



**STATE OF WASHINGTON
DEPARTMENT OF COMMERCE**

**REQUEST FOR APPLICATIONS (RFA)
RFA NO. FY26-173P1**

NOTE: Please read this entire document before submitting a response. Only full/complete responses for each Phase will be considered

PROJECT TITLE: Capital Project Capacity Grants for Non-Profit Organizations

RESPONSE DUE DATE:

- **Phase 1 Initial Project Summary due January 20, 2026 10:00 AM PST**
Submit your [Exhibit B](#) Applicant Information – Initial Project Summary via email to the RFA Coordinator Ashly McBunch ashly.mcbunch@commerce.wa.gov
- **Phase 2 due February 12, 2026 10:00 AM PST** (Applications from Phase 1 will be reviewed based on minimum qualifications, completeness and project viability, as outlined in Section 4, to determine eligibility for this phase.)

EXPECTED TIME PERIOD FOR CONTRACT: 4 months, March-June 2026

GRANTEE ELIGIBILITY: This procurement is open to those entities that satisfy the minimum qualifications, and are designated as Washington State Non-Profits (as designated by the WA Secretary of State and the US Federal Internal Revenue Service).

FUNDING SOURCE AND METHOD: This is Washington State Department of Commerce funding. Payments will be made on a **reimbursement basis** for deliverables accepted.

CONTENTS OF THE REQUEST FOR APPLICATIONS:

1. Introduction
2. General Information
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RFA Exhibits:

- Exhibit A Certifications and Assurances
- Exhibit B Phase 1 – Applicant Information (Initial Project Summary)
- Exhibit C Diverse Business Inclusion Plan
- Exhibit D Workers' Rights Certification
- Exhibit E Phase 2 Application (Invitees Only)
- Exhibit F Example Grant Contract including General Terms and Conditions

1 INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The Washington State Department of Commerce hereafter called "COMMERCE," is initiating this Request for Applications (RFA) to solicit applications from those qualified and interested in grant funding for advancing a capital project that the Applicant expects to **either be completed or become fully shovel-ready/break ground in the next five (5) years (by 2030).**

This RFA uses a **two-phase competitive process** to ensure applicants are ready to proceed with capital funding. **Phase 1 serves as a readiness check through an Initial Project Summary.** Based on this review, a subset of organizations will be invited to submit a full application in Phase 2, which will be evaluated for completeness and project viability.

The Capital Project Capacity Grants for Non-profit Organizations is designed to strengthen the ability of non-profit organizations to plan and prepare for capital projects. These grants provide funding for planning, pre-development, and pre-construction activities.

1.2 OBJECTIVES AND ELIGIBLE ACTIVITIES

The **Capital Project Capacity Grants for Non-profit Organizations** aims to strengthen the ability of non-profit organizations to plan, manage, and deliver capital projects that address unmet needs in Washington communities.

This pilot initiative is designed to:

- Support non-profits in taking the **next critical step** in their capital project journey
- Provide **targeted, early-stage funding** (up to \$50,000) at a pivotal moment in the capital project timeline
- Test a **theory of change**: that small, timely investments in planning and readiness can significantly improve a non-profit's ability to successfully **complete or break ground on a capital project in the next five (5) years**

Funding may support a range of **pre-development and pre-construction activities**, such as but not limited to:

Pre-Development

- Project Plans
- Assessments/Analysis (needs, feasibility)
- Budget Planning (project budgets, lifecycle cost analysis)
- Community and stakeholder engagement

Pre-Construction

- Design (schematic drawings and site plans)
- Studies (architectural, engineering, geotechnical, environmental)
- Permitting

Note: Funds may not be used for direct construction or site work, land acquisition, or general operating expenses not directly tied to the capital project.

COMMERCE may award multiple contracts as a result of this RFA.

1.3 MINIMUM QUALIFICATIONS

Minimum qualifications include:

- Licensed to do business in Washington or submit a statement of commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Applicant.
- Be a Washington State non-profit organization, as designated by the WA Secretary of State and the U.S. Internal Revenue Service.

Note: Fiscal sponsors are not eligible.

Applications that **do not clearly meet or exceed these minimum qualifications** will be rejected as non-responsive and will not receive further consideration for either phase. Any Application that is rejected as non-responsive will not be evaluated or scored.

