

## PROFESSIONAL SERVICES CONTRACT

**THIS CONTRACT**, made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 2015 (“Effective Date”), by and between the **CITY OF TACOMA**, a municipal corporation of the State of Washington (hereinafter referred to as the “CITY”), and **3MW STUDIO LLP**, doing business as **3SQUARE BLOCKS, LLP**, a Washington State Limited Liability Partnership, (hereinafter referred to as “CONTRACTOR”);

In consideration of the mutual promises and obligations hereinafter set forth, the Parties hereto agree as follows:

### 1. Scope of Services/Work

- A. The CONTRACTOR agrees to diligently and completely perform the services and/or deliverables related to the development of the Tacoma Mall Subarea Plan and EIS, as is specifically described in Exhibit A attached hereto and incorporated herein.
- B. Changes To Scope of Work. The CITY shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by CONTRACTOR, the CITY will agree to reasonably compensate the CONTRACTOR for such additional effort up to the maximum amount specified herein or as otherwise provided by City Code. Consultant will not perform additional work without written authorization from the City.

### 2. Term

- A. All services shall be satisfactorily completed on or before January 31, 2017 and this Contract shall expire on said date unless mutually extended in writing by the Parties.
- B. Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof. In the event CONTRACTOR is unable to proceed due to a delay solely attributable to CITY, CONTRACTOR shall advise CITY of such delay in writing as soon as is practicable.

### 3. Compensation and Payment

- A. The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract in accordance with Exhibit A.
- B. The total price to be paid by CITY for CONTRACTOR’S full and complete performance of the Scope of Work hereunder shall not exceed \$225,000 without the written consent of the CITY. Said price shall be the total compensation for CONTRACTOR’S

performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor's fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.

- C. The CONTRACTOR shall submit monthly invoices in a format comparable to the invoice attached hereto and identified as Exhibit C, for services completed and/or deliverables furnished during the previous month. Upon CITY'S request, CONTRACTOR shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.
- D. Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.
- E. The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.
- F. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.
- G. In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

#### **4. Independent Contractor Status**

- A. The services and deliverables shall be furnished by the CONTRACTOR as an independent Contractor, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to CONTRACTOR. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of CONTRACTOR's status as an independent Contractor hereunder, no workers' compensation insurance has been or will be obtained by the CITY on account of CONTRACTOR. CONTRACTOR may be required to provide the CITY proof of payment of these said taxes and benefits. If the CITY is assessed or deemed liable in any manner for those charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from those costs, including attorney's fees.
- B. The CONTRACTOR shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Contract, unless otherwise specified in writing herein.

## 5. Professional Services Warranty

- A. The CONTRACTOR warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which CITY intends to use said services and deliverables as expressed in Exhibit A.
- B. In the performance of services under this Contract, the CONTRACTOR and its employees agree to exercise the degree of skill and care required by customarily accepted good practices and procedures followed by professionals/consultants rendering the same or similar type of service. All obligations and services of the CONTRACTOR hereunder shall be performed diligently and completely according to such professional standards.
- C. If the CONTRACTOR intends to rely on information or data supplied by the CITY, other CITY contractor's or other generally reputable sources without independent verification, such intent shall be brought to the attention of the CITY.

## 6. Contract Administration and Right to Audit

- A. The Planning and Development Services Department/Planning Division/Elliott Barnett for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.
- B. The CONTRACTOR shall, at such times and in such form as the CITY may reasonably require, furnish the CITY with periodic status reports pertaining to the services undertaken pursuant to this Contract.
- C. Upon CITY's request, the Contractor shall make available to CITY all accounts, records, and documents related to the Scope of Work for CITY's inspection, auditing, or evaluation during normal business hours as reasonably needed by CITY to assess performance, compliance, and/or quality assurance under this Contract.

## 7. Records Retention

The CONTRACTOR shall establish and maintain records in accordance with requirements prescribed by the CITY, with respect to all matters covered by this Contract. Except as otherwise authorized by the CITY, the CONTRACTOR shall retain such records for a period of six (6) years after receipt of the final payment under this Contract or termination of this Contract.

**8. Notices**

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

CITY	CONTRACTOR
Elliott Barnett, Associate Planner City of Tacoma, Planning and Development Services 747 Market Street, Room 345 Tacoma, WA 98402	Julia Walton, Partner, 3 Square Blocks, LLP 101 Stewart Street, Suite 350 Seattle, WA 98101
Phone: 253-591-5389	206-276-0012
Fax: (253) 591-5433	Fax: (206) 626-0541
e-mail : Elliott.barnett@cityoftacoma.org	e-mail: Julia@3squareblocks.com

**9. Termination and Suspension**

- A.** The CITY may terminate this Contract at any time, with or without cause, by giving ten (10) business days written notice to CONTRACTOR. In the event of termination, all finished and unfinished work prepared by the CONTRACTOR pursuant to this Contract shall be provided to the CITY. In the event CITY terminates this Contract due to the CITY's own reasons and without cause due to the CONTRACTOR's actions or omissions, the CITY shall pay the CONTRACTOR the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein.
- B.** The CITY may suspend this Contract, at its sole discretion, upon seven (7) business days written notice to the CONTRACTOR. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the CONTRACTOR'S reasonable expenses and shall be subject to verification. The CONTRACTOR shall resume performance of services under this Contract without delay when the suspension period ends.
- C.** Termination or suspension of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

**10. Taxes, Licenses and Permits**

- A.** The CONTRACTOR acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and the CONTRACTOR agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the CITY is assessed, made liable, or responsible in any

manner for such charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from such costs, including attorney's fees.

- B.** In the event the CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then the CONTRACTOR authorizes the CITY to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the CONTRACTOR's total compensation.
- C.** The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30.

## **11. Indemnification**

- A.** The CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the fault of the CITY, or its officers, agents, or employees. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended.
- B.** The CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.
- C.** This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.
- D.** The State of Washington is not liable for claims or damages arising from CONTRACTOR's performance of this Contract.

## **12. Insurance**

During the course and performance of the services herein specified, CONTRACTOR will maintain the following insurance coverage:

- A.** Workers' Compensation and employer's liability --statutory limits.

- B.** Commercial General Liability -- \$1,000,000 single limit combined for personal injury, property damage; \$2,000,000 aggregate.
- C.** Automobile public liability and property damage -- \$1,000,000 single limit combined for bodily injury and property damage.
- D.** Professional liability or errors and omissions -- \$1,000,000 combined single limit for errors and omissions resulting in monetary loss normally covered by professional liability insurance.

Certificates of the above insurance coverage shall be delivered, within ten (10) days, to the CITY by CONTRACTOR'S insurance carrier or agent certifying the above insurance coverage items are in effect and will not be cancelled or materially changed without 30 days' written notice given to the CITY. The commercial general liability policy shall be on an occurrence basis and shall include an endorsement naming the CITY as an additional insured and stating that coverage under such policy is primary over and non-contributory with any insurance the CITY may maintain.

### **13. Nondiscrimination**

The CONTRACTOR agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. The CONTRACTOR shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. In the event of non-compliance by the CONTRACTOR with any of the non-discrimination provisions of this Contract, the CITY shall be deemed to have cause to terminate this Contract, in whole or in part.

### **14. Conflict of Interest**

No officer, employee or agent of the CITY, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The CONTRACTOR shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The CONTRACTOR represents that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains which would conflict in any manner or degree with the performance of the CONTRACTOR'S services and obligations hereunder. The CONTRACTOR further covenants that, in performance of this Contract, no person having any such interest shall be employed. The CONTRACTOR also agrees that its violation of the CITY'S Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Contract subjecting the Contract to termination.

