AGREEMENT BETWEEN THE CITY OF ELLensburg AND

FOR CARES ACT SMALL BUSINESS
AND COMMUNITY SUPPORT FUND GRANT

THIS AGREEMENT is made this ___ day of ________ 2020 (“Effective date”), by and between the City of Ellensburg, a Washington municipal corporation (“the City”) and ________________________ (“the Recipient”), the recipient of a grant award from the City’s Small Business and Community Support Fund, collectively referred to as the “Parties.”

WHEREAS, on March 9, 2020, the Ellensburg City Council declared a public health emergency in Ellensburg arising from the COVID-19 outbreak; and

WHEREAS, Governor Inslee issued Proclamation 20-25, “Stay Home, Stay Healthy, on March 23, 2020, which prohibited all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business, within the limitations therein; and

WHEREAS, Governor Inslee issued Proclamation 20-25.3 on May 4, 2020, which established an initial four-phased approach to reopening Washington State; and

WHEREAS Governor Inslee issued Proclamation 20-25.4 on May 31, 2020, which creates a transition from “Stay Home – Stay Healthy” to “Safe Start – Stay Healthy” on a County by County basis; and

WHEREAS, Kittitas County is currently in Phase 2 of the phased reopening plan, and many businesses located in Ellensburg are open only with a limited capacity and/or reduced operations; and

WHEREAS, disruptions to workers and small businesses are serious, as small businesses are the backbone of our economy, and provide the foundation of employment, services for the community, and revenue for cities and other public agencies to continue to provide essential services for the public welfare and benefit; and

WHEREAS, the Ellensburg City Council recognizes that one of its essential functions is to secure the health and welfare of Ellensburg’s citizens; and

WHEREAS, resources are necessary to help small businesses survive and certain small businesses reasonably require public aid in order to survive; and

WHEREAS, on March 27, 2020, the United States Congress adopted the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) which, among other things, amended Section 601(a) of the Social Security Act and established the Coronavirus Relief Fund, as added by section 5001 of the Coronavirus Aid, Relief, and
Economic Security Act ("CARES Act") (PL 116-136), established the Coronavirus Relief Fund and appropriated $150 billion to the Fund be used to make payments for specified uses to States and certain local governments; and

WHEREAS, guidance issued by the U.S. Treasury Department indicates that necessary expenditures incurred due to the COVID-19 public health emergency include costs incurred to support local businesses that suffered losses due to COVID-19 business interruptions, or incurred costs for personal protective equipment or other materials, supplies and equipment needed to safely operate following a COVID-19-related closure; and

WHEREAS, the Washington State allocation of Fund resources has been designated to reimburse certain additional local governments in the state for specified expenditures though contracts administered by the State Department of Commerce; and

WHEREAS, the City entered into an Interagency Agreement with the Washington State Department of Commerce ("Commerce") regarding the Fund for the period March 1, 2020 through October 31, 2020, attached hereto as Exhibit 1 and incorporated herein; and

WHEREAS, the Interagency Agreement incorporates Special Terms and Conditions – Interagency Agreement – Federal Funds ("Special Terms and Conditions"), attached hereto as Exhibit 2 and incorporated herein; and

WHEREAS, on May 18, 2020, the Ellensburg City Council adopted Resolution 2020-13, which established a Small Business and Community Support Fund, utilizing monies to be reimbursed to the City from the state of Washington’s Coronavirus Relief Funds; and

WHEREAS, the Recipient applied for and has been selected by the City to receive a grant from the CARES Act Small Business and Community Support Fund by the City ("Grant Funds") for allowable expenses, as set forth herein.

NOW THEREFORE, the Parties do hereby agree as follows:

AGREEMENT

1. Incorporation of Recitals/Exhibits. The Recitals and referenced Exhibits are incorporated herein by this reference.

2. Award Amount and Eligible Expenses. The total amount of Grant Funds to be awarded to Recipient is $_________. Recipient shall use Grant Funds only to pay or reimburse Recipient for Eligible Expenses incurred during the time period set forth in Section 3. A list of Eligible and Ineligible Expenses is included in Exhibit 1. In the event an expenditure is submitted that is ineligible for payment per Exhibit 1, it will not be reimbursed by Commerce or the City.
3. **Time Period.** All Eligible Expenses must be incurred by the Recipient between March 1, 2020 and October 31, 2020. Any expenses incurred before or after this period are not Eligible Expenses for Grant Funds. The Recipient understands that any expenses incurred in excess of Grant Funds are the Recipient’s sole responsibility and will not be paid by the City.