1.4 FUNDING

The total funding available for the **Capital Project Capacity Grants for Non-profit Organizations** in **FY26** is approximately **\$390,000**. COMMERCE anticipates awarding a small number of grants under this RFA. **Applications requesting more than \$50,000 will be rejected as non-responsive and will not be evaluated.** If additional funding becomes available, COMMERCE may amend awarded grants to support additional related services. However, **additional funding is not guaranteed.**

Any contract(s) awarded as a result of this RFA are **contingent upon the availability of funds.**

1.5 PERIOD OF PERFORMANCE

The period of performance of any grants resulting from this RFA is tentatively scheduled to begin on or about **March 1, 2026 and to end on June 30, 2026**. COMMERCE reserves the option at its sole discretion to extend the contract for two additional one-year periods.

1.6 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

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

1.7 DEFINITIONS

Definitions for the purposes of this RFA include:

Annual Operating Budget

The total annual operating expense of the organization, as reflected in the organization's most recent completed fiscal year budget.

Apparent Successful Applicant/Bidder/Vendor/Grantee/Awardee: The Applicant(s) selected to enter into negotiations leading to a fully executed contract for the work described in this procurement document.

Applicant: Individual, company, organization, or firm submitting an Application in order to attain a contract with COMMERCE.

Application: A complete, formal offer submitted in response to this RFA.

Capital Project: A project to construct either new facilities or make significant, long-term renewal improvements to existing facilities/infrastructure. These may include a broad range of construction, renovation, and rehabilitation projects

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

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

Applicant or Grantee: Individual or organization whose Application has been accepted by COMMERCE and is awarded a fully executed, written contract.

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

FTEs: Full-Time Equivalent (FTE) employees is a workforce measurement including all full-time payroll employees plus part-time payroll employees who collectively work at least 30 hours.

Non-Profit Organization: A non-profit organization is a legally recognized group organized for purposes other than generating profit and in which no part of the organization's income is distributed to its members, directors, or officers. A "non-profit" is formed under the Washington non-profit corporation act and qualifies as a non-profit for federal tax purposes.

Request for Applications (RFA): Formal procurement document in which needed services are identified and entities are invited to submit their Application to provide those services; this procurement document.

Rural: Counties with a population density less than 100 persons per square mile or counties smaller than 225 square miles

Small non-profit organization: For purposes of this application, small non-profit organizations are considered as having less than \$3 million in annual operating budget and 5 or fewer full time employees.

1.8 ADA

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

2 GENERAL INFORMATION

2.1 RFA COORDINATOR

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

Name	Ashly McBunch
E-Mail Address	ashly.mcbunch@commerce.wa.gov

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

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Applications	December 22, 2025
Applicants Conference	December 30, 2025 11:30 AM-12:30 PM
Question & answer period	December 22 2025-Jan 13 2026
Answers issued no later than	January 15, 2026
Phase 1 Due	January 20, 2026 10:00 AM
Review of Phase 1	January 20-27 2026
Phase Advancement Notifications Sent	January 28, 2026
Phase 2 Applications Due	February 12, 2026 10:00 AM
Evaluation of Phase 2	February 12-20 2026
Announce "Apparent Successful Applicants" and send notification via e-mail to unsuccessful Applicants	February 24, 2026
Hold debriefing conferences (if requested) (PHASE 2)	February 25-March 10 2026
Negotiate contract	February 25-March 10, 2026
Earliest date contract may be signed	March 11, 2026

COMMERCE reserves the right to revise the above schedule.

2.3 APPLICANTS' CONFERENCE

A conference will be held on December 30, 2025 11:30 a.m, Pacific time. The conference will be virtual only on a platform such as Zoom at the link below:

Join Zoom Meeting

<https://wastatecommerce.zoom.us/j/83989391070?pwd=ys6b2gdcieAMW5z2sU6YfiTIYAfpw.1>

Meeting ID: 839 8939 1070

Passcode: 727331

One tap mobile

+12532158782,,83989391070#,,,,*727331# US (Tacoma)

+12133388477,,83989391070#,,,,*727331# US (Los Angeles)

All prospective applicants are encouraged to attend; however, attendance is not mandatory. This meeting will be recorded.

COMMERCE will be bound only to COMMERCE written answers to questions. Questions arising at the

Applicants' conference will be documented and answered in written form. A copy of the questions and answers will be sent to each prospective Applicant made the RFA Coordinator aware of its interest in this RFA.

2.4 QUESTION AND ANSWER PERIOD

COMMERCE will accept questions about this RFA sent to the RFA 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.

