a. Architectural and site planning
 - b. Geotechnical studies
 - c. Environmental site assessment
 - d. Environmental reviews
 - e. Site infrastructure assessments
 - f. Planning construction and materials management
 - g. Public and stakeholder engagement including with local planning and economic development agencies
3. Budgeting
 - a. Project feasibility analysis
 - b. Construction cost estimates
 - c. Project budget analysis
 - d. Program Analysis
4. Capital Funding and Financing Strategy
 - a. Securing matching resources
 - b. Maximizing local government contributions
 - c. Longevity planning
 - d. Sharia-compliant financing
5. Plan and policy coordination
 - a. Assistance with compliance with the strategic, business, or master plans
 - b. Community readiness assessment

These funds are limited to the planning, predesign, preconstruction activities that occur prior to submitting a capital grant/loan application and receiving a capital funding award. As a result, **ineligible activities** include, but are not limited to:

1. Costs incurred by applicants associated with preparing an application in response to this RFP
2. Cost incurred by applicants prior to the effective date of the grant agreement
3. Site, land or real estate purchase or acquisition
4. Construction costs
5. Grant writing for COMMERCE capital grant/loan programs

COMMERCE reserves its discretions to determine which services are considered eligible or ineligible based on these guidelines.

1.3 MINIMUM QUALIFICATIONS

Eligible grant recipients

Funds awarded under this RFP are intended support CBOs, Federally Recognized Tribes, and marginalized or underserved communities' participation in state capital funding programs. As a result, in order to be considered an eligible applicant under this RFP, the applicant must meet the criteria of one (1) through 3 (three) (also see section 3.3):

1. Be licensed to conduct businesses in the State of Washington.
2. Be an eligible applicant for one or more of the COMMERCE capital grant/loan program identified above in section 1.1.
3. Have not received a COMMERCE competitive capital program award within the past two years.*
4. The applicant is meeting one or more of the following criteria:
 - (a) Applicant is operating in a Rural County ([definition provided here](#));
 - (b) Applicant is a Federally Recognized Tribe;
 - (c) Applicant is serving marginalized or underserved communities without a history of receiving capital funding from the programs listed in section 1.1. above**;
 - (d) Other applicant types. NOTE that other organizations are eligible to apply, however, COMMERCE will prioritize the applicant types in (a)-(c) above.

* Non-competitive awards such as capital direct appropriations within the past two years will not impact an applicant's eligibility under this RFP. For housing-related applications, COMMERCE will be prioritizing applications from organizations that have not received a competitive affordable housing capital award within the last 7 years.

**For applicants proposing affordable housing activities in their applications, COMMERCE will prioritize those communities that have been disproportionately impacted by homelessness, housing instability and lack of affordable housing.

1.4 FUNDING

COMMERCE has budgeted an amount no less than \$5.45 million total for this project. A minimum of \$2 million of these dollars are specifically for housing-related planning, predesign, preconstruction activities, which would assist the organization or Tribe with pursuing of a future capital award from the Affordable Housing Programs authorized in RCW 43.185A.

Awards will not exceed a maximum of \$200,000. We expect most awards to be between \$50,000 and \$200,000, but awards for less than \$50,000 will be considered. Proposals in excess of \$200,000 will be considered non-responsive and will not be evaluated. In the event additional funding becomes available during the period of performance, any contract awarded may be amended to provide for additional related services. Additional funding is not guaranteed.

Any contract awarded as a result of this RFP is contingent upon the availability of funding.

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about September 21, 2024, and to end on June 30, 2025; 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 (RCW). Proposers are encouraged to familiarize themselves with the requirements prior to submitting a Proposal that includes current or former state employees.

1.7 DEFINITIONS

Definitions for the purposes of this RFP include:

Apparent Successful Contractor/Bidder/Vendor/Grantee/Awardee: The Proposer selected to perform the anticipated services, subject to successful completion of contract negotiations and execution of a written contract.

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

Contract: A written, legally binding agreement to perform the services proposed, also called a Grant or Interagency Agreement.

Contractor: Individual or organization whose Proposal has been accepted by COMMERCE and is awarded a fully executed, written contract. Also called Grantee, Awardee, Recipient, or Vendor.

Diverse Business Inclusion Plan: Definition and description provided on page 8, in section 2.8.

Exhibit: Document attached to this RFP, also referred to as Attachment.

Proposal: A formal offer submitted in response to this Request for Proposals.

Proposer: Individual, firm, organization, company, or other entity or group of entities that submits a Proposal to attain a contract with COMMERCE.

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

Rural County: means a county with a population density of less than 100 persons per square mile or a county smaller than 225 square miles as determined by the office of financial management pursuant to RCW [43.62.035](#). Affordable housing capital projects authorized under RCW 43.185A use the "Rural" definition found in the Housing Trust Fund Handbook (see Glossary) [{HTF Handbook Version 3-4-2021.pdf | Powered by Box}](#). **However, for purposes of predevelopment grants for both housing and community facilities, Commerce will use the rural area definition by county (available here: [Population density and land area criteria used for rural area assistance and other programs | Office of Financial Management \(wa.gov\)](#)).**

Small business: An in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either: (i) Fifty or fewer employees; or (ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the Department of Revenue over the previous three consecutive years; or (b) Is certified with the Office of Women and Minority Business Enterprises under chapter 39.19 RCW.

Veteran-owned business: A business certified by the Washington Department of Veteran Affairs.

Minority-owned business: A business certified by the Washington State Office of Minority and Women's Business Enterprises. OMWBE defines a minority as African American/Black, Hispanic/Latino, Asian American, Pacific Islander, Native Hawaiian, Alaska Native, or Native American.

Woman-owned business: A business certified by the Washington State Office of Minority and Women's Business Enterprises.

1.8 ADA

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

2. GENERAL INFORMATION FOR PROPOSERS

2.1 RFP COORDINATOR

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

Name	Alice Zillah
E-Mail Address	Alice.Zillah@commerce.wa.gov

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

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	June 3, 2024
Question & answer period	June 3 – July 1, 2024
Answers to Q&A posted no later than	July 3, 2024
Pre-Proposal Conference	June 10, 2024, 11:00a to 12:00p PST
<i>Tribal-only Pre-Proposal Conference</i>	<i>June 11, 2024, 1:00p to 2:00p PST</i>
Proposals due	August 2, 2024, at 11:59 PM PST
Evaluate proposals	August 5 – September 3, 2024
Conduct virtual presentations with finalists, if required	September 3 and 4, 2024
Announce “Apparent Successful Grantee” and send notification via e-mail to unsuccessful Proposers	September 5, 2024
Hold debriefing conferences (if requested)	September 11-13, 2024
Negotiate contract	September 6, 2024
Earliest date contract may be signed	September 21, 2024

COMMERCE reserves the right to revise the above schedule.

2.3 QUESTION AND ANSWER PERIOD

COMMERCE will accept questions about this RFP sent to the RFP Coordinator at the email address listed in Section 2.1 during this period. Questions should not identify the submitting person or organization. COMMERCE will answer all questions in a Q&A document posted no later than the date identified in Section 2.2.

