

CONTRACT FACE SHEET

Contract Number: CD16-96503-028

Washington State Department of Commerce Local Government Division DIRECT-APPROPRIATION GRANTS

| | | | |
|---|---|---|--|
| 1. Contractor City of Olympia PO Box 1967 Olympia, WA 98501 | | 2. Contractor Doing Business As (optional) N/A | |
| 3. Contractor Representative Kip Summers, Senior Engineer (360) 570-5834 ksummers@ci.olympia.wa.us | | 4. Commerce Representative Karma Shannon ♥ Lawson, Project Manager PO Box 42525, Olympia, WA 98504 (360) 810-0185 Karma.ShannonLawson@commerce.wa.gov | |
| 5. Contract Amount \$921,500.00 | 6. Funding Source Federal: State: <input checked="" type="checkbox"/> Other: N/A: | 7. Contract Start Date Upon Execution | 8. Contract End Date June 30, 2019 |
| 9. Federal Funds (as applicable) N/A | | Federal Agency N/A | |
| 9. Federal Funds (as applicable) N/A | | CFDA Number N/A | |
| 10. Tax ID # XXXXXXXXXXXXXXX | 11. SWV # SWV0008653-00 | 12. UBI # 342000433 00 | 13. DUNS # |
| 14. Contract Purpose COMMERCE and the Contractor have entered into this Contract to undertake a legislatively approved project that furthers the goals and objectives of Washington State Direct Appropriations Program. The Washington State Department of Commerce (COMMERCE), and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contract Terms and Conditions including; ATTACHMENT I: CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES; ATTACHMENT II: CERTIFICATION OF INTENT TO ENTER THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) CERTIFICATION PROCESS (if applicable); ATTACHMENT III: CERTIFICATION OF AVAILABILITY OF FUNDS TO COMPLETE PROJECT. | | | |
| FOR THE CONTRACTOR _____ Signature _____ Print Name _____ Title _____ Date Approved as to form:  _____ Deputy City Attorney | | FOR THE DEPARTMENT OF COMMERCE _____ Mark K. Barkley, Assistant Director, Local Government Division _____ Date APPROVED AS TO FORM ONLY _____ Luke Eaton Assistant Attorney General _____ 4/4/2018 Date | |

DECLARATIONS

CLIENT INFORMATION

Contractor Name: **City of Olympia**
Contract Number: **CD16-96503-028**
State Wide Vendor Number: **SWV0008653-00**

PROJECT INFORMATION

Project Title: **Percival Landing Renovation**
Project City: **Olympia**
Project State: **Washington**
Project Zip Code: **98501**

CONTRACT INFORMATION

Grant Amount: **\$921,500.00**
Appropriation Number: **ESSB 5965 SL (2017 3rd Sp. Session)**
Contract End Date: **June 30, 2019 (subject to reappropriation)**
Biennium: **2017-2019**
Biennium Close Date: **June 30, 2019**
Earliest Date for Construction Reimbursement: **July 1, 2014**

ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

N/A

SCOPE OF WORK

This is a phased project that began in 2006 with the development of the Percival Landing Concept Plan. This Contract is for a portion of Phase 2 of Percival Landing Section A, to replace the failing stacked concrete and wooden bulkheads at Percival Landing along 4th Avenue W and Water Street SW with new steel sheet piling bulkhead. This will increase reliability of this major arterial through downtown Olympia and preserve public access to the boardwalk and utilities in the roadway. Funds from this Contract will be used for the following design, permitting, and construction activities:

- **Design** - Consultant will design the steel sheet piling bulkhead replacement
- **Permitting** - Corps of Engineers Nationwide Maintenance permit, DNR Hydraulic Project Approval, City of Olympia Building permit, and SEPA and Shoreline permit exemptions for maintenance
- **Construction** - Construction bidding, contracting and construction of bulkhead replacement, reconnection of boardwalk to new bulkhead pile cap

Costs may include, but are not limited to, environmental/cultural review, permits, material testing, as-built data gathering, bid documents, construction and construction management.

If the above scope of work includes engineering, planning, or design activities, the Contractor shall make all plans and documents funded in whole or in part by this Contract available for COMMERCE's review upon reasonable request.