2.5 SUBMISSION OF RESPONSES

ELECTRONIC RESPONSES:

Application due dates must follow due dates listed at 2.2 of this RFP.

Applications must be submitted electronically as an attachment to an e-mail to the RFA Coordinator, at the e-mail address listed in Section 2.1. 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 Applications. The Certifications and Assurances form must have a signature of the individual within the organization authorized to bind the organization to the offer. COMMERCE does not assume responsibility for problems with non-COMMERCE e-mail. If COMMERCE email is not working, appropriate allowances will be made.

Applications may not be transmitted using facsimile transmission.

Applicants should allow sufficient time to ensure timely receipt of the Application by the RFA Coordinator. **Late Applications will not be accepted and will be automatically disqualified from further consideration, unless COMMERCE e-mail is found to be at fault.** All Applications and any accompanying documentation become the property of COMMERCE and will not be returned. Any information received as a result of this RFA may be collected and considered for continuous improvement purposes.

2.6 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

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

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

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

provides for nondisclosure, COMMERCE shall maintain the confidentiality of the Applicant's information per the court order.

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

2.7 REVISIONS TO THE RFA

In the event it becomes necessary to revise any part of this RFA, addenda will be provided via e-mail to all individuals who have made the RFA Coordinator aware of their interest. Addenda is also published on Washington's Electronic Business Solution (WEBS), located at <https://fortress.wa.gov/ga/webs/>. Such addenda will also be published anywhere the RFA is posted, including on COMMERCE'S public webpage, located at <https://www.commerce.wa.gov/contracting/>.

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

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

2.8 ACCEPTANCE PERIOD

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

2.9 COMPLAINT PROCESS

Vendors 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 an Application.

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

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

2.10 RESPONSIVENESS

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

Phase 1:

Applicants who do not meet the readiness criteria or minimum qualifications in Phase 1 will be disqualified and notified at or around the time of disqualification.

Phase 2:

Applicants who are disqualified during the Phase 2 review process will be notified after the announcement of the Apparently Successful Applicant(s).

Disqualified Phase 2 Applicants will be informed of the reason for disqualification; this shall constitute a debriefing conference for the purposes of Section 4.7, Protest Procedure.

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

2.11 MOST FAVORABLE TERMS

COMMERCE reserves the right to make an award without further discussion of the Application submitted. Therefore, the Application should be submitted initially on the most favorable terms which the Applicant can propose. COMMERCE reserves the right to contact an Applicant for clarification of its Application.

The Applicant should be prepared to accept this RFA for incorporation into a contract resulting from this RFA. Contract negotiations may incorporate some, or all, of the Applicant's Application. It is understood that the Application will become a part of the official procurement file on this matter without obligation to COMMERCE.

2.12 CONTRACT AND GENERAL TERMS & CONDITIONS

The Apparent Successful Applicant will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit F. In no event is an Applicant to submit its own standard contract terms and conditions in response to this solicitation. The Applicant may submit proposed edits as allowed in the Certifications and Assurances section, Exhibit A to this RFA. COMMERCE will review requested edits and accept or reject the same at its sole discretion.

2.13 COSTS TO PROPOSE

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

2.14 NO OBLIGATION TO CONTRACT

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

2.15 REJECTION OF RESPONSES

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

2.16 COMMITMENT OF FUNDS

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

2.17 ELECTRONIC PAYMENT

The state of Washington prefers to utilize electronic payment in its transactions. The successful Applicant must have or obtain a Statewide Vendor Number (SWV) from the Office of Financial Management (OFM) to be paid by COMMERCE. For more information visit OFM at www.ofm.wa.gov.

2.18 INSURANCE COVERAGE

The Applicant is to furnish COMMERCE with a certificate of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below if requested.

The Applicant shall, at Applicant's 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 Applicant 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 sample grant and its special terms and conditions attached as Exhibit F.

3 RESPONSE CONTENTS

ELECTRONIC RESPONSES:

Applications must be written in English and submitted electronically to the RFA Coordinator. Exhibit B Item 2 (Applicant Information Initial Project Summary) is mandatory for submission of Phase 1. If Exhibit B Item 2 (Applicant Information Initial Project Summary) listed below is not included, your application will not be considered complete and will not be considered to move to Phase 2.