2.4 PRE-PROPOSAL CONFERENCES

A pre-proposal conference will be held on **June 10** at **11:00am to 12:00pm** Pacific Time. The pre-proposal conference will be virtual only, on Zoom. To register for the conference, please select this link: <https://wastatecommerce.zoom.us/j/86067075621?pwd=bkdqL0pvUzlsZjRKNEYxdzI3V2Q0dz09> Email the RFP Coordinator for questions about the pre-proposal conference. All prospective Proposers are encouraged attend; however, attendance is not mandatory.

A Tribal only pre-proposal conference will be held on **June 11** at **1:00pm to 2:00pm** Pacific Time. The pre-proposal conference will be virtual only, on Zoom. To register for the conference, please select this link: <https://wastatecommerce.zoom.us/j/83413710091?pwd=aFUa2lY6z4chzFC7Y3lb6Ali9ld8Sy.1> Email the RFP Coordinator for questions about the pre-proposal conference. All prospective Tribal Proposers are encouraged attend; however, attendance is not mandatory.

COMMERCE will be bound only to COMMERCE written answers to questions. Questions arising at the pre-proposal conference will be documented and answered in written form. A copy of the questions and answers will be sent to each prospective Proposer that has requested the RFP Coordinator to send them RFP addenda.

2.5 SUBMISSION OF PROPOSALS

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of COMMERCE and will not be returned.

ELECTRONIC PROPOSALS:

The proposal must be **received by the RFP Coordinator** no later than 11:59PM, Pacific Time, on **August 2, 2024**.

Proposals must be submitted electronically as an attachment to an e-mail to the RFP Coordinator, at the e-mail address listed in Section 2.1. Attachments to e-mail shall be in Microsoft Word format or PDF. Zipped files cannot be received by COMMERCE and cannot be used for submission of Proposals. The Submittal Letter and the Certifications and Assurances form must have a scanned or digital signature of the individual within the organization authorized to bind the Proposer to the offer. COMMERCE does not assume responsibility for problems with Proposer's e-mail. If COMMERCE email is not working, appropriate allowances will be made.

Proposals may not be transmitted using facsimile transmission.

Proposers should allow sufficient time to ensure timely receipt of the proposal by the RFP Coordinator. **Late proposals 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. Proposals should be sent in one email, however if more than one email is needed all must be received by the due date and time. Exceptions will not be made for partial submissions. Requests for deadline extensions will not be granted. All Proposals and any accompanying documentation become the property of COMMERCE and will not be returned.

2.6 PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

Proposals submitted in response to this RFP shall become the property of COMMERCE. All Proposals received shall remain confidential until the Apparent Successful Contractor is announced; thereafter,

all Proposals are subject to disclosure as provided for in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the proposal that the Proposer 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 Proposer 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 proposal exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Proposer has marked as "Proprietary Information," COMMERCE will notify the Proposer of the request and of the date that the records will be released to the requester unless the Proposer obtains a court order enjoining that disclosure. If the Proposer fails to obtain the court order enjoining disclosure, COMMERCE will release the requested information on the date specified. If a Proposer 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 Proposer's information per the court order.

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

2.7 REVISIONS TO THE RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be provided via e-mail to all individuals who have made the RFP Coordinator aware of their interest. Addenda may also be published on Washington's Electronic Business Solution (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 RFP and will be placed on the website. Such addenda will also be published anywhere the RFP is posted, including on COMMERCE'S public webpage, located at <http://www.commerce.wa.gov/serving-communities/current-opportunities/>.

You may also send your name and e-mail address to the RFP Coordinator to request to receive any NOFO addenda.

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

2.8 DIVERSE BUSINESS INCLUSION PLAN

Proposers are required to submit a Diverse Business Inclusion Plan with their Proposal describing in good faith their aspirational goals for subcontractor types. 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. No minimum level of minority- or women-owned business, Washington Small Businesses, 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

Proposals must provide 60 days for acceptance by COMMERCE from the due date for receipt of proposals.

2.10 COMPLAINT PROCESS

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

- a) The solicitation unnecessarily restricts competition;
- b) The solicitation evaluation or scoring process is unfair; or
- c) 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 proposal response deadline. The complaint must meet the following requirements:

- a) The complaint must be in writing;
- b) The complaint must be sent to the RFP coordinator in a timely manner;
- c) The complaint should clearly articulate the basis for the complaint; and
- d) The complaint should include a proposed remedy.

The RFP 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 is final. There is no appeal process.

2.11 RESPONSIVENESS

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

Disqualified Proposers will be notified after the announcement of the Apparently Successful Contractor(s).

Disqualified Proposers will be informed of the reason for disqualification; this shall constitute a debriefing conference for the purposes of Section 4.6, Protest Procedure.

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 Proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Proposer can propose. There will be no best and final offer procedure. COMMERCE reserves the right to contact a Proposer for clarification of its Proposal.

The Apparent Successful Contractor should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some, or all, of the Proposer's Proposal. The Proposal will become a part of the official procurement file on this matter without obligation to COMMERCE.

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 example 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 Proposal. In no event is a Proposer to submit its own standard contract terms and conditions in response to this RFP. All proposed edits to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances form. COMMERCE will review requested edits 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 Proposer in preparation of a Proposal submitted in response to this RFP, travel to or conduct of a presentation, or any other activities related to responding to this RFP.

2.15 NO OBLIGATION TO CONTRACT

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

2.16 REJECTION OF PROPOSALS

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

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 RFP. No services may begin and 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 must have or obtain a Statewide Vendor Number (SWV) from the Office of Financial Management to be paid by COMMERCE. For more information, visit: www.ofm.wa.gov.

2.19 INSURANCE COVERAGE

The Contractor is to furnish COMMERCE 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 if requested.

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 evidence in the form of a Certificate of Insurance that insurance shall be provided, and, if requested, a copy shall be forwarded to COMMERCE within fifteen (15) days of the contract effective date. Standard insurance requirements are included within the example contract and its special terms and conditions attached as Exhibit D.

3. PROPOSAL CONTENTS

Proposals must be written in English and submitted electronically to the RFP Coordinator (alice.zillah@commerce.wa.gov) in the order noted below:

1. Letter of Submittal
2. Certifications and Assurances (Exhibit A to this RFP)
3. Eligibility Threshold Criteria Responses
4. Prioritization Criteria
5. Project Background, Approach, And Outcomes
6. Project Team, Qualifications, And Experience
7. Cost Proposal
8. Diverse Business Inclusion Plan (Exhibit B to this RFP)
9. Workers' Rights Certification (Exhibit C to this RFP)

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the Proposal, but should also assist the Proposer in preparing a thorough response.

Items marked “mandatory” must be included as part of the Proposal to be considered responsive, however, these items are not scored. Items marked “scored” are those that are awarded points as part of the evaluation conducted by the evaluation team.

3.1 LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal must be signed and dated by a person authorized to legally bind the Proposer to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship.

