



**Interagency Agreement with
City of Mercer Island
through
Growth Management Services**

Contract Number:

24-63336-127

For

Middle Housing Grant

Dated:

Date of Execution

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Face Sheet

Contract Number: 24-63336-127

Local Government Division Growth Management Services Middle Housing Grants

1. Contractor City of Mercer Island 9611 SE 36th St Mercer Island, WA-98040		2. Regional Planner Catherine McCoy Catherine.McCoy@Commerce.wa.gov	
3. Contractor Representative Alison Van Gorp Deputy Director 206-275-7733 alison.vangorp@mercerisland.gov		4. COMMERCE Representative Anne Aurelia Fritzel 1011 Plum Street SE Housing Planning Manager Olympia, WA 98504 360-259-5216 Anne.Fritzel@commerce.wa.gov	
5. Contract Amount \$75,000	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>		7. Start Date Date of Execution
8. End Date June 30, 2025			
9. Federal Funds (as applicable) N/A		Federal Agency: N/A	
ALN N/A			
10. Tax ID # N/A	11. SWV # 003-238-600	12. UBI # 179-019-640	13. UEI # N/A
14. Contract Purpose For activities that support the preparation and adoption of policies and/or codes and other measures specific to implement middle housing (RCW 36.70A.030(26)) by applicable statutory deadlines.			
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 and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, and Attachment "B" – Budget.			
FOR CONTRACTOR _____ Jessi Bon, City Manager _____ _____ Date		FOR COMMERCE _____ Mark K. Barkley, Assistant Director Local Government Division _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	

Special Terms and Conditions

1. AUTHORITY

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

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 \$75,000 (seventy-five thousand dollars), for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

4. BILLING PROCEDURES AND PAYMENT

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

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number 24-63336-127.

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.

Invoices and End of Fiscal Year

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The Contractor must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

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. Any payment made by COMMERCE for costs that are determined to be duplicate, in Commerce's sole determination, shall be subject to recapture and may result in suspension or termination of this Contract.

Disallowed Costs

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

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

5. SUBCONTRACTOR DATA COLLECTION

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

6. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

7. FRAUD AND OTHER LOSS REPORTING

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

8. 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

General Terms and Conditions

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 Washington Department of Commerce.
- C. "Contract" or "Agreement" or "Grant" means the entire written agreement between COMMERCE and the Contractor, including any Attachments, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" or "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ALL WRITINGS CONTAINED 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.

3. AMENDMENTS

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

4. ASSIGNMENT

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

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
 - i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
 - ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and

a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. GOVERNING LAW AND VENUE

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

9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

10. LICENSING, ACCREDITATION AND REGISTRATION

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

11. RECAPTURE

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

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

12. RECORDS MAINTENANCE

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

The Contractor shall 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.

13. SAVINGS

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

14. SEVERABILITY

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

15. SUBCONTRACTING

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

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they 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.

16. SURVIVAL

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

17. TERMINATION FOR CAUSE

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

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

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

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

18. TERMINATION FOR CONVENIENCE

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

19. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or

acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

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

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

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

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

20. TREATMENT OF ASSETS

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

- A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.

- B.** The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- C.** If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D.** The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract.
- E.** All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

21. WAIVER

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

Attachment A: Scope of Work

Grant Objective: Conduct public engagement and analysis to update housing policy and development code consistent with HB 1110.			
Action 1	Prepare policy analysis matrix related to HB 1110		
Step 1.1	Policy Analysis – Review draft Housing and Land Use Elements to identify needed amendments for compliance with HB 1110	November 1, 2023	February 29, 2024
Deliverable 1	Policy Analysis Matrix summarizing needed amendments to comply with HB 1110		February 29, 2024
Action 2	Draft Amendments to Housing and Land Use Elements related to HB 1110	January 1, 2024	April 30, 2024
Step 2.1	Draft goal and policy amendments for Housing and Land Use Elements	January 1, 2024	March 30, 2024
Step 2.2	Draft Land Use Map amendments	January 1, 2024	March 30, 2024
Step 2.3	Planning Commission Review	March 1, 2024	April 30, 2024
Deliverable 2	Public Hearing drafts of the Housing and Land Use Elements, including amendments related to HB 1110		April 30, 2024
Action 3	HB 1110 Public Participation Plan	January 1, 2024	June 15, 2024
Step 3.1	Create HB 1110 Public Participation Plan	January 1, 2024	June 15, 2024
Deliverable 3	HB 1110 Public Participation Plan		June 15, 2024
Action 4	HB 1110 Code analysis	January 1, 2024	June 15, 2024
Step 4.1	Review Commerce Middle Housing Model Ordinance and other resources	January 1, 2024	February 28, 2024
Step 4.2	Technical code analysis to identify required and recommended code amendments	January 1, 2024	April 15, 2024
Step 4.3	Legal review	April 16, 2024	May 15, 2024
Deliverable 4	Code Analysis Matrix summarizing needed HB 1110 code changes		June 15, 2024