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CONTRACT TERMS AND CONDITIONS

Washington State Department of Commerce DIRECT-APPROPRIATION GRANTS

Part 1. SPECIAL TERMS AND CONDITIONS

1.1. DEFINITIONS

As used throughout this Washington State Capital Budget Direct-Appropriation Contract the following terms shall have the meaning set forth below:

- A. "Contract" shall mean this Washington State Capital Budget Direct-Appropriation Contract.
- B. "Contractor" shall mean the local government identified on the Contract Face Sheet performing service(s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.
- C. "COMMERCE" shall mean the Washington State Department of Commerce, and who is a Party to the Contract.
- D. "Declarations" and "Declared" shall refer to the project information, grant terms and conditions as stated on the Declarations Page of this Grant Contract located on page i of this Contract, displayed within the Contract in THIS STYLE for easier identification.

1.2. AUTHORITY

Acting under the authority of Chapter 43.330.050(5) RCW, COMMERCE has awarded the Contractor a Contract for a legislatively approved project pursuant to the legislative APPROPRIATION NUMBER and BIENNIUM as shown on the Declarations Page.

1.3. PURPOSE

COMMERCE and the Contractor have entered into this Contract to undertake a legislatively approved project that furthers the goals and objectives of Washington State. The project will be undertaken by the Contractor and will include the activities described in the SCOPE OF WORK shown on the Declaration page. The project must be undertaken in accordance with the grant terms and conditions, and all applicable federal, state and local laws and ordinances, which by this reference are incorporated into this Contract as though set forth fully herein.

1.4. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and state of Washington statutes and regulations.
- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.

1.5. GRANT AMOUNT

COMMERCE shall pay an amount not to exceed the awarded GRANT AMOUNT as shown on the attached Declarations Page for the eligible costs necessary for or incidental to the performance of work as set forth in the described in the SCOPE OF WORK shown on the Declaration page.

1.6. CERTIFICATION OF FUNDS

- A. The release of state funds under this Contract is contingent upon the Contractor certifying that it has expended or has access to funds from other sources as set forth in ATTACHMENT III: CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT to complete all the project activities identified in the SCOPE OF WORK shown on the Declaration page. Such sources may consist of a combination of any of the following:
 - i. Loans or grants.
 - ii. Eligible project expenditures prior to the execution of this Contract.
 - iii. Cash dedicated to the project.
 - iv. Funds available through a letter of credit or other binding loan commitment(s).

- v. Pledges from foundations or corporations.
- vi. Pledges from individual donors.
- vii. The value of real property when acquired solely for the purposes of this project, as established and evidenced by a current market value appraisal performed by a licensed, professional real estate appraiser, or a current property tax statement. COMMERCE will not consider appraisals for prospective values of such property for the purposes of calculating the amount of matching fund credit.
- viii. In-kind contributions, subject to the COMMERCE's approval.

B. The Contractor shall maintain records sufficient to evidence that it has access to or has expended funds from such sources, and shall make such records available for COMMERCE's review upon reasonable request

1.7. BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES

When the grant is used to fund the acquisition of real property, the value of the real property eligible for reimbursement under this grant shall be established as follows:

- A. Contractor purchases of real property from an independent third-party seller shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser, or a current property tax statement.
- B. Contractor purchases of real property from a subsidiary organization, such as an affiliated LLC, shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser or the prior purchase price of the property plus holding costs, whichever is less.

1.8. PROJECT EXPENDITURES ELIGIBLE FOR REIMBURSEMENT

Payments to the Contractor shall be made on a reimbursement basis only. For the purposes of this Contract, eligible costs shall be construed to mean costs incurred and paid, or costs incurred and payable within thirty (30) days. Only costs incurred on or after the EARLIEST DATE FOR CONSTRUCTION REIMBURSEMENT as shown in the Declaration are eligible for reimbursement under this Contract.

The Contractor may be reimbursed for the following eligible costs related to the activities identified in the SCOPE OF WORK shown on the Declaration page.