Along with introductory remarks, the Letter of Submittal must include the following information about the Proposer and any proposed subcontractors:

- A. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
- B. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
- C. Legal status of the Proposer (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
- D. Federal Employer Tax Identification number or Social Security number **and** the Washington Uniform Business Identification (UBI) number issued by the state of Washington. If the Proposer does not have a UBI number, the Proposer must state that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor. Indicate if a Federally Recognized Tribe not required to be licensed.
- E. Location from which the Proposer would operate.
- F. Identify any state employees or former state employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Proposer's organization. If following a review of this information COMMERCE determines that a conflict of interest exists, the Proposer may be disqualified from further consideration.

3.2 CERTIFICATIONS AND ASSURANCES (MANDATORY)

The Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Proposer to a contractual relationship, e.g., the President or Executive

Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Proposers wishing to submit any proposed contract edits must indicate so on this form (see Section 2.14).

3.3 ELIGIBILITY THRESHOLD CRITERIA RESPONSES (MANDATORY)

Important note: Organizations or Tribes must be eligible for the COMMERCE capital grant/loan they are interested in to receive the planning, predesign, and preconstruction funds. Please carefully review the eligibility criteria identified in section 1.3 and answer these eligibility questions to provide evidence that your organization is eligible for a grant under this RFP.

1. Is your organization licensed to do business in the State of Washington? Yes or No.
 - a. If no, for Tribal organizations and businesses: is your organization a registered business with a Federally Recognized Tribe? Yes or No.
 - b. If no to both, your organization must 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. Yes or No
2. Is your organization a Federally Recognized Tribe? Yes or No.
3. Is your organization a non-profit organization? Yes or No.

If answered no to all the options listed above in questions one (1) two (2), and three (3), you may not meet the minimum qualifications for this proposal, please do not continue and contact Alice.Zillah@commerce.wa.gov.

4. Please select one of the following eligible grant recipient types below. Definitions are provided in section 1.7.
 - (e) Applicant is operating in a Rural County ([definition provided here](#));
 - (f) Applicant is a Federally Recognized Tribe;
 - (g) Applicant is serving marginalized or underserved communities without a history of receiving capital funding from the programs listed in section 1.1. above**;
 - (h) Other applicant types. NOTE that other organizations are eligible to apply, however, COMMERCE will prioritize the applicant types in (a)-(c) above.

If your organization does not meet one of the eligible grant recipient types listed in question four (4), you do not meet the minimum qualifications for this proposal, please do not continue and contact Alice.Zillah@commerce.wa.gov.

5. Have you received a competitive COMMERCE Capital Awards through a competitive process between 2022 and 2024? Yes or No.

If you answered yes to question five (5), you may not meet the minimum qualifications for this proposal; please do not continue and contact Alice.Zillah@commerce.wa.gov.

Please review the eligibility requirements of the COMMERCE Capital Funding program(s) you anticipate leveraging for your proposed project.

6. After reviewing the eligibility requirements of the COMMERCE Capital Funding program(s), provide at least one specific Capital funding program you anticipate leveraging for your proposed project.

Note: If you do not provide at least one specific Capital funding program you anticipate leveraging for your proposed project, your proposal may be considered incomplete and may not be scored.

COMMERCE State Affordable Housing Capital programs (grants and loans):

- [Apple Health and Home](#)
- [Housing Trust Fund – Homeownership and Multifamily Housing](#)
- [Housing Preservation Program](#)

COMMERCE Federal Affordable Housing Capital programs (grants and loans):

- [HOME Rental Development Program](#)
- [National Housing Trust Fund Program](#)

COMMERCE Community Capital Facilities Grants (grants):

- [Building Communities Fund](#)
- [Building for the Arts](#)
- [Youth Recreational Facilities](#)
- [Early Learning Facilities](#)
- [Behavioral Health Facilities](#)

3.4 PRIORITIZATION CRITERIA (SCORED)

The following criteria reflect COMMERCE's priorities of supporting organization with that have faced barriers to accessing capital funding programs. Proposers that are new to state contracting will receive an extra 5% of awarded points added to their final score.

We are prioritizing organizations that have not received funding from a COMMERCE capital program.

Please answer the following questions:

1. Have you applied to for Commerce capital program funding in the past 7 years? (Y/N)
 - a. Select the option(s) that best describe your previous experience with Commerce competitive capital funding programs
 - i. My organization has not received Commerce capital funding within the past 7 years
 - ii. My organization has not received Commerce capital funding within the past 2 years

If you have received capital awards within the past seven years, please list all each, and specify program and award year.

Note: Organizations that have received Commerce competitive capital program awards within the past 2 year are not eligible for funding under this RFP. Non-competitive awards such as direct appropriation for capital projects should not be included in the responses above.

Does your organization have site control: Indicate all that apply: my organization/agency has...

1. Identified a property(ies) for the proposed project? (Y/N)
2. Ownership of the property being proposed for development? (Y/N)
3. Entered into a purchase and sale agreement, or other formal agreement with the current owner in order to develop the site? (Y/N)
4. Started initial conversation(s) with the property owner regarding the project. (Y/N)
5. Other (Y/N), if other please describe

3.5 PROJECT BACKGROUND, APPROACH, AND OUTCOMES (SCORED)

The Proposal must contain a comprehensive description of services including the following elements:

1. **Background:** In 150 words or less:
 - a. Describe the overall mission of your organization.
2. **Proposed project:** In 600 words or less, describe the project being proposed. Please include the following information:
 - a. Geographic location of the project (County/ies, city/ies, and neighborhood/s, as applicable).
 - b. Identify the population(s) and or community(ies) the proposed project intends to serve, as well as potential services offered.

- c. Please include information about other stakeholders involved in the project.
 - d. Describe the work that has already been completed on the proposed project to date (if any).
3. **Approach:** In 600 words or less, describe how your organization will use grant funds to further your project. Please include the following information:
- a. Key tasks that are needed to further the proposed project. Include all the specific planning, predesign, and preconstruction services needed.
 - b. Anticipated timeline of the proposed project, including when your organization might be ready to apply for a competitive COMMERCE capital grant opportunity.
 - c. Deliverables anticipated for each task, including additional community outreach and engagement needed to progress the project to development.
4. **Project Outcomes and Performance Measurement:** In 600 words or less, describe, in detail, how the completed project will benefit community members and address the community needs you identified above. Please include the following information:
- a. Detail how the proposed project will benefit community members identified in 3.5.1 and 3.5.2.
 - b. Describe the specific short- and long-term outcomes associated with the proposed.
 - c. Whenever possible, provide a numerical estimate of the anticipated outcomes (i.e., people served, new housing units created, jobs created, etc.).
 - d. Explain how your organization plans to monitor the quality of services provided.
5. **Risks:** In 300 words or less:
- a. Describe how your organization plans to adapt to the needs of the community as they change.
 - b. Identify potential barriers to executing the proposed planning, predesign, and preconstruction tasks within the timeline proposed above and the budget included in 3.7 and explain how the Proposer intends to mitigate these risks.

3.6 PROJECT TEAM, QUALIFICATIONS, AND EXPERIENCE (SCORED)

Staff identified in the Proposal must actually perform the assigned work. Any staff substitution must have prior approval from COMMERCE. Important notes: While subcontractors are not required at the time of the proposal, Proposers are reminded to select subcontractors only after reviewing all relevant requirements. In evaluating proposals, the department shall consider the ability of the contractor to provide technical assistance to low and very low-income persons, to persons with special housing needs, to persons with special behavioral needs, educational needs of children, and youth specific needs.