4. **Source of Grant Funds.** The Parties acknowledge that funding for this Agreement comes solely as reimbursement of, or payments made to, the City from the State of Washington. The City has no independent obligation to provide the Recipient with funds from any other source.

5. **Interagency Agreement.** The Parties to this Agreement agree to be bound to the provisions of the Interagency Agreement Number 20-6541C-169 between the City and the Washington State Department of Commerce, included as Exhibit 2 to this Agreement.

6. **Compliance with Federal, State and Local Laws.** The Recipient shall comply with and obey all applicable federal, state and local laws, regulations, and ordinances. Should the Recipient’s spending of the Grant Funds be inconsistent with applicable laws, provisions of this Agreement, or otherwise inappropriate, the City shall have the right to the return of any portion of the Funds that are later determined to have been spent in violation of applicable laws. In the alternative, the City may recapture such funds from payments due under this Agreement. The City shall not exercise this right until it has given written notice of noncompliance with applicable laws or this Agreement to Recipient and allowed Recipient a period of ten (10) days from the date of notice for Recipient to cure the noncompliance. The right of recapture provided in this section is in addition to and not in lieu of any right which Washington law provides for breach of contract.

   a. **No Use of Grant Funds for Expenses Covered by Other Programs.** The Recipient shall not use Grant Funds to cover payroll or other employee-related or business-associated costs for which the Recipient has received other federal, state or regional funds, including without limitation funds made available under the Payroll Protection Program (“PPP”) or unemployment insurance compensation.

   b. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction.** Recipient certifies, by signing this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State department or agency.

7. **Maintenance of Records; Public Records.** The Recipient shall maintain accurate written records, including accounting records such as invoices, sales receipts, and proof of payment, books, documents, data and other evidence that reflects all of Recipient’s direct and indirect expenditures of Grant Funds. These records must be sufficient to demonstrate that the funds have been used in accordance with Section 601(d) of the Social Security Act. The City may at any time review the documentation to determine the
Recipient’s conformance with the requirements of the Grant Funds program, and the Recipient shall make available to the City, upon request, all of the Recipient’s records and documents with respect to all matters covered by this Agreement.

a. The City may require the Recipient to provide additional documentation if the existing documentation is deemed incomplete.

b. The Recipient shall retain all records related to this Agreement for a period of six (6) years following the receipt of Grant Funds. These records, including materials generated under the contract, shall be subject at all reasonable times to inspection and review by the City, and to an audit by the Washington State Department of Commerce, personnel duly authorized by Commerce, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

c. If any litigation, claim or audit is started before the expiration of the six (6) year period provided in Section 7(b) above, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

d. All Recipient documents and records comprising this Agreement, and all other documents and records provided to the City by the Recipient, are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW. Thus, the City may be required, upon request, to disclose the Agreement and documents or records related to it unless an exemption under the Public Records Act or other laws applies.

8. Grant Contract Amendments. The Parties acknowledge that Commerce or the State of Washington may request changes to the Grant Funds or its provisions. Any changes or revisions to the Grant Fund terms and conditions that are applicable to this Agreement shall be incorporated by amendment of this Agreement, following written notice by City to the Recipient.

9. Nondiscrimination. During the performance of this Agreement, the Recipient shall comply with all federal and state nondiscrimination laws, including but not limited to, chapter 49.60 RCW, Washington’s Law Against Discrimination, and 42 U.S.C. 12101 et seq., the Americans with Disabilities Act (ADA). In the event of the Recipient’s noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Agreement may be rescinded, canceled, or terminated in whole or in part.

10. Termination. If the Recipient fails to fulfill its obligations under this Agreement, the City may terminate this Agreement upon written notice to the Recipient specifying the reason for termination. The termination date shall be specified in the notice of termination.