**15. City ownership of Work/Rights in Data and Publications:**

- A.** To the extent that CONTRACTOR creates any Work subject to the protections of the Copyright Act (Title 17 U.S.C) in its performance of this Contract, CONTRACTOR agrees to the following: The Work has been specially ordered and commissioned by CITY. CONTRACTOR agrees that the Work is a “work made for hire” for copyright purposes, with all copyrights in the Work owned by CITY. To the extent that the Work does not qualify as a work made for hire under applicable law, and to the extent that the Work includes material subject to copyright, CONTRACTOR hereby assigns to CITY, its successors and assigns, all right, title and interest in and to the Work, including but not limited to, all patent, trade secret, and other proprietary rights and all rights, title and interest in and to any inventions and designs embodied in the Work or developed during the course of CONTRACTOR’S creation of the Work. CONTRACTOR shall execute and deliver such instruments and take such other action as may be required and requested by CITY to carry out the assignment made pursuant to this section. Any documents, magnetically or optically encoded media, or other materials created by CONTRACTOR pursuant to this Contract shall be owned by CITY and subject to the terms of this sub-section. To the maximum extent permitted by law, CONTRACTOR waives all moral rights in the Work. The rights granted hereby to CITY shall survive the expiration or termination of this Contract
- B.** The CONTRACTOR shall be solely responsible for obtaining releases for the performance, display, recreation, or use of copyrighted materials.

**16. Public Disclosure**

- A.** This Contract and documents provided to the CITY by CONTRACTOR hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the CITY may be required, upon request, to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and CONTRACTOR has complied with the requirements of sub-section B herein, CITY agrees to provide CONTRACTOR ten (10) days written notice of impending release. Should legal action thereafter be initiated by CONTRACTOR to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by CONTRACTOR, including any damages, attorney’s fees or costs awarded by reason of having opposed disclosure. CITY shall not be liable for any release where notice was provided and CONTRACTOR took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to CONTRACTOR according to the “Notices” provision herein.

- B.** If CONTRACTOR provides the CITY with records that CONTRACTOR considers confidential or proprietary, CONTRACTOR must mark all applicable pages of said record(s) as “Confidential” or “Proprietary.” If CONTRACTOR fails to so mark record(s), then (1) the CITY, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and (2) the CONTRACTOR expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

**17. Duty of Confidentiality**

- A.** CONTRACTOR acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the CITY.
- B.** Except for disclosure of information and documents to CONTRACTOR’s employees, agents, or subcontractors who have a substantial need to know such information in connection with CONTRACTOR’s performance of obligations under this Contract, the CONTRACTOR shall not without prior written authorization by the CITY allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Contract.
- C.** The CONTRACTOR shall inform its employees, agents, and subcontractors of the confidentiality obligations under this Contract and instruct them so as to ensure such obligations are met. If so requested by the CITY, the CONTRACTOR further agrees to require all such individuals and entities performing services pursuant to this Contract to execute a Confidentiality and Non-Disclosure Agreement in a form acceptable to CITY.
- D.** The CONTRACTOR shall not release any information or documentation concerning the work under this Contract or any part thereof for marketing, advertising, or other commercial activities or publication including, but not limited to, news releases or professional articles, without the prior written approval of the CITY. Any and all news releases, professional articles, marketing, advertising, publicity, or other commercial activities that describe or discuss the Scope of Services shall be reviewed and approved by the CITY prior to publication, disclosure and/or distribution. The CONTRACTOR may submit for review and approval a generic abstract describing the component parts of the completed Scope of Services (“Project Abstract”) . After receiving written approval of the Project Abstract from the CITY, the CONTRACTOR may make minor insignificant changes to the Project Abstract and use all or parts of the Project Abstract in proposals.
- E.** This Section shall survive for six (6) years after the termination or expiration of this Contract.
- F.** CONTRACTOR shall ensure that the text of this Section is included in each subcontractor's contract pertaining to the Scope of Services hereunder.



## 18. Dispute Resolution

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to terminate authorized by this Contract.

## 19. Miscellaneous Provisions

- A. Governing Law and Venue. Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.
- B. CONTRACTOR shall perform consistently with the requirements for Subcontractors contained in Interagency Agreement (Contract Number 14-63401-005) between the Washington State Department of Commerce and the City of Tacoma for distribution of NEP – Puget Sound Watershed Protection and Restoration Grant funds in the amount of \$250,000 attached hereto as Exhibit D.
- C. Assignment. The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.
- D. No Third Party Beneficiaries. This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.
- E. Waiver. A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.
- F. Severability and Survival. If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.
- F. Entire Agreement. This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder.

All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.

**G. Modification.** No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the Parties.

**H. Authority to enter into this Contract.** The undersigned Contractor representative, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Contract for and on behalf of Contractor.

**IN WITNESS WHEREOF** the parties hereto have accepted and executed this Contract as of the Effective Date first written above.

**CITY OF TACOMA**

**3MW STUDIO LLP  
dba 3SQUAREBLOCKS, LLP**

\_\_\_\_\_  
T. C. Broadnax, City Manager

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Peter Huffman, Director  
Planning and Development Services

Address:  
\_\_\_\_\_

\_\_\_\_\_  
Andrew Cherullo, Director of Finance

Approved as to Form:

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Deputy City Attorney

Tax ID: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Doris Sorum, City Clerk

## EXHIBIT "A"

### SCOPE OF WORK

#### TACOMA MALL SUBAREA PLAN & EIS

The City of Tacoma (City) is undertaking the development of a Subarea Plan and Environmental Impact Statement (EIS) for the Tacoma Mall Subarea, and is engaging 3 Square Blocks, LLP (Consultant) as the lead consultant to complete the scope of work below. Tasks are organized according to the National Estuaries Program grant, administered by the Washington State Department of Commerce (DOC) Grant, which is funding this effort.

#### Task 1. Project Administration/Management

*Tasks not included in consultant scope of work.*

#### Task 2. Data Review

##### A. Data review.

Consultant will work with City to identify data needs and recommend methods to fill gaps, and produce a summary report.

##### B. Develop Project Materials.

Consultant will compile available data, as well as project management documents including a project team contact list, project calendar, and document template.

#### Task 3. Public Involvement Plan and Outreach

##### **A. Internal and External Outreach**

###### i. Outreach Plan.

Consultant will support the City's development of a project public outreach plan with the development of an outline that identifies of stakeholders and groups, activities, timelines, schedule, methods of communication, number and type of meetings, and engagement and recruitment methods.

###### ii. Project Kickoff Meeting.

Consultant will facilitate a staff kickoff meeting.

###### iii. Stakeholder Interviews.

Consultant will conduct up to 10 interviews with selected stakeholders.

###### iv. Key Messages and Project Identity.

Consultant will develop key messages for project communication, integrated with the project identity/branding effort, and a "project logo".

###### v. Communications and Materials.

Consultant will develop communication materials anticipated to include fact sheets; comment cards; three (3) media releases; three (3) calendar announcements; and three (3) newsletter articles. Materials will be provided to the City in electronic format.

###### vi. Stakeholders Groups.

Consultant will assist the City with identification, recruitment and chartering of a Community Stakeholder Group and a Technical (Agency Stakeholder Group). Consultant will attend and facilitate up to five (5) Community Stakeholder Group meetings and Technical Stakeholder Group meetings.

vii. Community Workshops.

Consultant will plan and facilitate two (2) community workshops. For each community meeting, Consultant will work with the project team to develop the agenda, design the meeting including specific activities for small group interaction, if appropriate, coordinate the development of materials, set-up/tear-down, and develop a workshop summary. City will arrange and provide meeting venues.

viii. Planning Commission and City Council Briefings.

Consultant will support staff with up to seven (7) City Commission, Committee and/or Council meetings.

ix. Formal EIS Outreach

Consultant will work in collaboration with the City to prepare for three (3) formal SEPA outreach meetings to fulfill RCW requirements of programmatic SEPA review.

x. Outreach summary

Consultant will prepare a summary report that documents the methodology for gathering public and stakeholder input, summarized all comments received, and describes how this information will be incorporated into the future sub-area plan and upfront State Environmental Policy Act (SEPA) review.