1. **Project Team Structure and Internal Controls:** Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Please also include the following:
 - a. Provide an organizational chart indicating lines of authority for personnel involved in the performance of this potential contract and relationships of these staff to other programs or functions of the organization(s). Include who will have prime responsibility and final authority for the work.
2. **Staff Qualifications and Experience:** Identify staff, including any subcontractors, who will be assigned to the potential contract. Please also include the following
 - a. Provide a brief summary for key project staff, which include information on the individual's particular skills related to this project, experience with similar project and managing grants, and significant accomplishments.

- b. Describe how your organization's staff represents and supports the community and/or population this proposed project intends to serve.
- c. Describe the actions your organization is taking to hire, invest in, and retain staff at all levels that are reflective of the population(s) the proposed project intends to serve.
- d. Describe two accomplishments or successes your organization has had serving marginalized communities in the past.
 - i. Note: these accomplishments or successes do not have to be related to the proposed project.
- e. Describe your organization's experience(s) adapting to the specific needs and input of the community. Please include the following information:
 - i. How your agency incorporates the lived experience(s) of your community into the development and implementation of services including but not limited to current/former participants, staff, and volunteers.

3. Related Information (MANDATORY)

- a. If the Proposer or any known subcontractor contracted with the state of Washington during the past 24 months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
- b. If the Proposer's staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
- c. If the Proposer has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Proposer's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
- d. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Proposer's position on the matter. COMMERCE will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Proposer in the past five years, so indicate.

4. Two (2) Letters of Support (MANDATORY)

Include two (2) letters of support for your organization and your proposed projects. Please limit these letters of support to 600 words and include, their names, addresses, telephone numbers, and e-mail addresses.

Do not include letters of support from current COMMERCE staff. By submitting a Proposal the Proposer and any partners or agents authorize COMMERCE to contact these individuals and any others who, from COMMERCE'S perspective, may have pertinent information. COMMERCE may or may not contact references in its sole discretion.

5. OMWBE and WDVA Certification (OPTIONAL AND NOT SCORED)

Include proof of certification issued by the Washington Office of Minority and Women's Business Enterprises (OMWBE) or Washington Department of Veteran Affairs (WDVA) if certified small, minority-, women-, or veteran-owned business(es) will be participating on this project in any capacity. For more information please see Sections 1.5 and 2.9, and visit: www.omwbe.wa.gov or www.wdva.wa.gov.

3.7 PROPOSED PROJECT BUDGET (SCORED)

Reminder: The total amount proposed must not exceed \$200,000 (Section 1.4) to be considered responsive to this RFP.

The evaluation process is designed to award this procurement not necessarily to the Proposer of least cost, but rather to the Proposer whose Proposal best meets the requirements and priorities identified in this RFP.

1. Identification of Costs

Identify all costs in U.S. dollars, including expenses to be charged for the services necessary to accomplish the planning and predesign tasks of the proposed project. This should also include tasks necessary to produce the deliverables under the contract. Proposers are required to collect and pay Washington state sales and use taxes if applicable. Costs for work to be completed by subcontractors are to be broken out separately. Please include information on the following

- A. Submit a fully detailed budget including staff costs and any expenses necessary to accomplish the project
- B. Describe your organization's ability to set aside funds for internal staffing for project management and other tasks that will be internally led
- C. List any other sources of funding secured or requested for the project.

4. EVALUATION AND CONTRACT AWARD

4.1 EVALUATION PROCEDURE

Responsive Proposals will be evaluated strictly in accordance with the requirements stated in this RFP and any addenda issued. The evaluation of Proposals will be accomplished by one or more evaluation team(s) designated by COMMERCE, which will determine the ranking of the proposals.

COMMERCE, in its sole discretion, may elect to invite top-scoring Proposers as finalists for a virtual presentation or interview.

The RFP Coordinator may contact the Proposer for clarification of any portion of their Proposal. Proposers are not permitted to submit, resubmit, correct, or change any materials of any kind after the date and time stated in Section 2.6 SUBMISSION OF PROPOSALS.

4.2 EVALUATION BREAKDOWN

For evaluation purposes, the following weighting will be assigned to each proposal section. Subsections may or may not be of equal weight.

Prioritization Criteria –10%

Proposers that are **new to state contracting** will receive an extra 5% of awarded points added to their final score.

Project Background, Approach, and Outcomes – 55%

Background
Proposed Project
Approach
Project Outcome and Performance Measurement
Risks

Project Team, Qualifications, and Experience – 30%

Project Team Structure and Internal Controls
Staff Qualifications and Experience

Proposed Project Budget 5%

Evaluation is based on detail not price.

Workers' Rights Certification Those Proposers who certify they do not require their employees to sign an individual arbitration clause as a condition of employment will receive an extra 5% of their awarded points added to their final score (see Exhibit C).

Please note: Eligible Contractors costs incurred after the award announcement date may be eligible for reimbursement under this RFP to limit potential delays to the project due to contracting.

COMMERCE reserves the right to award the contract(s) to the Proposer(s) whose Proposal is deemed to be in the best interest of COMMERCE and the state of Washington. See also Section 1.5 MANDATORY AWARD TO SMALL OR VETERAN-OWNED BUSINESS.

4.3 NOTIFICATION TO PROPOSERS

COMMERCE will notify the Apparent Successful Contractor(s) of their selection in writing upon completion of the evaluation process. Proposers who were not selected for further negotiation or award will be notified separately. Notification may also be made to the COMMERCE public website, Washington Electronic Business Solution (WEBS), or other publically accessible locations.

4.4 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Any Proposer who has submitted a Proposal and received notice that they were not selected for contract negotiation may request a debriefing. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Unsuccessful Proposer Notification is e-mailed to the Proposer. 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 Proposer's Proposal;
- Any written comments from evaluators related to that Proposer;
- Review of Proposer's final score in comparison with the other final scores **without** identifying the other Proposers or reviewing their Proposals.

Comparisons between Proposals or evaluations of the other Proposals is not allowed. COMMERCE will not discuss any items other than the three bullet points above. Debriefing conferences may be conducted on the telephone or by other electronic means and will be scheduled for a maximum of thirty (30) minutes. COMMERCE reserves the right to end a debriefing for any reason.

4.5 PROTEST PROCEDURE

Protests may be filed only by Proposers who submitted a response to this RFP and who have participated in a debriefing conference. Upon completing the debriefing conference, the Proposer is allowed five (5) business days to file a protest with the RFP Coordinator. Protests must be received by the RFP Coordinator no later than 5:00pm Pacific time on the fifth business day following the debriefing. Protests must be submitted by email. Proposers may choose to copy COMMERCE'S Central Contracts Office at centralcontracts@commerce.wa.gov. Do not copy any other COMMERCE staff.

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

All protests must be in writing, addressed to the RFP Coordinator, and signed by the protesting party or an authorized agent. The protest must state the RFP 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 RFP or COMMERCE policy.

Protests not based on procedural matters will not be considered. Protests will be dismissed as without merit if they address issues such as an evaluator's professional judgment on the quality of a proposal, or COMMERCE'S assessment of its own and/or other agencies' needs or requirements.