- A. Real property and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the project;
- B. Design, engineering, architectural, and planning;
- C. Archaeological/historical review;
- D. Construction management and construction observation (from external sources only);
- E. Construction costs including, but not limited to, the following:
 - i. Site preparation and improvements
 - ii. Permits and fees
 - iii. Labor and materials
 - iv. Taxes on project goods and services
 - v. Capitalized equipment
 - vi. Information technology infrastructure
 - vii. Landscaping
- F. Insurance premiums as required in Section 1.20;
- G. Other costs authorized through the legislation.

1.9. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the Contractor for eligible project expenditures up to the maximum payable under this Contract. When requesting reimbursement for costs incurred or expenditures made, the Contractor shall submit a signed and completed Invoice Voucher (Form A-19), referencing in the SCOPE OF WORK shown on the Declaration page project activity performed, and any appropriate documentation. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Each Invoice Voucher must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the project since the last invoice was submitted, as well as a report of project status to date.

COMMERCE will not release payment for any reimbursement request received until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the Contractor.

The final Invoice Voucher payment shall not occur prior to the completion of all project activities as identified in the SCOPE OF WORK shown on the Declaration page. A sum not to exceed ten percent (10%) of the GRANT AMOUNT will be retained until all project activities are complete and a Certified Project Completion Report is completed and submitted by the Contractor, per Section 1.11.

The Contractor shall submit all Invoice Vouchers and any required documentation to:

Local Government Division, Community Assistance and Research Unit
Department of Commerce
PO Box 42525
Olympia, WA 98504-2525

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

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

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

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

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

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

1.10. SUBCONTRACTOR DATA COLLECTION

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

1.11. CERTIFIED PROJECT COMPLETION REPORT AND FINAL PAYMENT

The Contractor shall complete a Certified Project Completion Report when activities identified in the SCOPE OF WORK shown on the Declaration page are complete.

The Contractor shall provide the following information to COMMERCE:

- A. A certified statement that the project, as described in the SCOPE OF WORK shown on the Declaration page, is complete and, if applicable, meets required standards.
- B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in the SCOPE OF WORK shown on the Declaration page.
- C. Certification that all costs associated with the project have been incurred and accounted for. Costs are incurred when goods and services are received and/or contract work is performed.
- D. A final voucher for the remaining eligible funds.

The Contractor will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the GRANT AMOUNT including the ten percent (10%) retainage, as described in Section 1.9. The final Invoice Voucher payment shall not occur prior to the completion of all project activities identified in the SCOPE OF WORK shown on the Declaration page and COMMERCE's receipt and acceptance of the Certified Project Completion Report.

1.12. REPORTS

The Contractor shall furnish COMMERCE with Project Status Reports when submitting Invoice Vouchers (as described in Section 1.9), a Certified Project Completion Report at project completion (as described in Section 1.10), and other reports as COMMERCE may require. Failure to file reports as requested may result in termination of this Contract.

1.13. EVALUATION AND MONITORING

The Contractor shall cooperate with and freely participate in any monitoring or evaluation activities conducted by COMMERCE, including site inspections, if necessary.

The Contractor may be asked by COMMERCE to provide photographs, either hard copy or electronically, which visually depict the progress made on the project.

COMMERCE or the State Auditor and any of their representatives shall have full access to and the right to examine all of the Contractor's records with respect to all matters covered in this Contract. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this Contract. Such rights last for six (6) years from the date final payment is made.

1.14. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this Contract, does not assert, and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Contract. This provision does not extend to claims that COMMERCE may bring against the Contractor in recapturing funds expended in violation of this Contract.

1.15. CHANGE OF OWNERSHIP OR USE FOR CONTRACTOR-OWNED PROPERTY

The Contractor understands and agrees that any or all assets acquired, constructed, or otherwise improved by the Contractor using the funds under this Contract shall be held and used by the Contractor for the purposes stated in the SCOPE OF WORK shown on the Declaration page for a period of at least ten (10) years from the date the final payment is made.

In the event that the Contractor decides to change or transfer ownership of any or all assets acquired, constructed, or otherwise improved by the Contractor using state funds under this Contract, the Contractor agrees that any such decision or action must be submitted in writing and approved by COMMERCE in writing at least thirty (30) days prior to the execution of such decision or action.

In the event the Contractor is found to be out of compliance with this section, the Contractor shall repay the principal amount of the grant as stated in Section 1.5, plus interest calculated at the rate of interest on State of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject asset was authorized. Repayment shall be made pursuant to Section 1.21. Recapture Provision.