**Task 4. Existing Conditions Report**

Baseline existing conditions data will be developed for the topics identified below. This baseline data will provide a basis for project communications, visioning, development of project scenarios.

**A. Existing Plans, Policies.**

- i. City staff will summarize relevant Comprehensive Plan policies, zoning and design standards, parking requirements, Complete Streets Design Guidelines, and other relevant City policies. Consultant will provide a format for City use to incorporate these into the Existing Conditions Report.

**B. Existing Conditions Reports.**

- i. Land Use.  
Consultant will prepare a description of the existing land use and development pattern within in the study area, and surrounding area.
- ii. Aesthetics and Urban Design.  
Consultant will prepare a description of the qualities of the urban environment, including existing character districts, scale, urban form, building types, and streets.
- iii. Housing.  
Consultant will identify existing housing types and amounts including housing affordable to low- and moderate income households (based upon available data).

## iv. Utilities &amp; Stormwater.

Consultant will identify utility providers and qualitatively describe existing major utility facilities (water, wastewater, electricity, gas, and telecommunications) located in the Tacoma Mall subarea. City staff will identify existing stormwater facilities as well as utilities demand and existing and future utilities capacity. Consultant will characterize existing conditions of the two watersheds in the project area and the receiving waters, using existing City and State data.

## v. Natural Systems.

City will provide existing background studies, GIS data and policy summary to Consultant to identify natural systems in the Tacoma Mall subarea. Consultant will describe the existing condition of mapped or documented critical areas in the subarea.

## vi. Soil and groundwater contamination.

City will provide existing information regarding soil and groundwater contamination for consultant to include in the report.

## vii. Historic and Cultural Resources.

City will identify known historic and archaeological resources and pertinent data sources. Consultant will incorporate this information into the Existing Conditions Report.

## viii. Public Services and Parks.

Consultant will review existing levels of service for police and fire protection, parks and other public services as determined through the scoping process. City will provide existing services and future services capacity for this review. Consultant will summarize information and identify any existing gaps.

## ix. Market and Economic Conditions.

## a. Identify Growth Scenario Parameters for Subarea Planning.

The consultant will evaluate study area growth forecasts and targets as they relate to development capacity and building densities in support of development of low growth and high growth scenarios for the study area.

## b. Identify Demographics, Economic and Real Estate Trends.

- The consultant will evaluate study area growth forecasts and targets as they relate to development capacity and building densities.
- The consultant team will incorporate demographic, economic and real estate trends into the development of low growth and high growth scenarios for the study area.

**Task 5. Area-Wide Transportation Strategy****A. Data Review**

## i. Transportation data collection and review of existing plans.

The Consultant will collect the following data necessary to prepare the transportation section of this sub-area plan and EIS:

a. *Traffic Counts*

Consultant will collect PM peak hour traffic counts at up to 25 key intersections within the study area and will be focused within three main corridors. Consultant will complete Saturday mid-day traffic counts at up to 5 key intersections. Consultant has and will utilize the most recent set of traffic counts at the relevant analysis

screenlines available from the Transportation Master Plan (TMP) and the Travel Demand Forecasting (TDF) Model and Pavement Management System projects. City ADT data on roadway segments will also be applied from the TMP and TDF Model projects. The Consultant, through their work on the TMP project, has the current transit, bicycle, and pedestrian data in the study area as well as the current planning work contained in relevant modal plans and the TMP.

*b. The following additional data will be gathered:*

- Transit – Consultant will collect additional data and relevant studies from Pierce Transit and Sound Transit on existing and planned transit routes in the study area.
- Bicycling and Walking – Consultant will gather data on existing pedestrian and bicycle facilities in the study area, including up to eight hours in the field confirming existing facilities and facility gaps.
- Safety – It is assumed that City staff will collect the existing safety/collision data.
- Modal Plans – Through Consultants' work on the TMP and coordinating efforts with Sound Transit and Pierce Transit, the Consultant possesses this multi-modal transportation plan information.

**B. Existing Conditions**

- i. Based on the collected data, the Consultant will analyze existing transportation system operations in the study area. The existing conditions analysis will include:
  - a. Analysis of traffic operations at up to 25 study intersections within three key corridors for one condition to be defined as in conjunction with City staff. Synchro will be used for the intersection analysis.
  - b. Calculation of screenline volume/capacity ratios at the screenlines adjacent to the study area, as defined in the TDF Model project.
  - c. City staff will complete the mapping and documentation of collisions, and document existing freight conditions, and parking supply and demand within the study area.
  - d. Mapping and description of transit operations (frequency of service, load factors) for all Pierce Transit and Sound Transit routes in the area.
  - e. Mapping and description of bicycle and pedestrian conditions, including system gaps and existing mode share estimates.
- ii. A sub-area model will be developed using the most updated City travel demand model. The Consultant shall refine, enhance and calibrate the City model to meet the Subarea planning needs. This model will be used to analyze the existing and future traffic demand.

**C. Future Transportation Analysis**

*i. Trip generation analysis.*

Consultant will use the 6Ds MXD trip generation model to calculate the net change in vehicle, transit, and bike/pedestrian trips expected from the Tacoma Mall Sub-Area Plan for two action alternatives (low growth and high growth) and the no action alternative.

ii. *No-build and build future year transportation forecasts.*

Consultant will use the sub-area Model to estimate future year (e.g., 2040) transportation forecasts for auto trips and transit trips. As part of the future year model update, Consultant will work with the City to include the transportation infrastructure improvements assumed under future conditions (no-build condition will be taken primarily from the current TMP project list). Consultant will estimate bicycle and pedestrian trips and map them to show the differences among alternatives.

iii. *No-build and build future year transportation analysis.*

Using the data from the future year transportation forecasts, Consultant will assess the operations of the transportation system under future year conditions for the two land use alternatives (low growth and high growth).

iv. *Traffic Operational Analysis*

Consultant shall develop a 2015 base traffic operational model using SYNCHRO (Traffic Operational Analysis Software). This traffic operations model will be used to estimate the existing and future deficiencies at the different intersections of the Tacoma Mall Subarea. An iterative travel demand modeling procedure will be followed while estimating the future deficiencies, to identify the best traffic circulation pattern and the best access management practices along the major corridors in the Subarea. Initially, the consultant will prepare a list of intersections that do not meet the City of Tacoma Level of Service (LOS) standards in 2015 and 2040.

The City will complete the safety analysis results and note any areas in the future that may experience a greater rate of crashes. The City will also complete the future year parking needs assessment and freight analysis.

v. *Impact analysis, mitigating actions, and Capital Improvement Project list. (This task is part of the Draft EIS).*

Consultant will describe the multi-modal transportation impacts by comparing the transportation analysis results of the action alternatives to the no action alternative. As part of this process, the Consultant will work with City staff to determine appropriate multi-modal impact thresholds for this sub-area plan and EIS. For each identified impact, Consultant will identify multi-modal mitigation measures, which may include, but are not limited to, transportation system management and travel demand management strategies, increased transit service, targeted new roadway capacity, and bicycle and pedestrian facility improvements.

vi. *Capital Improvement Project list.*

Consultant will develop a multi-modal Capital Improvement Project (CIP) list to address existing transportation issues as well as future issues in the context of future land use, with planning level costs for three different planning terms (Short/Mid/Long).

vii. *Street Typologies.*

Consultant team will develop an area-wide map of street typologies based upon the City's Complete Streets Street Typologies.

viii. *Conceptual Street-Scape/Capital Projects Design.*

Consultant will develop typical cross-section and plan conceptual street-scape designs

(up to two or three typical cross-section streetscape concepts for three key corridors). Right-of-way (ROW), number of lanes, multi-modal improvements will be shown at an approximate 5-percent concept design level. It is assumed that City will provide base mapping for corridor design.

ix. *Transportation goals and policies.*

The Consultant will develop recommended sub-area transportation goals and policies.