- 1. Certifications and Assurances (Exhibit A)**
- 2. Applicant Information (Initial Project Summary) (Exhibit B)**
- 3. Diverse Business Inclusion Plan (Exhibit C)**
- 4. Worker's Rights Certifications (Exhibit D)**

All items marked "mandatory" must be included as part of the Application for the Application 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.

Any applicant selected to move forward to Phase 2 will receive a notification with a full application document by the RFA Coordinator for completion in accordance with the timeline listed at 2.2 of this RFA.

A breakdown of the Phase 2 Application Categories and contents can be seen at Exhibit E. This is not the full application however it provides information and guidelines for phase 2.

3.1 CERTIFICATIONS AND ASSURANCES (MANDATORY Phase 2 only)

The Certifications and Assurances form (Exhibit A) must be signed and dated by a person authorized to legally bind the Applicant 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. Those wishing to submit any proposed contract edits must indicate so on this form (see Section 2.12).

3.2 APPLICANT INFORMATION (Initial Project Summary) (MANDATORY Phase 1 only)

The Applicant Information form (Exhibit B) Initial Project Summary must be completed in its entirety. If any question does not apply, please enter "N/A" or "None".

3.3 DIVERSE BUSINESS INCLUSION PLAN (MANDATORY Phase 2 only)

The Diverse Business Inclusion Plan (Exhibit C) is a communication tool allowing Applicants to inform COMMERCE if diverse business will be involved in the contract if awarded. Participation includes directly (the Applicant) and indirectly, such as any subcontractors or subgrantees who might carry out services chargeable to the contract. 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- and women-owned business enterprise (MWBE), Washington Small Business, or Washington State certified Veteran Business participation is required as a condition for receiving an award. Any affirmative action requirements set forth in any federal rules included or referenced in the contract documents will apply.

3.4 WORKERS' RIGHTS CERTIFICATION (MANDATORY Phase 2 only)

The Workers' Rights Certification (Exhibit D) must be signed and dated as described in Section 3.1. Some employers require their employees to waive certain rights. While this is legally permitted, the Washington Governor's Office considers it a harmful and disfavored practice. Executive Order 18-03 requires all state agencies to award bonus points in competitive processes to increase contracting with employers that do not require their employees to sign an individual arbitration clause or waiver of collective or class action. Those Applicants which certify they do not require their employees to waive such rights as a condition of employment will receive an extra 5 points of their awarded points added to their final score.

3.5 PHASE 2 APPLICATION CATEGORIES AND INFORMATION (Only for those invited from Phase 1)

Eligible Applicants from Phase 1 will receive a Phase 2 application via email by the RFA Coordinator in accordance with 2.2 of this RFA

Phase 2- Has its own Application that will be **scored** based on the strength, feasibility, and community impact of the proposed capital project

4 EVALUATION AND CONTRACT AWARD

4.1 EVALUATION PROCEDURE

Phase 1 – Initial Project Summary (Readiness Check)

In Phase 1, eligible non-profit organizations submit a brief **Initial Project Summary (Applicant Information Exhibit B)**. This is a **readiness check** to determine whether your organization is prepared to move forward to the full application stage.

The RFA Coordinator will review Phase 1 applications for

- Basic eligibility aligned with 1.3 Minimum Qualifications and 1.4 Funding
- Content Completeness

The RFA Coordinator will forward Phase 1 applications that meet the above to evaluation team for a non-scored review for

- Alignment with the goals of the Capital Project Capacity Grants
- Project viability to move forward for Phase 2

Priority Considerations (Phase 1)

Phase 1 is not scored; however, COMMERCE may apply **priority considerations** to help inform which eligible applicants are invited to submit a full application. These include:

- **Rural location**
- **Small non-profit organization**

All Applications will be reviewed for completeness and evaluated strictly in accordance with the requirements stated in this RFA and any addenda issued. The evaluation of Applications will be accomplished by an evaluation team to be designated by COMMERCE, which will determine the ranking, viability of projects and priority considerations of the Applications.

4.2 CLARIFICATION OF RESPONSE

The RFA Coordinator may contact Applicants for clarification of any portion of the Applicant's Application. Submission or alteration of any materials after the due date is prohibited.