11. Governing Law and Venue. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Washington and the venue will be in Kittitas County, Washington.
12. **Assignment of Contract.** The Recipient shall not assign this contract without the prior written consent of the City.

13. **Entire Agreement.** The Parties agree that this Agreement, including referenced exhibits, is the complete expression of the terms agreed to by the Parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the Parties.

14. **Severability.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.

CITY OF ELLENSURG

By: ________________________________
John Akers, City Manager

RECIPIENT

By: ________________________________

Printed Name: _____________________

Title: ______________________________
A. Eligible Uses of Grant Funds:

a. Payment of rent or required monthly loan payments.
b. Payments of regular wages, employee benefits and taxes; provided such expenses have not been and, to the best knowledge of the Recipient, will not be reimbursed under any federal, state or regional program, including any grant or loan programs.
c. Expenditures involved in typical operating costs, including those set forth on an income statement as a regular, ongoing cost of operating the business.
d. Typical draws or wages paid on a regular interval to the owner; provided such draws or wages are consistent with those paid to the owner in previous corresponding quarters, years or other appropriate time intervals.
e. Expenses for compliance with COVID-19-related public health measures, including personal protective equipment and supplies, plexiglass barriers or other similar equipment and expenses reasonably necessary for the protection of public health and the health of Recipient owners and employees.

B. Ineligible Uses of Program Grant Funds:

a. Political campaign contributions or donations.
b. Charitable contributions or gifts.
c. Bonus payments to Recipient owners, officers or employees.
d. Payment of wages to any member of the Recipient owner’s family who is not a bona fide employee.
e. Draws or salary to Recipient owner that exceeds the amount paid over a corresponding interval, quarter, or year in 2019.
f. Paydown or payoff of debt by more than the monthly amount required by the underlying debt instrument.
g. Payroll and other employee- or business-associated costs for which the Recipient has received or expects to receive reimbursement from other federal, state or regional funds (e.g. Payroll Protection Program or unemployment insurance).
h. Damages covered by insurance.
i. Reimbursement to donors for donated items or services.
j. Severance pay.
k. Legal settlements.
l. Any expense not considered an eligible business expense by the Department of the Treasury Internal Revenue Service.
Exhibit 2

Interagency Agreement with

City of Ellensburg

through

the Coronavirus Relief Fund for Local Governments

For

Costs incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) during the period of March 1, 2020 thru October 31, 2020.

Start date: March 1, 2020
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SPECIAL TERMS AND CONDITIONS
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1. AUTHORITY

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by the Interstate Cooperation Act, Chapter 39.34 RCW.

2. ACKNOWLEDGMENT OF FEDERAL FUNDS

Funds under the Contract are made available and are subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and Title V and VI of the CARES Act.

The Contractor agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses issued by the Contractor describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the following statement:

"This project was supported by a grant awarded by US Department of the Treasury. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of the Treasury. Grant funds are administered by the Local Government Coronavirus Relief Fund thru the Washington State Department of Commerce."

3. CONTRACT MANAGEMENT

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

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

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

4. COMPENSATION

COMMERCE shall pay an amount not to exceed the contract amount listed on the Face Sheet for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work (Attachment A).

5. EXPENSES

Contractor shall receive reimbursement for allowable expenses as identified in the Scope of Work (Attachment A) or as authorized in advance by COMMERCE as reimbursable.

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

6. INDIRECT COSTS

Contractor shall provide their indirect cost rate that has been negotiated between their entity and the federal government. If no such rate exists a de minimis indirect cost rate of 10% of modified total direct costs (MTDC) will be used.

7. 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 expenditures made, Contractor shall submit all invoice Vouchers and any required documentation electronically through COMMERCE's Contracts Management System (CMS), which is available through the Secure Access Washington (SAW) portal. If the Contractor has constraints preventing access to COMMERCE's online A-19 portal, a hard copy A-19 form may be provided by the COMMERCE Project Manager upon request.
SPECIAL TERMS AND CONDITIONS
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The voucher must be certified by an official of the Contractor with authority to bind the Contractor. The final voucher shall be submitted to COMMERCE no later than November 15, 2020.