Task 6. Area-Wide Stormwater Strategy

**A. Stormwater Strategy Collaboration.**

The City will lead development of the area-wide stormwater management strategy as part of the development of basin-level stormwater management approaches.

i. Incorporate inputs.

Consultant will incorporate the City's stormwater strategy into the Subarea Plan, including goals, policies, and identified stormwater retrofit opportunities. The Consultant will ensure the stormwater strategy is consistent with anticipated land cover changes, results of the Puget Sound Watershed Characterization, and restoration goals identified for Thea Foss and Flett Creek watersheds.

ii. Watershed Characterization.

Consultant will describe the importance and condition of the downstream receiving waters (Wapato Lake, Thea Foss Waterway, Flett Creek, and Chambers Creek). Consultant will use the results of Ecology's Puget Sound Watershed Characterization and relevant documentation of the downstream receiving waters to evaluate the relative importance and level of degradation of the Tacoma Mall Subarea in terms of hydrologic processes, habitat, and water quality within a regional context.

iii. Identify Opportunities.

Stormwater retrofit opportunities will be identified at multiple spatial scales ranging from large subarea solutions to the neighborhood and site level scale. The strategy will incorporate stormwater LID BMPs that are key elements of the Subarea Plan (such as the land use maps, capital facility and infrastructure improvement projects, recreational opportunities, street designs) are consistent with and, where applicable, capitalize on stormwater retrofit opportunities identified by the City.

iv. Illustrative graphic.

The Consultant will create an illustrative graphic that shows the proposed area-wide stormwater system, including any regional facilities, areas targeted for LID, retrofit opportunities identified by the City, and how the stormwater drains to downstream water bodies. This graphic is intended to be based on qualitative information.



Task 7. Draft Sub-area Plan and Environmental Impact Statement (EIS)

A. Scenario Development.

Two project scenarios will be developed and refined using community workshop process input, Existing Conditions Analysis and public input. Scenarios will be built and refined by considering effects of major catalyst projects and potential implementation actions. Consultant will identify and assess potential future High Capacity Transit station locations into scenarios to derive maximum TOD benefit. The consultant will facilitate a staff workshop to finalize draft guiding principles and project scenarios. Scenarios will form the basis of EIS alternatives.

B. Vision statement and urban design framework.

The consultant will develop draft and final project vision statement, urban design framework and character district definition.

C. Define EIS Alternatives.

Based on the findings of the existing conditions analysis, Scoping process and Scenario Planning, Consultant will facilitate a meeting with the City to identify draft EIS Alternatives. The alternatives will include a description of the planning envelope of anticipated development in the study area, building typologies, roadway network, and infrastructure improvements. One no-action alternative and two action alternatives are assumed. For each alternative, Consultant will prepare a conceptual land use map that identifies land use designations within the study area consistent with the project vision and alternatives.

D. Policy & Implementation Framework.

Consultant will prepare draft subarea plan policies and principles. Goals and policies will address land use, aesthetics, housing, natural environment, utilities and stormwater, public services and transportation. Potential catalyst projects, implementation strategies and future infrastructure and services framework will be identified.

E. Compile Draft Subarea Plan.

i. Finalize EIS Alternatives.

Consultant will meet with the City to review the input from the community workshop process and findings of the preliminary environmental analysis, and determine whether any scenario refinements are needed before being finalized into Draft EIS alternatives.

ii. Draft Subarea Plan.

Consultant will compile the information developed in Tasks 2-6 into the draft Subarea Plan and environmental impact analysis. The draft Subarea Plan will include a land use map, goals and principles, list of potential capital projects, and a framework for implementing regulations. As needed, the draft Subarea Plan will include a description

of the differences between plan alternatives. Consultant will compile a Draft Subarea Plan for City review.

F. Preliminary Draft EIS.

i. Consultant will compile a Preliminary Draft EIS for City review. The preliminary document will include all components of the Draft EIS, including a description of alternatives, affected environment, impacts, mitigating measures and significant unavoidable adverse impacts for all scoped elements of the environment and alternatives. The Impacts Analysis will include:

- a. *Land Use.*
- b. *Aesthetics and Urban Design.*
- c. *Housing.*
- d. *Transportation.*
- e. *Utilities and Stormwater.*
- f. *Public Facilities and Services.*

ii. City Review and Comment.

Consultant will hold an internal project workshop, solicit City comments, then incorporate revisions to the Draft EIS. Consultant assumes that changes requested by the City will not require substantive new analyses.

iii. Public DEIS.

Consultant will provide the City a print-check copy of the Draft EIS to (1) confirm that all requested changes have been made and (2) authorize publication of the document. Upon authorization by the City, Consultant will provide disk and paper copies of the document for City issuance.

Task 8. Plan Implementation Report

A. Regulatory Framework.

Consultant will identify possible zoning tools that could be used to implement the subarea plan. Following City review and direction, Consultant will draft policy and regulatory approach language for review and refinement by City staff and stakeholder groups.

B. Infrastructure, Facilities and Services.

Consultant will prepare a draft list of infrastructure, facilities and services for the alternatives. Planning-level cost estimates and potential funding strategies will be provided in 2015 dollars based on consultant expertise.

C. Mitigation Document.

Consultant will prepare a mitigation document that identifies future subarea mitigation for City use in project permitting.

**Task 9. Proposed Sub-Area Plan and EIS**

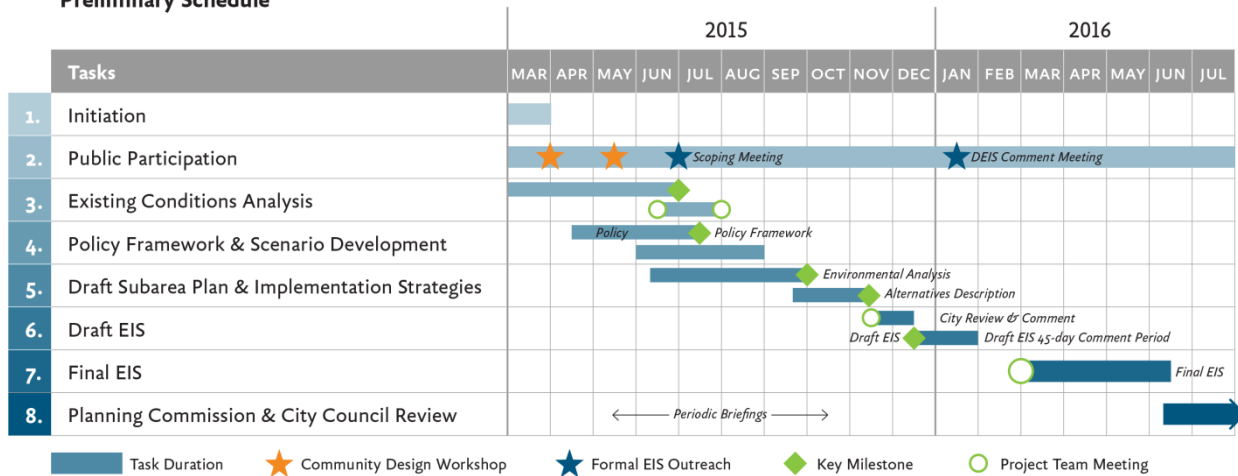
**A. Final EIS/Subarea Plan.**

Following the close of the Draft EIS public comment period, Consultant will:

- i. Review all Draft EIS written and oral comments.
- ii. Catalogue comments for City and consultant team review.
- iii. Confirm approach through consultation with the City, and review the draft mark-up of comments.
- iv. Prepare responses to all Draft EIS comments, unless otherwise jointly agreed with City. It is anticipated that the City will provide guidance on comments that focus on policy direction and other issues unrelated to the technical EIS analysis.
- v. Assemble responses to comments and summaries of any additional analysis in the format of a preliminary Final EIS for review and comment by the City. If required, it is assumed any additional analysis would entail minor modifications to existing data and not involve substantive new analysis or analysis of additional environmental parameters or new alternatives.
- vi. Revise Preliminary Final EIS based on City comments.
- vii. Prepare a final print-check copy of the document for confirmation that all requested changes have been made and authorization for publication.
- viii. Produce disk and paper copies of the Final EIS and Subarea Plan.