Scores received are not a valid basis of protest and will be dismissed as without merit unless included with facts supporting bias, discrimination, or conflict of interest on the part of an evaluator.

Upon receipt of a protest, a protest review will be held by COMMERCE. COMMERCE'S Chief Contracts Officer, or other employee delegated by the Director who was not involved in the award process, will consider the record along with 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 directly impact the actual interest of another Proposer, such Proposer may be given an opportunity to submit its views and any relevant information on the protest.

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 error(s) and re-evaluate all proposals, or
 - Cancel this RFP and begin a new process, or
 - Make other findings and determine other courses of action as appropriate.

If COMMERCE does not find merit in the protest, COMMERCE may 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.

5. RFP EXHIBITS

Exhibit A Certifications and Assurances

Exhibit B Diverse Business Inclusion Plan

Exhibit C Workers' Rights Certification

Exhibit D Service Contract Format with General Terms and Conditions

Exhibit E Federally Recognized Tribe Service Contract Format with General Terms and Conditions

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the Proposal 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 Proposal 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 proposal.
3. The attached Proposal 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 Proposal, 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 RFP 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 Proposal. All Proposals become the property of COMMERCE, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this Proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not be knowingly disclosed by him/her prior to opening, directly or indirectly, to any other Proposer or to any competitor.
7. I/we agree that submission of the attached Proposal constitutes acceptance of the RFP contents and the attached example contract and general terms and conditions. If there are any proposed edits to these terms, I/we have described those edits in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or organization to submit or not to submit a Proposal for the purpose of restricting competition.
9. I/we grant COMMERCE the right to contact references and any others who may have pertinent information regarding the ability of the Proposer and the lead staff person to perform the services contemplated in this RFP.
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.

I/We have reviewed the Contract and General Terms and Conditions and I/we: (check one)

- are** submitting proposed contract edits. If proposed contract edits are being submitted for consideration, I/we have attached them to this form. *(See Section 2.14)*
- are not** submitting proposed contract edits. *(Default if neither are checked)*

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

Signature of Proposer Date

Printed Name Title

DIVERSE BUSINESS INCLUSION PLAN

Please see Section 2.9 for more information regarding the Diverse Business Inclusion Plan.

If awarded a contract as a result of this RFP, do you anticipate subcontracting* with or purchasing from any of the following:

	Yes	No
State Certified Minority Owned Businesses?	<input type="checkbox"/>	<input type="checkbox"/>
State Certified Woman Owned Businesses?	<input type="checkbox"/>	<input type="checkbox"/>
State Certified Veteran Owned Businesses?	<input type="checkbox"/>	<input type="checkbox"/>
Washington Small Businesses?	<input type="checkbox"/>	<input type="checkbox"/>

Organizational Goals:

Please list the approximate percentage of funding received through this RFP which is expected to be subcontracted to each subcontractor category:

For example, say the total contract amount is \$10,000. Of that, \$1,000 will be subcontracted to a business to create one of the deliverables and the organization plans to use a Washington Small Business. They would enter "10%" on the appropriate line below. On the other hand, if all subcontracts will be with nonprofit organizations or with businesses not described below, they would enter "0%".

State Certified Minority Owned Businesses: _____%

State Certified Woman Owned Businesses: _____%

State Certified Veteran Owned Businesses: _____%

Washington Small Businesses: _____%

Please list the approximate percentage of purchases reimbursed by funding received as a result of this RFP that will be made from each category:

For example, say allowable expenses are estimated to be \$1000, most of which will reimburse the cost of supplies purchased from various sources. If the organization plans to make half of those purchases from a Certified Woman-Owned Business, they would enter "50%" on the appropriate line below.

State Certified Minority Owned Businesses: _____%

State Certified Woman Owned Businesses: _____%

State Certified Veteran Owned Businesses: _____%

Washington Small Businesses: _____%

If you plan to subcontract and/or purchase with funding received as a result of this RFP and answered 'No' to all questions above, please explain:

Click or tap here to enter text.

- I/We do not plan to subcontract any of the work described in this RFP.
- I/We do not plan to make any purchases reimbursable under this RFP.

Please identify the person in your organization who will manage your Diverse Business Inclusion Plan related to this project:

Name: _____

Title: _____

Phone: _____

E-Mail: _____

***Please note that subcontracting must be done in accordance with contractual terms and conditions which may include specific subcontractor selection requirements. Do not select subcontractors until you have reviewed all applicable requirements.**

**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 Department of Commerce is seeking to contract with qualified organizations which certify that their employees are not, as a condition of employment, subject to mandatory individual arbitration clauses and class or collective action waivers. See Section 4.2.

RFP Number: _____

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

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 Procurement Coordinator as part of your complete response.



Grant Agreement with

Please enter the Entity/Business Name of Grantee Organization

through

Click or tap here to enter text.

Grant Number:

Please enter Grant Number

For

Provide Project Title/ Primary Grant Purpose in 25 words or less

Dated: Please enter start date of grant

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Face Sheet

Grant Number: <Insert Number>

<Select Division, Board, or Commission> <Insert Unit or Office>

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

Special Terms and Conditions

1. Grantee <Insert legal name> <Insert mailing address> <Insert physical address> <Insert location>		2. Grantee Doing Business As (as applicable) <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 \$ Total>	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: <u>ALN</u> <Insert name> <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> _____ Signature _____ Date		FOR COMMERCE _____ <insert name>, <insert title> _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	

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 contact 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. **ACKNOWLEDGEMENT OF CLIMATE COMMITMENT ACT FUNDING**

If this Agreement is funded in whole or in part by the Climate Commitment Act, Grantee agrees that any website, announcement, press release, and/or publication (written, visual, or sound) used for media-related activities, publicity, and public outreach issued by or on behalf of Grantee which reference programs or projects funded in whole or in part with Washington's Climate Commitment Act (CCA) funds under this Grant, shall contain the following statement:

“The [PROGRAM NAME / GRANT / ETC.] is supported with funding from Washington's Climate Commitment Act. The CCA supports Washington's climate action efforts by putting cap-and-invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at www.climate.wa.gov.”

The Grantee agrees to ensure coordinated Climate Commitment Act branding on work completed by or on behalf of the Grantee. The CCA logo must be used in the following circumstances, consistent with the branding guidelines posted at [CCA brand toolkit](#), including:

- A. Any project related website or webpage that includes logos from other funding partners;
- B. Any publication materials that include logos from other funding partners;
- C. Any on-site signage including pre-during Construction signage and permanent signage at completed project sites; and
- D. Any equipment purchased with CCA funding through a generally visible decal.

3. 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 terms of the Scope of Work and Budget.

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.

4. BILLING PROCEDURES AND PAYMENT

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

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 Grant through June 30, regardless of the Grant start and end date.

Duplication of Billed Costs

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

Disallowed Costs

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

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.).

5. SUBGRANTEE 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 subgrantees and the portion of Grant funds expended for work performed by subgrantees, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subgrantees. "Subgrantees" shall mean subgrantees of any tier.