Action 5	HB 1110 Affordable Housing Incentive Policy Analysis and HB 1110 Administration Analysis	November 1, 2023	June 15, 2024
Step 5.1	Analyze HB 1110 affordable housing incentive policy options, including review of Commerce model ordinance and approaches used in other jurisdictions	November 1, 2023	June 15, 2024
Step 5.2	Economic analysis of policy options	November 1, 2023	June 15, 2024
Deliverable 5	HB 1110 Affordable Housing Incentive Policy Options Memo		June 15, 2024
Action 6	Draft Residential Code Amendment per HB 1110	June 15, 2024	December 31, 2024
Step 6.1	Planning Commission Working Session	June 15, 2024	September 30, 2024
Step 6.2	Prepare draft code amendment, including HB 1110 affordable housing incentive program	July 1, 2024	October 30, 2024
Step 6.3	Legal Review	November 1, 2024	November 30, 2024
Deliverable 6	Draft Residential Code Amendment per HB 1110		December 31, 2024
Action 7	Public Engagement	November 1, 2024	June 15, 2025
Step 7.1	Develop tailored outreach materials	November 1, 2024	February 28, 2025
Step 7.2	Provide public information/outreach on the requirements of HB 1110 and the proposed Residential Code Amendment.	November 1, 2024	June 15, 2025
Step 7.3	Community Engagement related to proposed Residential Code Amendment	January 1, 2025	June 15, 2025
Deliverable 7	Outreach Materials (website, e-newsletter, newspaper ad, etc) and Community Engagement Summary Memo		June 15, 2025
Action 8	Legislative Review and adoption	January 1, 2025	June 15, 2025
Step 8.1	Transmit draft Code Amendment for State agency review (RCW 36.70A.106)	January 1, 2025	January 30, 2025

Step 8.2	Planning Commission review & public hearing	February 1, 2025	April 30, 2025
Step 8.3	City Council review and adoption	May 1, 2025	June 15, 2025
Deliverable 8	Adopted HB 1110 Code Amendment		June 15, 2025

Attachment B: Budget

Grant Objective: Conduct public engagement and analysis to update housing policy and development code consistent with HB 1110.	Fiscal Year	Commerce Funds
Deliverable 1: Policy Analysis Matrix summarizing needed amendments to comply with HB 1110	FY1 – February 29, 2024	\$5,000
Deliverable 2: Public Hearing drafts of Housing and Land Use Elements related to HB 1110	FY1 – April 30, 2024	\$5,000
Deliverable 3: HB 1110 Public Participation Plan	FY1 – June 15, 2024	\$5,000
Deliverable 4: Code Analysis Matrix summarizing needed HB 1110 code changes	FY1 – June 15, 2024	\$10,000
Deliverable 5: HB 1110 Affordable Housing Incentive Policy Options Memo	FY1 – June 15, 2024	\$12,500
Deliverable 6: Draft Residential Code Amendment per HB 1110	FY2 – December 31, 2024	\$10,000
Deliverable 7: Outreach Materials (website, e-newsletter, newspaper ad, etc.) and Community Engagement Summary Memo	FY2 – June 15, 2025	\$12,500
Deliverable 8: Adopted Housing Code Amendment	FY2 – June 15, 2025	\$15,000
Total		\$75,000

Funds must be invoiced in the appropriate fiscal year (FY1 or FY 2), or they may not be able to be paid. Please be sure to invoice for all FY 1 by June 30, 2024 and FY 2 by June 30, 2025.