**PRELIMINARY SCHEDULE:**

Tacoma Mall Subarea Plan/EIS  
Preliminary Schedule



**ASSUMPTIONS:**

Where appropriate, assumptions that have been incorporated into the preceding text. In addition, the following assumptions are provided.

1. This scope of work and budget are based upon Consultant's best estimation of the level of effort. If the level effort or tasks change, a scope of work and budget change will be necessary. Additional service requests or alterations beyond those described in this document will require supplemental contract modifications or explicit, pre-approved substitutions. The Consultant will not perform additional work without written authorization from the City.
2. The budget presents cost estimates for each task. With prior City authorization, time may be transferred from one task to another due to greater or lesser level of effort, provided that each task shall be completed and the total budget shall not be exceeded.
3. City will provide the Consultant team available government documents and studies, alternative concept plans, Buildable Lands data, including any relevant electronic GIS data and aerial photos of the project study area. All documents will be returned to the City as appropriate upon completion of this contract.
4. City will provide Consultant capacity data relative to public services and utilities within the Tacoma Mall study area.
5. The scope does not include original data collection except as explicitly described in this scope. Research and data collection will be based on readily available secondary sources of information, including reports, inventories, maps and other similar literature from local government and other sources.
6. City will be responsible for arranging meeting locations and facilities, meeting notifications, publication of legal notices.
7. It is assumed that three public meeting will be held in conjunction with the Draft EIS (Pre-Scoping, Scoping and DEIS Comment meeting).
8. Consultant will have primary responsibility for coordinating, reviewing, and editing information obtained from the EIS project team members to ensure that final documents are consistent in style and content.
9. Consultant is not responsible for delays in the schedule resulting from delays in the provision of critical information or in decision-making by City staff, commissions or citizen groups.
10. City will consolidate all internal staff review comments for each round of draft review documents and provide a single, compiled set of comments to the Consultant for revisions.

11. This Scope of Work does not include assistance with or representation by any member of the Consultant Team at legal and quasi-judicial appeals. The Scope of Services may be amended to include such assistance or representation if the City desires.
12. The level of effort for Final EIS varies depending on the level of comment and additional analysis required. For this scope and budget, a moderate level of comment and limited additional analysis has been assumed. Following the close of the public comment period, Consultant and City will meet to review comments and key issues to be addressed. If the level of work required to respond to comments and conduct additional analysis is significantly greater than anticipated in this scope and budget, the City and Consultant will consider and mutually agree upon refinements to approach and/or other strategies to ensure successful completion of the Final EIS.
13. Except as specifically noted above, all Consultant deliverables will be limited to electronic file transfers. The City is responsible for document reproduction and distribution of all review and final drafts. Deliverables will be in an electronic format agreed to in advance by the City and Consultant.

**EXHIBIT "B"****BUDGET, PERSONNEL AND RATES****PERSONNEL AND ESTIMATED BUDGET:**

The City has selected 3 Square Blocks as the consultant lead for this effort. The core team and their assigned roles include:

Project Manager	Julia Walton – 3 Square Blocks
Lead Authors – 3 Square Blocks	Julia Walton: Subarea Plan Deborah Munkberg: Environmental Impact Statement Michael Read: Editing & Graphics
Public Participation & Outreach	Marcia Wagoner, 3 Square Blocks Julia Walton, 3 Square Blocks Seth Harry, Seth Harry and Associates (SHA)
Policy Development and Technical Analysis	<u>Multiple Elements:</u> Deborah Munkberg, 3 Square Blocks Mark Goodman, Community Attributes Incorporated (CAI) Reema Shakra, ESA <u>Urban Design, Codes, Aesthetics:</u> Seth Harry, SHA Julia Walton, 3 Square Blocks <u>Alternatives Development:</u> Chris Mefford, CAI Mark Goodman, CAI Seth Harry, SHA <u>Transportation:</u> Dan Grayuski, Fehr & Peers Chris Breiland, Fehr & Peers <u>Natural Systems &amp; Green Infrastructure:</u> Reema Shakra, ESA Aaron Booy, ESA Steve Roelof, ESA

Replacement of any of these people or significant change in their job responsibilities will require City approval. Staff beyond those named here may assist core team members in completing project tasks, at a rate no higher than the average hourly rate for project lead or subconsultants. City retains the right to approve or disapprove the use of additional staff beyond those named here.

**PROJECT BUDGET ESTIMATE:**

		<i>Project Lead</i>	<i>Subcontractors</i>				
<i>Firm Name</i>		<b>3 Square Blocks</b>	<b>Seth Harry &amp; Associates</b>	<b>Fehr &amp; Peers</b>	<b>Community Attributes</b>	<b>ESA</b>	<b>Total</b>
Task							
1	<b>Project Administration</b>	0	0	0	0	0	0
2	<b>Data Review</b>	3,640	1,000	0	0	700	<b>5,340</b>
3	<b>Public Involvement Plan and Outreach</b>	14,000	10,000	5,000	0	0	<b>29,000</b>
4	<b>Existing Conditions Report</b>	7,560	0	0	8,500	4,000	<b>20,060</b>
5	<b>Area-wide Transportation Study</b>	0	10,000	50,000	0	0	<b>60,000</b>
6	<b>Area-wide Stormwater Strategy</b>	560	0	0	0	7,300	<b>7,860</b>
7	<b>Draft Subarea Plan/EIS</b>	31,920	12,000	12,000	2,500	9,000	<b>67,420</b>
8	<b>Plan Implementation Report</b>	8,820	3,000	0	0	2,000	<b>13,820</b>
9	<b>Proposed Subarea Plan &amp; EIS</b>	7,000	0	5,000	0	2,000	<b>14,000</b>
<b>Total Labor</b>		<b>73,500</b>	<b>36,000</b>	<b>72,000</b>	<b>11,000</b>	<b>25,000</b>	<b>217,500</b>
<b>Direct Costs</b>			4,000				<b>4,000</b>
<b>Subconsultant Fee</b>							<b>\$3,500</b>
<b>Total Cost</b>							<b>\$225,000</b>

**FEE SCHEDULE**

<b>HOURLY BILLING RATES</b>				
<b>Tacoma Mall Sub-area Plan</b>				
<b>3 Square Blocks Consultant Team</b>				
<b>3 Square Blocks</b>	<b>-</b>		<b>ESA</b>	
<b>Julia Walton</b>	<b>\$150</b>		<b>Mark Johnson</b>	<b>\$165</b>
<b>Deborah Munkberg</b>	<b>150</b>		<b>Steve Winter</b>	<b>\$145</b>
<b>Marcia Wagoner</b>	<b>\$150</b>		<b>Reema Shakra</b>	<b>\$120</b>
<b>Michael Read</b>	<b>\$150</b>		<b>Aaron Booy</b>	<b>\$120</b>
<b>Casey Bradfield</b>	<b>\$110</b>		<b>Nicole Czarnomski</b>	<b>\$115</b>
<b>Jessie Hartmann</b>	<b>\$110</b>		<b>Steve Roelof</b>	<b>\$114</b>
<b>Average Hourly Rate</b>	<b>\$140</b>		<b>Average Hourly Rate</b>	<b>\$125</b>
<b>Community Attributes (CAI)</b>			<b>Fehr and Peers</b>	
<b>Average Hourly Rate</b>	<b>\$150</b>		<b>Dan Grayuski</b>	<b>\$225</b>
<b>Chris Mefford</b>	<b>\$250</b>		<b>Christopher Breiland</b>	<b>\$210</b>
<b>Radhika Nair</b>	<b>\$110</b>		<b>Aaron Guze</b>	<b>\$140</b>
<b>Bryan Lobel</b>	<b>\$105</b>		<b>Tiiki Rysen</b>	<b>\$140</b>
<b>Mark Goodman</b>	<b>\$100</b>		<b>Justin Resnick</b>	<b>\$110</b>
<b>Yolanda Ho</b>	<b>\$100</b>		<b>Ryan Hughes</b>	<b>\$80</b>
<b>Elliot Weiss</b>	<b>\$92.50</b>		<b>Average Hourly Rate</b>	<b>\$150</b>
<b>Average Hourly Rate</b>	<b>\$150</b>			
<b>Seth Harry &amp; Associates</b>				
<b>Seth Harry</b>	<b>\$150</b>			
<b>Ruth Landsman</b>	<b>\$150</b>			
<b>Average Hourly Rate</b>	<b>\$150</b>			



**EXHIBIT "C"  
SAMPLE INVOICE**

This form is intended to illustrate the information the City of Tacoma needs to process Contract payments. The City of Tacoma prefers that CONTRACTOR use its own standard business invoice forms so long as they include the following information. CONTRACTORS who do not have a standard business invoice form may use this form as their invoice. Your cooperation in providing the information we are requesting will ensure prompt processing of your payments.