6. 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, 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 provide 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 OR a written request by COMMERCE, 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 Subgrantees provide adequate insurance coverage for the activities arising out of subgrants.

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

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, 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 Grant to the Grantee. The state of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Grantee for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this 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 that receive \$10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees pursuant to this paragraph shall name the Grantee as beneficiary.

7. FRAUD AND OTHER LOSS REPORTING

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

8. ORDER OF PRECEDENCE

In the event of an inconsistency in this 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**
- **Add any other attachments incorporated by reference from the Face Sheet listed within order of attached.**

General Terms and Conditions

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 Washington Department of Commerce.**
- C. **“Grant” or “Agreement” or “Contract” 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 Grant shall be the same as delivery of an original.**
- D. **“Grantee” or “Contractor” 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, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).**
- F. **“State” shall mean the state of Washington.**
- G. **"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” and “subcontractor” mean subgrantee/subcontractor(s) in 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.

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 attorneys' fees and costs.

9. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

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

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

- B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this 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

Grantee must maintain and comply with written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. Grantee must comply with the following minimum requirements:

- A. **No employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Grantee may neither solicit nor accept gratuities, favors, or anything of monetary value from Grantees or parties to subcontracts and must comply with RCW 39.26.020. However, Grantee may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Grantee.**
- B. **If the Grantee has a parent, affiliate, or subsidiary organization that is not a state, local government, or federally recognized tribe, the Grantee must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the Grantee is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.**

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 Grant 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.

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 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 Grant. "Claim" as used in this Grant, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

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

The Grantee's obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the Grantee, its subcontractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Grantee or its subgrantees, agents, or employees.

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

16. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent Grantee relationship will be created by this Grant. The Grantee and its employees or agents performing under this Grant are not employees or agents of the state of Washington or COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

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 Grant, 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

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 Grant.

20. LIMITATION OF AUTHORITY

Only the Authorized Representative or the 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 Grant. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Grant is not effective or binding unless made in writing and signed by the Authorized Representative.

21. NONDISCRIMINATION

A. Nondiscrimination Requirement. During the performance of this Agreement, the GRANTEE, including any subcontractor, shall comply with all federal, state, and local nondiscrimination laws, regulations and policies, this shall include but not be limited to the following: GRANTEE, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, GRANTEE, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which GRANTEE, or subcontractor, has a collective bargaining or other agreement.

The funds provided under this Agreement shall 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 Agreement.

B. Obligation to Cooperate. GRANTEE, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that GRANTEE, including any subcontractor, has engaged in discrimination prohibited by this Agreement pursuant to RCW 49.60.530(3).

C. Default. Notwithstanding any provision to the contrary, COMMERCE may suspend GRANTEE, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until COMMERCE receives notification that GRANTEE, including any subcontractor, is cooperating with the investigating state agency. In the event GRANTEE, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), COMMERCE may terminate this Agreement in whole or in part, and GRANTEE, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. GRANTEE or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

D. Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Agreement termination or suspension for engaging in discrimination, GRANTEE, subcontractor, or both, shall be liable for contract 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, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. GRANTEE may also be required to repay grant funds pursuant to Section 25 (Recapture) of the General Terms & Conditions if the Agreement is terminated based on a violation of the nondiscrimination requirement. COMMERCE shall have the right to deduct from any monies due to GRANTEE or subcontractor, or that thereafter become due, an amount for damages GRANTEE or subcontractor will owe COMMERCE for default under this provision.

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 Grantee’s employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

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 subgrantees shall conform in all respects with physical, fire or other security policies or regulations.

32. SUBGRANTING/SUBCONTRACTING

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

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

Every subgrant/subcontract shall bind the Subgrantee/Subcontractor to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subgrantee/Subcontractor fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subgrantee/Subcontractor to assure fiscal conditions of this Grant. In no event shall the existence of a subgrant/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 subgrant/subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subgrantee/Subcontractor's performance of the subgrant/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.

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 Grant.

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

INSTRUCTIONS
TRIBAL AGREEMENT
STATE FUNDS

Attachment B: Budget

INSTRUCTIONS
TRIBAL AGREEMENT
STATE FUNDS

Exhibit E

How to Use this Template-This is the template for **COMMERCE** State funded Tribal Agreements.

Tribal agreements, contracts, grants, and loans must include the following Special Terms and Conditions:

CULTURALLY RELEVANT SERVICES

In performing work pursuant to any Agreement, the Tribe or Nation may develop and operate programs and deliver goods, services, and/or benefits in a manner that is culturally relevant and particularly suited to and/or particularly located for access by members of the Contractor's Nation or other Tribes, in accordance with Tribal Laws and policies.

HIRING AND EMPLOYMENT PRACTICES

The Tribe or Nation may give preference in its hiring and employment practices to members of the Contractor, or other Tribes, who have met all requirements for that position, including, state requirements, and as may be provided by Tribal Laws and policies.

SOVEREIGN IMMUNITY

Nothing whatsoever in this Agreement constitutes or shall be construed as a waiver of the Contractor's sovereign immunity.

Tribal agreements, contracts, grants, and loans should include the following definition in the General Terms and Conditions:

"Tribal Law" means the resolutions, law, codes, and/or ordinances enacted by the Tribe or Nation executing this Agreement, and any of the Contractor's tribal court decisions interpreting the same. All references in this Agreement to Tribal Law shall include any successor, amended, or replacement law, as of the effective date of such successor, amended, or replacement law.

Parts of each Agreement–

- **Cover Page**-The first page of each agreement will have a cover page that includes the Department of Commerce logo, name of project, name of program and start date.
- **Table of Contents**-Lists all sections of the Agreement and page numbers.
- **Stated Name of Entity Issuing Agreement**-This Template may be used by **COMMERCE** as well as its various Boards and Commissions. The language now identifies **COMMERCE** as the contracting party. But if a Board or Commission issues the contract it may insert its name. For example, in the General Terms of Conditions of this Template, page 1, Section 1, entitled "Definitions", the contracting party is **COMMERCE** and identified as follows: "**COMMERCE**' shall mean the Department of Commerce." If a Board such as the Public Works Board issued the contract, this language would instead say: "**PWB**' shall mean the Public Works Board created in RCW 43.155.030." And in such case the **PWB** would do a "find and replace" in Word to replace **COMMERCE** with **PWB** throughout the Face Sheet, Special Terms and Conditions and General Terms and Conditions.

INSTRUCTIONS
TRIBAL AGREEMENT
STATE FUNDS

- **Face Sheet**-This one page has much of the data about the Tribe or Nation and COMMERCE, e.g., Agreement number, other entity name and address, start and end dates, TIN, SWV Number, etc. It provides for the signatures of both COMMERCE and the other governmental entity.
- **Special Terms and Conditions**- The attached Special Terms and Conditions are very specific to each Interagency Agreement. Thus, the content may not be standard among all COMMERCE Interagency Agreements. The program may re-word these or add more terms to fit their individual needs. If they do not apply, the program should conduct a risk assessment/analysis involved in deleting it. Documentation of such will be kept in both the FSD Contracts and Program files for this Interagency Agreement. Then this provision may be deleted from the body of Interagency Agreement and Interagency Agreement table of contents.