4.3 EVALUATION AND SCORING

Phase 1 – Reviewed by evaluation team based on 4.1

Phase 2 – Full Application Evaluation (Advanced Applicants Only)

This phase is **scored** and focuses on evaluating the strength, viability, and community impact of the proposed capital project

Scoring Criteria

Applications will be evaluated based on:

- **Clarity and quality** of the proposal, complete responses with defined goals
- **Feasibility/viability** of completing the proposed work by **June 30, 2026**. This includes if the capital project is sufficient detail, what has been completed to date, what remains to be completed in the next 12 months and five years, whether the project appears plausible and appropriately scoped for their role and capacity.
- **Alignment with program goals and community needs**. This includes how the need was determined (evidence, input, assessment), who will benefit from the project, how communities served have been involved in need identification, planning, or pre-design. Strength of partnerships, relationships, and community alignment.

Applications invited to Phase 2 will be evaluated based on the following categories:

Phase 2 Scoring Criteria	Points
Capital Project Description and Progress to Date	25 pts
Community Need, Benefit, and Engagement	25 pts
Timeline, Feasibility, and Capital Budget	20 pts
Organizational Readiness	20 pts
Capacity-Building Funding Request (up to \$50,000)	10 pts
Base Score Total	100 pts

+ Additional Points (up to 15 pts total)

Additional Criteria	Points
Organization certifies it does not require individual arbitration agreements ¹	+5 pts
Project supports geographic balance or underserved areas ²	+5 pts
Organization is small (e.g., <\$3M annual budget) ²	+5 pts
Maximum Possible Score	115 pts

¹ Certifications must be submitted with Phase 2 (see Exhibit D). Points will be applied in Phase 2.

² Determined by COMMERCE based on program priorities (project type, regional diversity, and community impact) and applicant pool.

Please note:

- Additional points are **not guaranteed** and are used to help ensure equitable distribution of funding.

4.4 NOTIFICATION TO APPLICANTS

Applicants that are not selected to move forward to Phase 2 will be notified in accordance with 2.10 Responsiveness. Applicants not selected for further negotiation will be notified by e-mail.

4.5 DEBRIEFING OF UNSUCCESSFUL APPLICANTS

Upon request, a debriefing conference will be scheduled with an unsuccessful Applicants who made it through both Phase 1 and Phase 2. The request for a debriefing conference must be received by the RFA Coordinator within three (3) business days after the Notification of Unsuccessful Applicant notice is emailed to the Applicant. 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 organization's Application;
- Any written comments from evaluators related to that Applicant;
- Review of their final score in comparison with the other final scores **without** identifying the other participants or reviewing their Applications.

Comparisons between proposals or evaluations of the other proposals is not allowed. Debriefing conferences may be conducted on the telephone or by other electronic means, to include email and will be scheduled for a maximum of thirty (30) minutes. COMMERCE reserves the right to end a debriefing for any reason.

4.6 PROTEST PROCEDURE

This procedure is available to Applicants who submitted an Application in response to this RFA document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Applicant is allowed five (5) business days to file a protest of the RFA process with the RFA Coordinator. Protests must be received by the RFA Coordinator no later than 5:00pm Pacific time on the fifth business day following the debriefing. Protests must be submitted by email. Applicants may choose to copy COMMERCE'S Central Contracts Office at FormalProtest@commerce.wa.gov. Do not copy any other COMMERCE staff.

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

All protests must be in writing and signed by the protesting party or an authorized agent. The protest must state the grounds for the protest 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. All protests shall be addressed to the RFA Coordinator.

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 the evaluator
- Errors in computing the score
- Non-compliance with procedures described in this procurement document or current COMMERCE policy

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) An evaluator's professional judgment on or assessment of the quality of an Application, or 2) 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 and all available facts and issue a decision within ten (10) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may directly impact the actual interest of another Applicant, such Applicant 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 acquisition 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 Applications
 - Reissue the solicitation document and begin a new process
 - Make other findings and determine other courses of action as appropriate

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

5 RFA EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Phase 1 – Applicant Information (Initial Project Summary)
- Exhibit C Diverse Business Inclusion Plan
- Exhibit D Workers' Rights Certification
- Exhibit E Phase 2 Application (Invitees Only)
- Exhibit F Example Grant Contract including General Terms and Conditions

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of my/our Application, 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(s):

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

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

- ☐ **are** submitting proposed Contract edits. If proposed Contract edits are being submitted, I/we have attached them to this form. (See Section 2.12)
- ☐ **are not** submitting proposed Contract edits. (*Default if neither are checked*)

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

Signature

Printed Name and Title

Date

APPLICANT INFORMATION
Initial Project Summary
Turn in this document for PHASE 1

As the first step in this two-phase competitive process, eligible non-profit organizations must submit this Initial Project Summary (Exhibit B). Submit your organization's Exhibit B Initial Project Summary via email to the RFA Coordinator Ashly McBunch ashly.mcbunch@commerce.wa.gov. Microsoft Word documents and PDF (Portable Document Format) are the only acceptable formats to submit your organization's Exhibit B Initial Project Summary. See P

This document will allow COMMERCE to gather essential information about the applicant organization, the capital project concept, and the immediate capital readiness needs that may be supported with up to **\$50,000** in short-term capacity-building funding.