**I HEREBY REQUEST PAYMENT FOR THE FOLLOWING ITEMIZED SERVICES AND/OR PRODUCT DELIVERABLES:**

Services (Describe):  
Deliverables (Describe):

**AS PER CONTRACT No.:** \_\_\_\_\_ **AMOUNT DUE:** \_\_\_\_\_

**I HEREBY CERTIFY THAT THIS BILL IS CORRECT AND JUST AND THAT PAYMENT FOR THE SERVICES AND/OR DELIVERABLES IDENTIFIED HAS NOT BEEN RECEIVED.**

**BY:** \_\_\_\_\_ **DATE SIGNED:** \_\_\_\_\_  
**SIGNATURE:**

**TITLE:** \_\_\_\_\_

**ORGANIZATION NAME:** \_\_\_\_\_

**FEDERAL TAX ID No. or SS No.:** \_\_\_\_\_

**TELEPHONE NUMBER:** \_\_\_\_\_

**PLEASE REMIT PAYMENT TO:** (Name and Address of Contractor)

**I Attest and Certify that all Services and/or Deliverables identified in this Invoice have been performed and/or supplied.**

\_\_\_\_\_  
**Contract Administrator Signature**

City Planning and Development Services  
Dept./Division:  
Contact Name: Elliott Barnett  
Phone: 253-591-5389  
Fax: 253-591-5433

**EXHIBIT "D"**

NEP – Puget Sound Watershed Protection and Restoration Grant (Contract Number 14-63401-005)



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000

[www.commerce.wa.gov](http://www.commerce.wa.gov)

July 3, 2014

Stephen Atkinson  
Associate Planner  
City of Tacoma  
Planning and Development Services  
747 Market Street, Room 1036  
Tacoma, WA 98402

Dear Mr. Atkinson:

Enclosed is the signed contract between the City of Tacoma and the Department of Commerce for the National Estuary Program (NEP) Puget Sound Watershed Protection and Restoration Grant. If you have any questions about the contract please call Heather Ballash at 360.725.3044 or me.

Sincerely,

Paul Johnson  
Contracts Specialist  
Growth Management Services  
Department of Commerce  
360.725.3048

Enclosure





# Department of Commerce

Innovation is in our nature.

## **Interagency Agreement with**

City of Tacoma

through

Department of Commerce  
Growth Management Services

## **For**

National Estuary Program (NEP)  
Puget Sound Watershed Protection and Restoration Grant

## **Start date:**

Date of Execution

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Attachment A, Scope of Work

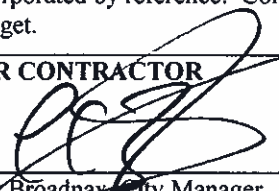

Attachment B, Budget



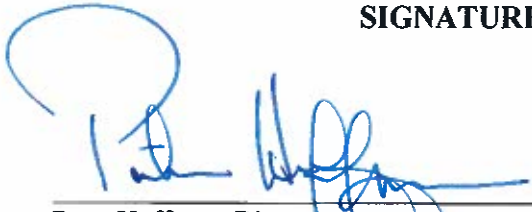
**FACE SHEET**

Contract Number: 14-63401-005

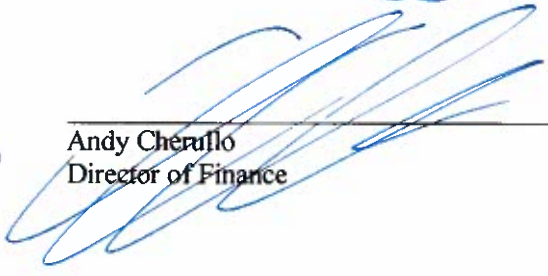
**Washington State Department of Commerce  
Local Government and Infrastructure Division  
Growth Management Services  
National Estuary Program (NEP) – Puget Sound Watershed Protection and Restoration Grant**

<b>1. Contractor</b> City of Tacoma Planning and Development Services 747 Market Street, Room 1036 Tacoma, WA 98402		<b>2. Contractor Fiscal Representative</b> Robyn Hovies Senior Accountant (253) 591-5215 rhovies@cityoftacoma.org	
<b>3. Contractor Representative</b> Stephen Atkinson Associate Planner (253) 591-5531 satkinson@cityoftacoma.org		<b>4. COMMERCE Representative</b> Heather Ballash Senior Planner Phone: 360-725-3044 heather.ballash@commerce.wa.gov P.O. Box 42525 1011 Plum Street SE Olympia, WA 98504-2525	
<b>5. Contract Amount</b> \$250,000	<b>6. Funding Source</b> Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> Date of Execution	<b>8. End Date</b> December 31, 2016
<b>9. Federal Funds (as applicable)</b> \$250,000	<b>Federal Agency:</b> U.S. Environmental Protection Agency	<b>CFDA Number</b> 66.123	
<b>10. Tax ID #</b> 91-6001283	<b>11. SWV #</b> SWV0000318-02	<b>12. UBI #</b> 278012338	<b>13. DUNS #</b> 073135535
<b>14. Contract Purpose</b> The City of Tacoma will develop a draft Sub-Area Plan and environmental impact statement for the Tacoma Mall Regional Growth Center. The Subarea Plan and EIS will identify the environmental impacts associated with the allocated growth and development up-front, and on an area-wide basis, and will provide for proportional, substantive mitigation for adverse environmental impacts.			
COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, 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 referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, and Attachment "B" – Budget.			
<b>FOR CONTRACTOR</b>  _____ T.C. Broadnax, City Manager City of Tacoma  Date <u>6/11/2014</u>		<b>FOR COMMERCE</b>  _____ Kendee Yamaguchi, Assistant Director Local Government and Infrastructure Division  Date <u>6/24/14</u>	
See attached Signature Addendum Page for Contractor		<b>APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE</b>	

SIGNATURE ADDENDUM PAGE FOR CONTRACTOR



Peter Huffman, Director  
Planning and Development Services Department




Andy Cherullo  
Director of Finance

Approved as to form:

  
Deputy/Assistant City Attorney

Approved:

  
Risk Manager

Attest:

Doris Baum 6-12-2014  
City Clerk

**SPECIAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
FEDERAL FUNDS**

**1. ACKNOWLEDGEMENT OF FEDERAL FUNDING**

Reports, documents, signage, videos, or other media, developed as part of projects funded by this Agreement shall contain the following statement:

"THIS PROJECT HAS BEEN FUNDED WHOLLY OR IN PART BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER PUGET SOUND ECOSYSTEM RESTORATION AND PROTECTION COOPERATIVE AGREEMENT GRANT PC-00J20101 WITH WASHINGTON DEPARTMENT OF ECOLOGY. THE CONTENTS OF THIS DOCUMENT DO NOT NECESSARILY REFLECT THE VIEWS AND POLICIES OF THE ENVIRONMENTAL PROTECTION AGENCY, NOR DOES MENTION OF TRADE NAMES OR COMMERCIAL PRODUCTS CONSTITUTE ENDORSEMENT OR RECOMMENDATION FOR USE."