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly. The invoices shall describe and document, to COMMERCE's satisfaction, reimbursable expenditures as set forth under the Scope of Work (Attachment A) and Budget & Invoicing (Attachment B). The invoice shall include the Contract Number as stated on the Face Sheet.

Each voucher must be accompanied by an A-19 Certification (Attachment C) and A-19 Activity Report (Attachment D). The A-19 Certification must be certified by an authorized party of the Contractor to certify and attest all expenditures submitted on the voucher are in compliance with the United States Treasury Coronavirus Relief Fund ("Fund") Guidance for State, Territorial, Local, and Tribal Governments:


The A-19 Activity Report must be submitted which describes, in Excel spreadsheet and narrative form, a detailed breakdown of the expenditures within each applicable budget sub-category identified in the voucher, as well as a report of expenditures to date. COMMERCE will not release payment for any reimbursement request received unless and until the A-19 Certification and A-19 Activity Report is received. After approving the Invoice Voucher, A-19 Certification and Activity Report, COMMERCE shall promptly remit a warrant to the Contractor.

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

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

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

Duplication of Billed Costs.

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

Disallowed Costs.

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

Should the Contractor be found to spend funds inconsistent with federal laws, rules, guidelines, or otherwise inappropriately, it is the responsibility of the Contractor to reimburse Commerce for any amount spent on disallowed costs.

8. AUDIT

Contractor shall maintain internal controls providing reasonable assurance it is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs; and prepare appropriate financial statements, including a schedule of expenditures of federal awards.

If the Contractor is a subrecipient and expends $750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:
SPECIAL TERMS AND CONDITIONS
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A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.

B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Contractor is a subrecipient and expends less than $750,000 in federal awards from any and/or all sources in any fiscal year, the Contractor shall notify COMMERCE they did not meet the single audit requirement.

The Contractor shall send all single audit documentation to auditreview@commerce.wa.gov.

9. DEBARMENT

A. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
   i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
   
   ii. Have not within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice.
   
   iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549, and
   
   iv. Have not within a three-year period preceding the signing of this Contract had one or more public transactions (Federal, State, or local) terminated for cause of default.

B. Where the Contractor is unable to certify to any of the statements in this Contract, the Contractor shall attach an explanation to this Contract.

C. The Contractor agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.

D. The Contractor further agrees by signing this Contract that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

   LOWER TIER COVERED TRANSACTIONS
   
   i. The lower tier Contractor certifies, by signing this Contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency,
   
   ii. Where the lower tier Contractor is unable to certify to any of the statements in this Contract, such contractor shall attach an explanation to this Contract.

E. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the regulations implementing Executive Order 12549.

10. 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:
11. ORDER OF PRECEDENCE
In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget & Invoicing
- Attachment C – A-19 Certification
- Attachment D – A-19 Activity Report
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 attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
   D. "Contractor" 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. ALL WRITINGS CONTAINED HERIN
   This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

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

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

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION
   A. "Confidential Information" as used in this section includes:
      i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
      ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
      iii. All personal information in the possession of the Contractor that may not be disclosed under state or federal law.
   B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality.
GENERAL TERMS AND CONDITIONS
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FEDERAL FUNDS

COMMERCe may require changes to such policies and procedures as they apply to this Contract whenever COMMERCe reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCe. Upon request, the Contractor shall immediately return to COMMERCe any Confidential Information that COMMERCe reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCe within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

6. COPYRIGHT

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

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

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

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

7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington, and any applicable federal laws, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.
9. INDEMNIFICATION
Each party shall be solely responsible for the acts of its employees, officers, and agents.

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

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

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

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

The Contractor shall maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity.

The 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.

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

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

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

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they
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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. Contractor shall incorporate 2 CFR Part 210, Subpart F, audit requirements into all subcontracts. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.

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

16. SURVIVAL

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

17. TERMINATION FOR CAUSE

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

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

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

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

18. TERMINATION FOR CONVENIENCE

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

19. TERMINATION PROCEDURES

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

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

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

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

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

20. TREATMENT OF ASSETS

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

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

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

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