The Initial Project Summary is intentionally brief and is designed to allow applicant's to provide a snapshot of their project while ensuring COMMERCE can determine basic eligibility, alignment with program goals, and readiness to move forward to the more detailed application stage.

This is not a full application and completing this document does not guarantee advancement to Phase 2, however it is required to be eligible for Phase 2.

Section A. Organization Information (if not applicable put N/A)					
Full Legal Name of Organization			Licensed to do Business in Washington?		
			<input type="checkbox"/> Yes <input type="checkbox"/> Will become licensed within 30 days of award		
Year Incorporated	Entity Type	Applicant Type	Number of Employees		
	Choose an item.	Choose an item.	Choose an item.		
Additional Detail:					
Mailing Address			Physical Address (if different than mailing address)		
Street:			Street:		
City:	State:	Zip Code:	City:	State:	Zip Code:
Statewide Vendor Number (SWV):	Uniform Business Identifier (UBI):	Unique Entity Identifier (UEI):			

Key Staff

Primary contact person for this Application	Other Application contact (if applicable)
Name and Title:	Name and Title:
Phone:	Phone:
Email:	Email:

Initial Project Summary Questions

Applicants should provide clear, high-level information only; detailed budgets, attachments, and technical materials are not required and will not be reviewed. **If a question is not applicable provide a brief explanation why it does not apply.**

Section B. Capital Project Overview

1. Capital Project Type (select one): Energy, Housing, Infrastructure/Public Works, Facilities, Other (please describe):

Click or tap here to enter text.

2. Briefly describe your capital project, including location and stage of project:

Click or tap here to enter text.

Section C. Community Need and Beneficiaries

3. What community need does this capital project address?

Click or tap here to enter text.

4. Who will benefit from this project?

Click or tap here to enter text.

Section D. Project Snapshot

5. What is the anticipated timeline (include estimated shovel-ready or groundbreaking date and/or project completion date)?

Click or tap here to enter text.

6. What is the estimated total capital project cost? Do you have a funding plan in place? What funds have been raised to date? Please share specific amounts from funding sources.

Click or tap here to enter text.

7. What is your current staff or consulting capacity dedicated to managing the capital project? Describe their relevant experience managing capital projects.

Click or tap here to enter text.

Section E. Capital Readiness Need

8. What is your capital project Pre-Development/Pre-Construction need that could be supported with up to \$50,000?

Click or tap here to enter text.

9. Explain how this Pre-Development/Pre-Construction step can be fully completed by June 30, 2026?

Click or tap here to enter text.

These questions are not scored, but will help prioritize the Phase 1 applications and may be used within Phase 2 for additional consideration and/or points. This Applicant or the community(ies) it serves: (check all that apply):

- ☐ **Is located in a rural Washington county**
- ☐ **Is a Small non-profit organization**

DIVERSE BUSINESS INCLUSION PLAN

Please see Section 3.3 for more information regarding the Diverse Business Inclusion Plan.

If awarded a contract as a result of this RFA, 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 RFA which is expected to be subcontracted to each subcontractor category:

For example, say the total funding 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 non-profit 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 RFA 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 RFA 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 RFA.
- ☐ I/We do not plan to make any purchases reimbursable under this RFA.

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.**

**Applicant Certification
Executive Order 18-03 – Workers' Rights**

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

RFA Number: **FY26-173P1**

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

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

OR

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

OR

☐ This organization certifies it has no employees.

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

Organization Name: _____

Print full legal entity name of organization

Signed: _____

Printed Name: _____

Title: _____

Place: _____

Print city and state where signed

Date: _____

Return Applicant Certification to Procurement Coordinator as part of your complete response.

Phase 2 Full Application Information and Guidelines

Applicants who are selected through the Phase 1 review process will be **invited to submit a Phase 2 Full Application**. Only organizations that receive written email notification of advancement to Phase 2, from the RFA Coordinator are eligible to participate in Phase 2. Submission of Phase 1 documents does **not** guarantee advancement or funding.