**2. 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.

**3. COMPENSATION**

COMMERCE shall pay an amount not to exceed **two hundred fifty thousand dollars (\$250,000)** for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work (Attachment A) and the Budget (Attachment B). If Contractor expends more than the amount of federal funding in its approved budget in anticipation of receiving additional funds, it does so at its own risk. The Federal Government, and therefore COMMERCE, is not legally obligated to reimburse Contractor for costs incurred in excess of the approved budget. Contractor's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

***EXPENSES***

Contractor shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable.

Such 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.

***MANAGEMENT FEES***

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

***LINE ITEM TRANSFERS***

The total amount of transfers of funds between line item budget categories shall not exceed ten (10) percent of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed ten percent, the total budget shall be subject to justification and negotiation of a contract amendment by the Contractor and COMMERCE.

**SPECIAL TERMS AND CONDITIONS  
INTERAGENCY AGREEMENT  
FEDERAL FUNDS**

**4. QUARTERLY REPORTS**

Contractor shall submit a status report, using the U.S. Environmental Protection Agency's (EPA) Puget Sound Financial and Ecosystem Accounting Tracking System (FEATS) form provided by COMMERCE, every three (3) months describing the progress made on the scope of work outlined in "Attachment A" and performance measures to be determined with EPA during the term of the contract. Reports will be due on a schedule to be determined by COMMERCE. Quarterly Reports shall be submitted to COMMERCE and should be provided electronically.

**5. FINAL REPORT**

In addition to the quarterly status reports, Contractor shall submit a final report, which is due by the end date of the contract. The report shall be submitted to COMMERCE and should be provided electronically. The report shall generally contain the same information as the status reports, but should cover the entire contract period.

**6. BILLING PROCEDURES AND PAYMENT**

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE quarterly. Payment will be based on satisfactory acceptance of progress made on each task and satisfactory acceptance of each deliverable.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number **14-63401-005**. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

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

COMMERCE may, in its sole discretion, terminate the 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.

**7. INSURANCE**

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

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the

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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, non-renewal or modification.

The Contractor shall submit to COMMERCE within fifteen (15) calendar days of the Agreement start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Agreement, 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 Agreement, as follows:

**Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Agreement activity but no less than \$1,000,000 per occurrence. Additionally, the 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 Agreement involves the use of vehicles, owned or operated by the Contractor or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

**Professional Liability, Errors and Omissions Insurance.** The 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:

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

**Additional Provisions:**

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The state of Washington, COMMERCE, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.
2. **Identification.** The policy must reference COMMERCE's Agreement number and the State agency name.

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3. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by COMMERCE's Risk Manager, or the Risk Manager for the state of Washington, before the Agreement is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
4. **Excess Coverage.** By requiring insurance herein, COMMERCE does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to COMMERCE in this Agreement.

**Local Government Contractors that Participate in a Self-Insurance Program**

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from COMMERCE, the Contractor may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the Contractor shall provide: (1) a description of its self-insurance program, and (2) 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: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. Contractor's 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 Agreement.

**8. QUALITY ASSURANCE PROJECT PLAN**

The Contractor must first complete a Quality Assurance Project Plan (QAPP) waiver form (see <http://www.ecy.wa.gov/programs/eap/qa/docs/NEPQAPP/index.html>). Completing the waiver form may indicate that a detailed QAPP is required. Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies can be found at <http://www.ecy.wa.gov/biblio/0403030.html>. The Contractor must submit a waiver or QAPP to Ecology's Quality Assurance Officer for review, comment, and final approval prior to conducting any work on the project (e.g., field measurements, sample collections, laboratory analyses, analysis of existing data, modeling). All relevant environmental data must be submitted to Ecology in Environmental Information Management (EIM) format (see <http://www.ecy.wa.gov/eim>) unless specified otherwise by the QA Officer.

**9. PEER REVIEW**

The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Ecology Project Manager prior to releasing any final reports or products resulting from the funded study.

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**10. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

GENERAL COMPLIANCE, 40 CFR, Part 33. The Contractor agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C Pursuant to 40 CFR, Section 33.301, the Contractor agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that Contractors, loan recipients, and prime contractors also comply.

Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503 The Contractor agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the end of the contract period. Only procurements with certified MBE/WBEs are counted toward a COMMERCE's MBE/WBE accomplishments under the contract with EPA. The reports must be submitted semiannually for the periods ending March 15th and September 15th. Reports should be sent to the COMMERCE representative.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at [www.epa.gov/osbp](http://www.epa.gov/osbp).

**11. DUNS and CCR REQUIREMENTS**

Unless otherwise exempted from this requirement under 2 CFR 25.110, Contractor must maintain the currency of its information in the CCR until submission of its final financial report required under this Award or receive the final payment, whichever is later.

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Contractor may not subcontract to any entity unless the entity has provided its DUNS number to Contractor.

**12. FY2011 ACORN FUNDING RESTRICTION**

No funds provided under this Agreement may be used for sub-awards/sub-grants or contracts to the Association of Community Organizations for Reform NOW (ACORN) or any of its subsidiaries.

**13. 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



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**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. "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.
- D. "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.
- E. "State" shall mean the state of Washington.
- F. "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. ADVANCE PAYMENTS PROHIBITED**

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

**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.

**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.

**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.

**6. 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.

**7. ATTORNEYS' 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 attorneys fees and costs.

**8. 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.

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

Responses to any unresolved management 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. Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations**

Contractors expending \$500,000 or more in a fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations." Revised OMB A-133 requires the Contractor to provide the auditor with a schedule of Federal Expenditure for the fiscal year(s) being audited. When state funds are also to be paid under this Agreement a Schedule of State Financial Assistance must also be included. Both schedules include:

- Grantor agency name
- Federal agency
- Federal program name
- Other identifying contract numbers
- Catalog of Federal Domestic Assistance (CFDA) number (if applicable)
- Grantor contract number
- Total award amount including amendments (total grant award)
- Current year expenditures

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 in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

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

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

**C. Documentation Requirements**

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) 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](mailto: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.

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**9. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS**

- 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:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
  2. 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;
  3. 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
  4. 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**

- a) 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.
  - b) 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 rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

**10. 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,

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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.

**11. 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 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.

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.

**12. 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

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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.

EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Commerce acknowledges that EPA may authorize another grantee to use copyrighted works or other data developed under this Agreement as a result of: a) the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or; b) termination or expiration of this agreement.

**13. 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 Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the 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.

**14. DUPLICATE PAYMENT**

COMMERCE shall not pay the Contractor, if the Contractor has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

**15. 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.

**16. 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 and against all claims for injuries or death arising out of or resulting from the

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

The 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. The Contractor shall be required to indemnify, defend, and hold harmless State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor..

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.

**17. 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.

**18. 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.

**19. 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:

**United States Laws, Regulations and Circulars (Federal)**

**A. Audits**

Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

**B. Labor and Safety Standards**

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

**C. Laws against Discrimination**

Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90  
Nondiscrimination in Federally Assisted Programs.

Americans with Disabilities Act of 1990, Public Law 101-336.

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Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Handicapped Employees of Government Contractors, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.

Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794.

Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq, 24 CFR Part 1.

Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 U.S.C. 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

**D. Office of Management and Budget Circulars**

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A-122 (if the Contractor is a nonprofit organization).

Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-102 (if the Contractor is a local government or federally recognized Indian tribal government).

Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, OMB Circular A-110.

FAR 31.2 for Commercial Operations.

An electronic copy of all the Circulars and applicable CFR's may be obtained via the OMB Home Web page at [http://www.whitehouse.gov/omb/circulars\\_default](http://www.whitehouse.gov/omb/circulars_default).

Unless otherwise indicated, the Cost Principles apply to the use of funds provided under this Agreement and In-kind matching donations. The applicability of the Cost Principles depends on the type of organization incurring the costs.