There are two parts of Special Terms and Conditions. The first is the “Tribe or Nation Special Terms and Conditions” and the second is the “Program Special Terms and Conditions”.

- Tribe or Nation Special Terms and Conditions include details of the actual work to be performed and compensation.
- Program Special Terms and Conditions are included in each Agreement of this specific type. For example, an Agreement may have special reporting provisions and this is required of each agreement in this program.

When there is a conflict between various parts of the Agreement, the “Order of Precedence” paragraph describes how it is resolved. First are the applicable laws and regulations. Then the Special Terms and Conditions followed by the General Terms and Conditions. The last is the Attachments. However, if the attachments are actually the Statement of Work and Budget, they are actually part of the Tribe or Nation Special Terms and Conditions and should be included as part of them.

- **General Terms and Conditions**-These are of a more general nature and should be the same for each COMMERCE type. For example, all Agreements should have a provision for the Americans with Disabilities Act and both the content and title ought to be the same.

Not all the provisions may be utilized. But they should still remain as a General Term and Condition in the Agreement. For example, the termination provisions may never be used in successfully completed agreements because they terminate on the stated end date. But the provision should remain in each Agreement should default or some other unforeseen circumstance require early termination.



Tribal Agreement with

enter Tribal entity name here

through

**enter Name of COMMERCE program issuing/administering
contract 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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24. WAIVER 12

Attachment A, Scope of Work
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Face Sheet

Washington State Department of Commerce
 <Select Division, Board, or Commission>
 <Insert Unit or Office>
 <Insert Program(s) and/or Project(s)>

1. Tribe or Nation <Insert legal name> <Insert mailing address> <Insert physical address> <Insert location>		2. Tribe or Nation Doing Business As (optional) <Insert DBA name> <Insert DBA mailing address> <Insert DBA physical address> <Insert DBA location>	
3. Tribe or Nation Representative <Insert name> <Insert title> <Insert phone> <Insert e-mail>		4. COMMERCE Representative <Insert name> <Insert mailing address> <Insert title> <Insert physical address> <Insert phone> <Insert e-mail> <Insert e-mail> <Insert location>	
5. Agreement 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>		ALN: <Insert Assistance Listing Number>	
Federal Agency: <Insert Agency Name>			
10. Tax ID # <Insert number>	11. SWV # <Insert number>	12. UBI # <Insert number>	13. UEI # <Insert number>
14. Agreement Purpose <Briefly describe Agreement purpose>			
<p>COMMERCE, defined as the Department of Commerce, and the Tribe or Nation, as defined above, acknowledge and accept the terms of this Agreement and attachments and have executed this Agreement on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following other documents incorporated by reference: Contract Terms and Conditions including Attachment "A" - <insert title>, Attachment "B" - <insert title>, Attachment "C" - <insert title>, <etc.></p>			
FOR TRIBE OR NATION _____ <insert name>, <insert title> _____ Date		FOR COMMERCE _____ <insert name>, <insert title> _____ Date APPROVED AS TO FORM ONLY Signature on file.	

SPECIAL TERMS AND CONDITIONS

TRIBAL AGREEMENT STATE FUNDS

1. AGREEMENT 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 Agreement.

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

The Representative for the Tribe or Nation and their contact information are identified on the Face Sheet of this Agreement.

2. ACKNOWLEDGEMENT OF CLIMATE COMMITMENT ACT FUNDING

If this Agreement is funded in whole or in part by the Climate Commitment Act, Tribe or Nation agrees that any website, announcement, press release, and/or publication (written, visual, or sound) used for media-related activities, publicity, and public outreach issued by or on behalf of Tribe or Nation which reference programs or projects funded in whole or in part with Washington's Climate Commitment Act (CCA) funds under this Grant, shall contain the following statement:

“The [PROGRAM NAME / GRANT / ETC.] is supported with funding from Washington's Climate Commitment Act. The CCA supports Washington's climate action efforts by putting cap-and-invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at www.climate.wa.gov.”

The Tribe or Nation agrees to ensure coordinated Climate Commitment Act branding on work completed by or on behalf of the Grantee. The CCA logo must be used in the following circumstances, consistent with the branding guidelines posted at [CCA brand toolkit](#), including:

- E. Any project related website or webpage that includes logos from other funding partners;
- F. Any publication materials that include logos from other funding partners;
- G. Any on-site signage including pre-during Construction signage and permanent signage at completed project sites; and
- H. Any equipment purchased with CAA funding through a generally visible decal.

3. 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. Tribe or Nation's compensation for services rendered shall be in accordance with the terms of Attachment A, Scope of Work and Attachment B, Budget.

EXPENSES

Tribe or Nation 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 Tribe or Nation for authorized expenses shall not exceed \$, which amount is included in the Agreement 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. Tribe or Nation shall receive compensation for travel expenses at current state travel reimbursement rates

4. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Tribe or Nation upon acceptance of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly nor less than quarterly.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Agreement reference 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 Contractor.

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

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

Duplication of Billed Costs

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

Disallowed Costs

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

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

5. SUBCONTRACTOR DATA COLLECTION

The Tribe or Nation will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Agreement performed by Subcontractors and the portion of the Agreement funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

6. CULTURALLY RELEVANT SERVICES

In performing work pursuant to any Agreement, the Tribe or Nation may develop and operate programs and deliver goods, services, and/or benefits in a manner that is culturally relevant and particularly suited to and/or particularly located for access by members of the Contractor's Nation or other tribes, in accordance with Tribal Laws and policies.

7. HIRING AND EMPLOYMENT PRACTICES

The Tribe or Nation may give preference in its hiring and employment practices to members of the Contractor, or other tribes, who have met all requirements for that position, including state requirements, and as may be provided by Tribal Laws and policies.

8. INSURANCE

The Tribe or Nation shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect COMMERCE should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Tribe or Nation or Subcontractor, or agents of either, while performing under the terms of this Agreement.

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 Tribe or Nation shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Tribe or Nation shall submit to COMMERCE within fifteen (15) calendar days of the Agreement start date OR a written request by COMMERCE, a certificate of insurance which

outlines the coverage and limits defined in this insurance section. During the term of the Agreement, the Tribe or Nation shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Tribe or Nation 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 Tribe or Nation shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, 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 Agreement activity but no less than \$1,000,000 per occurrence. Additionally, the Tribe or Nation is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.**

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

Automobile Liability. In the event that performance pursuant to this Agreement involves the use of vehicles, owned or operated by the Tribe or Nation or its 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 Tribe or Nation shall maintain Professional Liability or Errors and Omissions Insurance. The Tribe or Nation shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Tribe or Nation and licensed staff employed or under contract to the Contractor. 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 Tribe or Nation for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

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

9. FRAUD AND OTHER LOSS REPORTING

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

10. ORDER OF PRECEDENCE

In the event of an inconsistency in this Agreement, 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**
- **[add any other attachments incorporated by reference on the Face Sheet]**

11. SOVEREIGN IMMUNITY

Nothing whatsoever in this Agreement constitutes or shall be construed as a waiver of the Tribe or Nation's sovereign immunity.