The purpose of the Full Application is to gather more detailed information regarding the organization, its capital project, community engagement, readiness, and the specific capacity-building activities proposed for funding up to **\$50,000**. This expanded information will enable COMMERCE to evaluate feasibility, alignment with program goals, and potential impact of grant funding.

Phase 2 will be scored in accordance with section 4 of the RFA.

The Full Application is designed to:

- Provide a **deeper, more complete picture** of the capital project and its development to date
- Demonstrate **community need, community benefit, and community involvement**
- Assess the organization's **governance, staffing, and readiness** to advance the project
- Confirm the feasibility of completing **short-term capacity-building tasks by June 30, 2026**
- Present a **clear, realistic scope of work and budget** for the requested grant funding
- Ensure alignment with the overarching goals of the Capital Project Capacity Grants for Non-profit Organizations

Phase 2 allows applicants to expand on the high-level information submitted in Exhibit B and provide the detail needed for a final funding decision.

Applicants invited to Phase 2 will be asked to provide detailed responses in the following categories/areas:

○ Capital Project Description and Progress to Date
○ Community Need, Benefit, and Engagement
○ Timeline, Feasibility, and Capital Budget
○ Organizational Readiness
○ Capacity-Building Funding Request (up to \$50,000)
○ Other questions as appropriate (additional points)

Applicants invited to Phase 2 must submit Exhibit A Certifications and Assurances, Exhibit C Diverse Business Inclusion Plan and Exhibit D Workers' Rights Certification.

Applicants should expect to submit supporting documents (e.g., timeline, letters of commitment, chart of accounts, etc.) **as appropriate** to provide detailed answers within the full application.

Timeline for notifications and submissions is listed within 2.2 Estimated Schedule.

A full budget will be required to be submitted with Phase 2 application. Below is an example of a budget for a deliverables-based contract.

BUDGET

Please include a detailed budget not to exceed the amount in Section 1.4. Include costs of all things necessary to carry out the services of this RFA. Costs for work to be done by subcontractors or subgrantees are to be broken out separately. Commerce reserves the right to negotiate a lesser award amount than the applicant includes in this budget

The evaluation process is designed to award funding not necessarily to the Applicants of least cost, but rather to Applicants that best meet the requirements of this RFA. Applicants are encouraged, however, to submit budgets which are consistent with efforts to conserve state resources.

This Capital Project Capacity Grants for Non-Profit Organizations will fund a component of a capital projects, such as but not limited to: Design(s), Feasibility study(ies), Strategic Planning, Fiscal/Business planning, Policy development, and other related capital project pre-construction activities. Allowable costs as part of a deliverable can include but are not limited to: Staff time, Consultant or professional services, capital project planning, technical assistance, community engagement, data collection, project scoping, asset mapping, equipment/software that supports readiness (e.g., project management tools), Travel or stipends.

Funds may not be used for Direct construction or site work, Land acquisition, General operating expenses not tied to capital project.

Total FY26 funding available for Capital Project Capacity Grants for Non-Profits is approximately \$390,000. Commerce expects to execute a small number of grants for FY26. Applications in excess of \$50,000 will be rejected as non-responsive and will not be evaluated

SAMPLE BUDGET

ITEM	DATE DUE	Estimated payment/invoice amount
1. Monthly progress report (on COMMERCE-provided template)	Monthly, by the 15 th	None, but required for each invoice payment
2. Meet at least once per month with COMMERCE designee		None, but required for each invoice payment
3. Grant implementation plan outline on Commerce provided template	MARCH 31, 2026	\$2,000
4. Draft of written feasibility report	MAY 31, 2026	\$10,000
5. Final copy of written feasibility report	JUN 30, 2026	\$13,000
6. Final Report (on COMMERCE-provided template)	June 15, 2025	None, but required for final invoice payment
TOTAL		\$25,000



Grant Agreement with

Please enter the Entity/Business Name of Grantee Organization

through

Click or tap here to enter text.

Grant Number:

Click or tap here to enter text.