**E. Other**

Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243/Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352. (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that Contractors who apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose

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any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Contractor agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. Contractor shall include the language of this provision in award documents for all sub-awards exceeding \$100,000, and require that subcontractors submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure.

Part 30 Recipients - All contracts awarded by Contractor shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at Title 40 CFR Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, Contractor affirms that it is not a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a non-profit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

Lobbying and Litigation - Contractor's chief executive officer shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. Contractor shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

Hotel-Motel Fire Safety Act - Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, Contractor agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended. Contractor may search the Hotel-Motel National Master List at: <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

Recycled Paper

Institutions of Higher Education Hospitals and Non-Profit Organizations - In accordance with 40 CFR 30.16, Contractor agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

State Agencies and Political Subdivisions - In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchases of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

State and Local Institutions of Higher Education and Non-Profit Organizations - In accordance with 40 CFR 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.



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State Tribal and Local Government Recipients - In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), Contractor agrees to use recycled paper and double sided printing for all reports which are prepared a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

Drug-Free Workplace Certification - Contractor must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200-36.230. Additionally, in accordance with these regulations, Contractor organization must identify all known workplaces under its federal award; and keep this information on file during the performance of the award.

Contractors who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Contractors can access the Code of Federal Regulations (CFR) Title 40 Part 36 at:  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_06/40cfr36\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html).

Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104(g)): To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this contract:

a. EPA, as the Federal awarding agency for the funds being administered under this contract may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by EPA at 2 CFR part 1532. You must inform EPA immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. EPA's right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to EPA under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

Prohibition Statement - You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

**F. Privacy**

Privacy Act of 1974, 5 U.S.C. 552a.

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**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. Office of minority and women’s business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. Open public meetings act, Chapter 42.30 RCW.
- H. Public records act, Chapter 42.56 RCW.
- I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

**20. 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.

**21. LIMITATION OF AUTHORITY**

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

**22. 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.

**23. POLITICAL ACTIVITIES**

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

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

**24. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS**

A Contractor which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Contract.

A Contractor which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Contract.

The Contractor’s procurement system should include at least the following:

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1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
3. Minimum procedural requirements, as follows:
  - a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
  - b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
  - c. Positive efforts shall be made to use small and minority-owned businesses.
  - d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
  - e. Contracts shall be made only with reasonable subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
  - f. Some form of price or cost analysis should be performed in connection with every procurement action.
  - g. Procurement records and files for purchases shall include all of the following:
    - 1) Contractor selection or rejection.
    - 2) The basis for the cost or price.
    - 3) Justification for lack of competitive bids if offers are not obtained.
  - h. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
4. Contractor and Subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this Contract is expected to exceed \$5,000.

Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

**25. 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.

**26. 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.

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**27. 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 retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the 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.

**28. RIGHT OF INSPECTION**

The Contractor shall provide right of access to its facilities to COMMERCE, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

**29. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may 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.

**30. 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.

**31. SITE SECURITY**

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

**32. 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.

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If Contractor subcontracts under this Contract, Contractor is responsible for selecting its subcontractors and, if applicable, for conducting sub-contract competitions. Contractor agrees to:

1. Establish all subcontract agreements in writing;
2. Maintain primary responsibility for ensuring successful completion of the approved project (CONTRACTOR CANNOT DELEGATE OR TRANSFER THIS RESPONSIBILITY TO A SUBCONTRACTOR).
3. Ensure that any subcontracts comply with the standards in Section 210(a)-(d) of OMB Circular A-133, and are not used to acquire commercial goods or services for the subcontractor.
4. Ensure that any subcontracts to 501(c)(4) organizations do not involve lobbying activities;
5. Monitor the performance of subcontractors, and ensure subcontractors comply with all applicable regulations, statutes, and terms and conditions which flow down in the subcontract;
6. Obtain COMMERCE consent before making a sub-award to a foreign or international organization, or a subcontract to be performed in a foreign country; and
7. Obtain approval from COMMERCE for any new subcontract work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

**33. 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.

**34. 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.

**35. 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.

**36. 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.

**37. 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

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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.

**38. 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 the AGENCY 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

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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.

**39. WAIVER**

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

## Scope of Work

Task	Deliverable	Timeline/Deadline
1. Project Administration/ Management	1.1 - Quality Assurance Project Plan (QAPP) Waiver Form and, if necessary, QAPP.	July 31, 2014
	1.2 - Quarterly progress reports and financial vouchers.	Quarterly: July 10, 2014; October 10, 2014; January 10, 2015; April 10, 2015; July 10, 2015; October 10, 2015; January 10, 2016; April 10, 2016; July 10, 2016  And if needed, October 10, 2016 December 31, 2016.
	1.3 - Final project summary report.	July 1, 2016
2. Data Review	2 - Memorandum assessing available data and data gaps, and providing recommendations for methods to obtain needed data.	October 14, 2014
3. Public Involvement Plan and Outreach	3.1 - Public involvement implementation plan.	October 14, 2014
	3.2 - Summary report that documents the methodology for gathering public and stakeholder input, summarized all comments received, and describes how this information will be incorporated into the future sub-area plan and upfront State Environmental Policy Act (SEPA) review.	July 1, 2016
4. Existing Conditions Report	4 - Draft existing conditions report.	December 30, 2014
5. Area-Wide Transportation Strategy	5 - Traffic analysis model based on identified potential build-out scenarios.	June 14, 2015
6. Area-Wide Stormwater Strategy	6.1 – Evaluate the existing infrastructure and develop a stormwater area-wide build-out model.  6.2 – Draft retrofit facility recommendations based on identification of retrofit projects as follows: <ul style="list-style-type: none"> <li>• Determination of the feasibility of green infrastructure and low impact development strategies; and</li> <li>• Evaluation of nodal treatment facilities.</li> </ul>	June 14, 2015



Task	Deliverable	Timeline/Deadline
	6.3 – Draft recommendations for developing an in-lieu fee or surcharge program for city-owned stormwater retrofit facilities.	
7. Draft Sub-area Plan and Environmental Impact Statement (EIS)	7 – Draft Sub-area Plan including goals, objectives and policies, land use categories, SEPA review, environmental impacts and potential mitigation, and neighborhood infrastructure and amenities.	January 1, 2016
8. Plan Implementation Report	8 – Report with recommendations for Sub-area Plan implementation that include: <ul style="list-style-type: none"> <li>• Use of existing regulations;</li> <li>• Changes to existing zoning regulations and building codes;</li> <li>• Environmental impacts and potential mitigation;</li> <li>• Resolution of conflicts between proposed mitigation and existing regulations; and</li> <li>• Financing Strategies.</li> </ul>	January 1, 2016
9. City Council Consideration of the Proposed Sub-Area Plan and EIS.	9 – Planning Commission recommendation, draft Sub-Area Plan, EIS, and exhibits.	July 1, 2016

**Budget**

<b>Task</b>	<b>City Match</b>	<b>Grant Amount</b>	<b>Total Project Cost</b>
Task 1. Project Administration/Management	\$7,500	\$0	\$7,500
Task 2. Data Review	\$1,500	\$5,000	\$6,500
Task 3. Public Involvement Plan and Outreach	\$30,000	\$20,000	\$50,000
Task 4. Existing Conditions Report	\$5,000	\$10,000	\$15,000
Task 5. Area-Wide Transportation Strategy	\$12,500	\$100,000	\$112,500
Task 6. Area-Wide Stormwater Strategy	\$25,000	\$25,000	\$50,000
Task 7. Draft Sub-Area Plan and EIS	\$18,500	\$55,000	\$73,500
Task 8. Plan Implementation Report	\$5,000	\$25,000	\$30,000
Task 9. Proposed Sub-Area Plan and EIS	\$15,000	\$10,000	\$25,000
<b>TOTAL</b>	<b>\$120,000</b>	<b>\$250,000</b>	<b>\$370,000</b>