1.16. CHANGE OF USE FOR LEASED PROPERTY

The Contractor understands and agrees that any facility leased by the Contractor that is constructed, renovated, or otherwise improved using state funds under this Contract shall be used by the Contractor for the purposes stated in the SCOPE OF WORK shown on the Declaration page for a period of at least ten (10) years from the date the final payment is made.

In the event the Contractor is found to be out of compliance with this section, the Contractor shall repay the principal amount of the grant as stated in Section 1.5, plus interest calculated at the rate of interest on State of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 1.21. Recapture Provision.

1.17. HISTORICAL AND CULTURAL ARTIFACTS

Prior to commencing construction, Contractor shall complete the requirements of Governor's Executive Order 05-05, or, as a substitute for completion of Governor's Executive Order 05-05, Contractor shall complete Section 106 of the National Historic Preservation Act. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts and agrees to hold harmless COMMERCE and the State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 05-05, coordinate with COMMERCE and the Washington State Department of Archaeology and Historic

Preservation (DAHP), including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed project funded by this Contract. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing pre-requisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and notify the local historic preservation officer and the state's historic preservation officer at DAHP, and the Commerce Representative identified on the Face Sheet. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local law enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all sub-contracts for work or services related to the SCOPE OF WORK shown on the Declaration page.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and, WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05.

In the event that the Contractor finds it necessary to amend the SCOPE OF WORK shown on the Declaration page the Contractor may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

1.18. SIGNAGE, MARKERS, AND PUBLICATIONS

If, during the period covered by this Contract, the Contractor displays or circulates any communication, publication, or donor recognition identifying the financial participants in the project, any such communication or publication must identify "The Taxpayers of Washington State" as a participant.

1.19. PREVAILING WAGE LAW

The project funded under this Contract is subject to state prevailing wage law (Chapter 39.12 RCW). The Contractor is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine the prevailing wages that must be paid. COMMERCE is not responsible for determining the prevailing wages applying to this project or for any prevailing wage payments that may be required by law.

1.20. INSURANCE

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

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 Contractor shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation or modification.

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

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

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

Automobile Liability. In the event that performance pursuant to this Contract involves the use of vehicles, owned or operated by the Contractor or its subcontractors, 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 Contractor shall maintain Professional Liability or Errors and Omissions Insurance. The Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under Contract to the Contractor. The State of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor 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:

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

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

Self-Insured Contractors

With prior approval from COMMERCE, the Contractor may provide insurance coverage under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the Contractor shall provide:

- i. a description of its self-insurance program, and
- ii. a certificate and/or letter of coverage that outlines coverage, limits, and deductibles.

All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by:

- i. Governmental Accounting Standards Board (GASB),
- ii. Financial Accounting Standards Board (FASB), and
- iii. The Washington State Auditor's annual instructions for financial reporting.

Contractors participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The State of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Contractor shall provide annually to COMMERCE a summary of coverages and a letter of self-insurance, evidencing continued coverage under Contractor's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self-insurance will be provided on the anniversary of the start date of this Contract.

1.21. RECAPTURE PROVISION

In the event that the Contractor fails to expend state funds in accordance with state law and/or the provisions of this Contract, COMMERCE reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance. Repayment by the Contractor of state funds under this recapture provision shall occur within thirty (30) days of demand. In the event that COMMERCE is required to institute proceedings to enforce this recapture provision, COMMERCE shall be entitled to its cost thereof, including reasonable attorney's fees.

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture all funds disbursed under the Contract, in addition to any other remedies available at law or in equity. This provision supersedes the Recapture provision in Section 2.32 of the General Terms and Conditions.

1.22. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Contract are withdrawn, reduced, or limited in any way by the Washington State Governor or Legislature during the Contract period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of COMMERCE, and shall meet and renegotiate the Contract accordingly.

1.23. REAPPROPRIATION

The parties hereto understand and agree that any state funds, including the ten percent (10%) retainage as described in Section 1.9, not expended by the BIENNIUM CLOSE DATE listed on the Declarations Page will lapse on that date unless specifically reappropriated by the Washington State Legislature or Governor. COMMERCE will make all necessary efforts to seek reappropriation of funds into the declared BIENNIUM. If funds are so reappropriated, COMMERCE's obligation under the terms of this Contract shall be contingent upon the terms of such reappropriation.