GENERAL TERMS AND CONDITIONS

TRIBAL AGREEMENT STATE FUNDS

1. DEFINITIONS

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

- A. "Agreement" or "Grant" or "Contract" means the entire written Agreement between COMMERCE and the Tribe or Nation, including any Attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this Agreement shall be the same as delivery of an original.
- B. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- C. "COMMERCE" shall mean the Washington Department of Commerce.
- D. "Materials" shall mean 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.
- E. "Parties" shall mean the Tribe or Nation and COMMERCE, who are the Parties to this Agreement.
- F. "State" shall mean the state of Washington.
- G. "Subgrantee" or "Subcontractor" shall mean one not an employee of the Tribe or Nation, who is performing all or part of those services under this Agreement under a separate agreement with the Tribe or Nation. The terms "Subgrantee" and "Subgrantees" means Subgrantee(s) in any tier.
- H. "Tribal Law" means the resolutions, law, codes, and/or ordinances enacted by the Tribe or Nation executing this Agreement, and any of the Tribe or Nation's tribal court decisions interpreting the same. All references in this Agreement to Tribal Law shall include any successor, amended, or replacement law, as of the effective date of such successor, amended, or replacement law.
- I. "Tribe or Nation" or "Contractor" or "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Agreement, and shall include all employees and agents of the Tribe or Nation.
- J. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the Agreement 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. ALL WRITINGS CONTAINED HEREIN

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

3. AMENDMENTS

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

4. ASSIGNMENT

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

5. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

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

- i. all material provided to the Tribe or Nation by COMMERCE that is designated as "confidential" by COMMERCE;**
- ii. all material produced by the Tribe or Nation that is designated as "confidential" by COMMERCE; and**
- iii. all Personal Information in the possession of the Tribe or Nation 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 numbers, driver's license numbers and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).**

B. The Tribe or Nation shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Tribe or Nation shall use Confidential Information solely for the purposes of this Agreement 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 Tribe or Nation 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 Tribe or Nation shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Agreement whenever the Grantor reasonably determines that changes are necessary to prevent unauthorized disclosures. The Tribe or Nation shall make the changes within the time period specified by COMMERCE. Upon request, the Tribe or Nation shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Tribe or Nation against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Tribe or Nation shall notify COMMERCE within twenty-four (24) hours of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

6. CONFLICT OF INTEREST

In performing under this Agreement, the Tribe or Nation shall comply with applicable state or federal laws related to ethics or conflicts of interest as well as its own ethics policies.

7. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Grantor. 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 Tribe or Nation 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 Agreement, but that incorporate pre-existing materials not produced under the Agreement, the Tribe or Nation 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 Tribe or Nation warrants and represents that the Tribe or Nation has all

rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Tribe or Nation shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Agreement, 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 Agreement. The Tribe or Nation shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Tribe or Nation with respect to any Materials delivered under this Agreement. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Tribe or Nation.

8. DISPUTES

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

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

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

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

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

Nothing in this Agreement 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.

9. GOVERNING LAW AND VENUE

This Agreement 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.

10. INDEMNIFICATION

Each party shall be responsible for the acts or omissions of itself and its own officers, employees, and agents acting within the scope of their authority. No party to this Agreement shall be responsible for the acts or omissions of entities or individuals not a party to this Agreement.

11. INDEPENDENT CAPACITY OF THE TRIBE OR NATION

The Parties intend that an independent contractor relationship will be created by this Agreement. The Tribe or Nation and its employees or agents performing under this Agreement are not employees or agents of the state of Washington or COMMERCE. The Tribe or Nation 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 Tribe or Nation 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 Tribe or Nation.

12. LAWS

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

13. NONDISCRIMINATION

A. Nondiscrimination Requirement. During the performance of this Agreement, the Tribe or Nation, including any subcontractor, shall comply with all federal, state, and local nondiscrimination laws, regulations and policies, this shall include but not be limited to the following: Tribe or Nation, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Tribe or Nation, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Tribe or Nation, or subcontractor, has a collective bargaining or other agreement.

The funds provided under this Agreement shall 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 Agreement.

B. Obligation to Cooperate. Tribe or Nation, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Tribe or Nation, including any subcontractor, has engaged in discrimination prohibited by this Agreement pursuant to RCW 49.60.530(3).

C. Default. Notwithstanding any provision to the contrary, COMMERCE may suspend Tribe or Nation, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until COMMERCE receives notification that Tribe or Nation, including any subcontractor, is cooperating with the investigating state agency. In the event Tribe or Nation, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), COMMERCE may terminate this Agreement in whole or in part, and Tribe or Nation, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Tribe or Nation or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

D. Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Agreement termination or suspension for engaging in discrimination, Tribe or Nation, subcontractor, or both, shall be liable for contract 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, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Tribe or Nation may also be required to repay grant funds pursuant to Section 15 (Recapture) of the General Terms & Conditions if the Agreement is terminated based on a violation of the nondiscrimination requirement. COMMERCE shall have the right to deduct from any monies due to Tribe or Nation or subcontractor, or that thereafter become due, an amount for damages Tribe or Nation or subcontractor will owe COMMERCE for default under this provision.

14. POLITICAL ACTIVITIES

No funds may be used under this Agreement for working for or against ballot measures or for or against the candidacy of any person for public office.

15. RECAPTURE

In the event that the Tribe or Nation fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of this Agreement, 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 Tribe or Nation 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 Agreement.

16. RECORDS MAINTENANCE

The Tribe or Nation shall maintain all books, records, documents, data and other evidence relating to this Agreement 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 Agreement.

The Tribe or Nation 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 Agreement, 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.

17. 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 Agreement and prior to normal completion, COMMERCE may terminate the Agreement under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Agreement may be amended to reflect the new funding limitations and conditions.

18. SEVERABILITY

The provisions of this Agreement 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 Agreement.

19. SUBGRANTING

The Tribe or Nation may only Subgrant work contemplated under this Agreement if it obtains the prior written approval of COMMERCE.

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

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

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

20. SURVIVAL

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

21. TERMINATION FOR CAUSE/SUSPENSION

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

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

COMMERCE reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Tribe or Nation from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Tribe or Nation or a decision by COMMERCE to terminate the Agreement. A termination shall be deemed a "Termination for Convenience" if it is determined that the Tribe or Nation: (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 Agreement are not exclusive and are, in addition to any other rights and remedies, provided by law.

22. TERMINATION FOR CONVENIENCE

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

23. TERMINATION PROCEDURES

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

COMMERCE shall pay to the Tribe or Nation the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Tribe or Nation 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 Agreement. COMMERCE may withhold from any amounts due the Tribe or Nation 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 Agreement.

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

- A. Stop work under the Agreement on the date, and to the extent specified, in the notice;

- B. Place no further orders or Subgrants for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Agreement that is not terminated;**
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed the Authorized Representative, all of the rights, title, and interest of the Tribe or Nation under the orders and Subgrants 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;**
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and Subgrants, with the approval or ratification of the Authorized Representative to the extent directed by the Authorized Representative, 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 Agreement 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 Agreement, which is in the possession of the Tribe or Nation and in which COMMERCE has or may acquire an interest.**

24. 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 Agreement unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

Scope of Work

Budget