For

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

Start Date: 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)>

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) Federal Agency: <u>ALN</u> N/A N/A N/A			
10. Tax ID # <Insert number>	11. SWV # <Insert number>	12. UBI # <Insert number>	13. UEI # N/A
14. Award Method <input type="checkbox"/> Non-Competitive <input type="checkbox"/> Competitive		NOFO/RFX # <Insert competitive process number or N/A>	
Proviso # <Insert Proviso Number or N/A>			
15. 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" – Scope of Work, Attachment "B" – Budget, Attachment "C" – <insert title>, <etc.>			
FOR GRANTEE		FOR COMMERCE	

<p>_____ <insert name>, <insert title></p> <p>_____ Signature</p> <p>_____ Date</p>	<p>_____ <insert name>, <insert title></p> <p>_____ Date</p> <p>APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE</p>
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▪ **Special Terms and Conditions**

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 shall be based on the terms of the Scope of Work and Budget.

Expenses

Grantee shall receive reimbursement for approved 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.

If travel is required to complete the scope of work and approved in advance in writing, reimbursable travel expenses may include airfare (economy or coach class only), other transportation, lodging, and food necessary during periods of required travel. Grantee shall be reimbursed at a rate not to exceed the current state rate and in accordance with the [State of Washington Office of Financial Management Travel Regulations](#).

4. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Grantee upon acceptance of deliverables or services provided and receipt of properly completed invoices, which shall be submitted to COMMERCE via the Contracts Management System (CMS).

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and any expenses to be reimbursed. The invoice shall include Grant Number .

If applicable, Grantee must also include attachments that describe and document, to COMMERCE's satisfaction, a detailed description of the work performed, progress of the project, and/or receipts or other proof of payment. Except for approved indirect costs, if any, or as otherwise authorized by COMMERCE in writing, a receipt must accompany every expense in the amount of \$50.00 or more to receive reimbursement. COMMERCE may request additional documentation at any time.

Any expense reimbursed under this Grant which is later determined to be unallowable must be repaid according to the terms COMMERCE provides.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be made electronically utilizing Grantee's Statewide Vendor (SWV) number.

COMMERCE may, in its sole discretion, terminate this Grant or withhold payments 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. No payments in advance of or in anticipation of any expense reimbursable under this Grant shall be made by COMMERCE

If subgranting and/or subcontracting is authorized by COMMERCE, all Subgrantee/Subcontractor payments are reimbursable expenses within the meaning of this Agreement. Grantee must have, and may be required to demonstrate, the means to pay each and every Subgrantee/Subcontractor. Failure to pay Subgrantees/Subcontractors as agreed may result in suspension or termination of this Grant.

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.

Unless otherwise authorized by COMMERCE in writing, reimbursable payroll costs shall not include employee overtime nor bonus pay.

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.

6. INSURANCE

The Grantee shall maintain 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 a certificate of insurance to COMMERCE which outlines the coverage and limits defined in this insurance section within fifteen (15) calendar days of a written request by COMMERCE. The 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. During

the term of this Contract, if requested, the Grantee shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

DO NOT send insurance certificates to COMMERCE unless requested by COMMERCE. Any certificates received by mail will be returned to sender unless the certificate identifies the contract number, contract manager name, and/or program name to which it applies.

The Grantee shall maintain the following policies in full force and effect during the term of this Grant:

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

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, 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 this entire written document 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 the work under this Grant under a separate agreement 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. **BREACHES OF OTHER STATE CONTRACTS**

Grantee is expected to comply with all other contractual agreements executed between Grantee and the State of Washington. A breach of any other contract or grant agreement entered into between Grantee and the State of Washington may, in COMMERCE's sole discretion, be deemed a breach of this Grant.

10. **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 if COMMERCE 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.

11. CONFLICT OF INTEREST

Grantee must maintain and comply with written standards of conduct covering conflicts of interest and governing the actions of its employees who are 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 or household, 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. LAWS

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

20. 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.

21. 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 of any clause or condition of this Grant is not effective or binding unless made in writing and signed by the Authorized Representative.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. REGISTRATION WITH DEPARTMENT OF REVENUE

Unless exempt from State law, the Grantee shall complete registration with the Washington State Department of Revenue.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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/subcontracting, as well as copies of all subgrants/subcontracts 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. 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.

34. 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.

35. 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.

36. TERMINATION FOR CAUSE

In the event COMMERCE determines the Grantee has failed to comply with one or more terms 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, unless remedying the noncompliance is not feasible or not in the State's interest. 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.

37. 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 or part thereof 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.

38. 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.

39. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, and reimbursable 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.

40. WAIVER

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

- **Attachment A: Scope of Work**

- **Attachment B: Budget**