In the event any funds awarded under this contract are reappropriated for use in a future biennium, COMMERCE reserves the right to assign a reasonable share of any such reappropriation for administrative costs.

1.24. TERMINATION FOR FRAUD OR MISREPRESENTATION DISINCENTIVE

In the event the Contractor commits fraud or makes any misrepresentation in connection with the Grant application or during the performance of this Contract, COMMERCE reserves the right to terminate or amend this Contract accordingly, including the right to recapture all funds disbursed to the Contractor under this Contract.

Part 2. GENERAL TERMS AND CONDITIONS

2.1. DEFINITIONS

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the Contractor, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this Contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2.2. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

2.3. ALL WRITINGS CONTAINED HEREIN

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

2.4. AMENDMENTS

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

2.5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35

The Contractor 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.

2.6. APPROVAL

This Contract shall be subject to the written approval of COMMERCE's authorized representative and shall not be binding until so approved. The Contract may be altered, amended, or waived only by a written amendment executed by both parties.

2.7. ASSIGNMENT

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

2.8. ATTORNEY'S FEES

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

2.9. AUDIT

A. General Requirements

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate audits and shall ensure that Subcontractors also maintain auditable records.

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

COMMERCE reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

Responses to any unresolved findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

In the event an audit is required, if the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's records must be available for review by COMMERCE.

C. Documentation Requirements

The Contractor must send a copy of any audit report no later than nine (9) months after the end of the Contractor's fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street SE
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter and Management Decision Letter, where applicable.

If the Contractor is required to obtain a Single Audit in accordance with 2 CFR Part 200, a copy must be provided to Commerce; no other report is required.

2.10. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990, 28 C.F.R. Part 35 will be required, as specified by the local building Department.

2.11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

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

1. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
2. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security

number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

- B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure

2.12. CONFORMANCE

If any provision of this Contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

2.13. CONFLICT OF INTEREST

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

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Contractor and their subcontractor(s) must identify and state of Washington employees for former state employees employed or on the firm's governing board during the past 24 months. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by Commerce that a conflict of interest exists, the Contractor may be disqualified from further consideration for the award of a contract.

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

2.14. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document, which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

2.15. DISALLOWED COSTS

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

2.16. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the the Director and/or the designee, 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 Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract 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 Contract 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.

2.17. DUPLICATE PAYMENT

The Contractor certifies that work to be performed under this Contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

2.18. GOVERNING LAW AND VENUE

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

2.19. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to 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 Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the Contractor's or any subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Contractor 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.

2.20. INDEPENDENT CAPACITY OF THE CONTRACTOR

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

2.21. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor 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 Contractor the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

2.22. LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

Washington State Laws and Regulations

- A. Affirmative action, RCW 41.06.020 (1).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17A RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Housing assistance program, Chapter 43.185 RCW
- G. Interlocal cooperation act, Chapter 39.34 RCW.
- H. Noise control, Chapter 70.107 RCW.
- I. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open public meetings act, Chapter 42.30 RCW.
- K. Prevailing wages on public works, Chapter 39.12 RCW.
- L. Public records act, Chapter 42.56 RCW.
- M. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.
- N. Shoreline management act of 1971, Chapter 90.58 RCW.
- O. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- P. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State environmental policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05 Archeological and Cultural Resources.

2.23. LICENSING, ACCREDITATION AND REGISTRATION

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

2.24. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

2.25. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

2.26. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

2.27. PAY EQUITY

The Contractor 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. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - 1. 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.
 - 2. 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.
 - 3. 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 Contract may be terminated by the Department, if the Department or the Department of Enterprise services determines that the Contractor is not in compliance with this provision.

2.28. POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 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.

2.29. PREVAILING WAGE LAWS

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this Contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

2.30. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided,

however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

2.31. PUBLICITY

The Contractor 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.

2.32. RECAPTURE

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

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

2.33. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

CONTRACTOR shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

2.34. REGISTRATION WITH DEPARTMENT OF REVENUE

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

2.35. RIGHT OF INSPECTION

At no additional cost, all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

2.36. SAVINGS

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

2.37. SEVERABILITY

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

2.38. SUBCONTRACTING

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

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

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

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

2.39. SURVIVAL

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

2.40. TAXES

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

2.41. TERMINATION FOR CAUSE / SUSPENSION

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

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

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

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

2.42. TERMINATION FOR CONVENIENCE

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

2.43. TERMINATION PROCEDURES

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

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

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

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

1. Stop work under the Contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
3. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the Contract had been completed, would have been required to be furnished to COMMERCE;
6. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
7. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this Contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

2.44. TREATMENT OF ASSETS

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

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

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

2.45. WAIVER

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

**ATTACHMENT I:
CERTIFICATION OF THE PAYMENT AND REPORTING OF
PREVAILING WAGES**

**Washington State Department of Commerce
DIRECT-APPROPRIATION GRANTS**

**Contractor: City of Olympia
Contract Number: CD16-96503-028**

The Contractor, by its signature below, certifies that all contractors and subcontractors performing work on the project as described in the SCOPE OF WORK shown on the Declaration page shall comply with prevailing wage laws set forth in RCW 39.12, as applicable to the project funded by this Contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with RCW 39.12, and shall make such records available for Commerce's review upon request.

If any state funds are used by the Contractor for the purpose of construction, applicable State Prevailing Wages must be paid.

The Contractor, by its signature below, certifies that the declaration set forth above has been reviewed and approved by the Contractor's governing body as of the date and year written below.

SIGNATURE

NAME

TITLE

DATE

**ATTACHMENT II:
CERTIFICATION OF THE INTENT TO ENTER THE LEADERSHIP IN ENERGY AND
ENVIRONMENTAL DESIGN (LEED)
CERTIFICATION PROCESS**

**Washington State Department of Commerce
DIRECT-APPROPRIATION GRANTS**

**Contractor: City of Olympia
Contract Number: CD16-96503-028**

The Contractor, by its signature below, certifies that it will enter into the Leadership in Energy and Environmental Design (LEED) certification process, as stipulated in RCW 39.35D, as applicable to the project described in the SCOPE OF WORK shown on the Declaration page funded by this Contract. The Contractor shall, upon receipt of LEED certification by the United States Green Building Council, provide documentation of such certification to Commerce.

The Contractor, by its signature below, certifies that the declaration set forth above has been reviewed and approved by the Contractor's governing body or board of directors, as applicable, as of the date and year written below.

EXEMPT: DO NOT SIGN

SIGNATURE

NAME

TITLE

DATE

**ATTACHMENT III:
CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT**

**Washington State Department of Commerce: DIRECT-APPROPRIATION GRANTS
Contractor: City of Olympia
Contract Number: CD16-96503-028**

| Type of Funding | Source Description | Amount |
|-----------------------------------|---|-----------------------|
| <i>Grant</i> | Washington State Department of Commerce | \$921,500.00 |
| <i>Other Grants</i> | | |
| Grant #1 | | \$ |
| Total Other Grants | | \$0.00 |
| <i>Other Loans</i> | | |
| Loan #1 | | \$ |
| Total Loans | | \$0.00 |
| <i>Other Local Revenue</i> | | |
| Source #1 | General Fund (2011 CFP) | \$150,000.00 |
| Source #2 | General Fund (2016 CFP) | \$199,000.00 |
| Source #3 | General Fund (2018) | \$1,705,000 |
| Total Local Revenue | | \$2,054,000.00 |
| <i>Other Funds</i> | | |
| Source #1 | | \$ |
| Total Other Funds | | \$0.00 |
| Total Project Funding | | \$2,975,500.00 |

CERTIFICATION PERFORMANCE MEASURE

The Contractor, by its signature, certifies that project funding from sources other than those provided by this Contract and identified above are fully expended or committed, or both, in an amount sufficient to complete the project, or a distinct phase of the project that is useable to the public, and that the funding will be used for the purpose as described elsewhere in this Contract, as of the date and year written below.

The Contractor shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the project, and shall make such records available for COMMERCE's review upon reasonable request.

SIGNATURE

NAME

TITLE

DATE