



STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE

1011 Plum St SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000  
[www.commerce.wa.gov](http://www.commerce.wa.gov)

<<Date>>

Contact Name  
Legal Name  
Street  
Street2  
City, WA ZIP

RE: Grant Contract Number

Dear Contact Name:

Attached is the contract for a grant under the Energy Efficiency & Solar Grants Program. This contract details the terms and conditions that will govern the agreement between us. Please review the Special and General Terms and Conditions of the contract carefully. We recommend consulting with your legal advisor before accepting this offer.

When you have obtained the appropriate original signatures, either return two signed original contracts and all the attachments to the Washington State Department of Commerce (Commerce) within 60 calendar days of the date of this letter OR email a scanned legible signed copy. Failure to return the contracts within this timeline may result in your project being delayed.

After the contracts have been fully executed by Commerce, the scanned original, along with instructions for invoicing and reporting will be emailed to you. If a hard copy is preferred, please indicate so upon return of the signed contract. We encourage you to store all pertinent documents associated with this project and grant offer in a file that is readily accessible to auditors for their periodic review.

A requirement of this program is that you must maintain updated project records as well as ensure current liability insurance documents are sent to Commerce annually.

We look forward to working with you over the course of your successful project. If you have any questions about this contract, please contact us.

Sincerely,

Dever Haffner-Ratliffe  
State Energy Office  
360-522-3610  
[EEandS@commerce.wa.gov](mailto:EEandS@commerce.wa.gov)





# Department of Commerce

## Capital Agreement with

<Local gov or recipient organization name here>

through

Energy Efficiency and Solar Grants Program

## For

<List project title, if applicable, and/or describe the primary purpose for the funding or the intended outcome/deliverables in approx. 25 words or less>

**Start date:** <Month> <Day>, <Year>

THIS PAGE INTENTIONALLY LEFT BLANK

## TABLE OF CONTENTS

FACE SHEET .....	1
DECLARATIONS.....	2
1. PUBLICITY (Replaces General Terms Section #2.30) .....	2
2. SUBCONTRACTING (Replaces General Terms and Conditions #2.38) .....	2
3. Treatment of assets (Replaces General Terms section #2.42) .....	3
SPECIAL TERMS AND CONDITIONS .....	4
1.1. CONTRACT MANAGEMENT .....	4
1.2. COMPENSATION .....	4
1.3. CHANGES TO SCOPE OF WORK .....	4
1.4. MATCH .....	4
1.5. BILLING PROCEDURES AND PAYMENT .....	4
1.6. SUBCONTRACTOR DATA COLLECTION.....	5
1.7. HISTORIC OR CULTURAL ARTIFACTS.....	5
1.8. INSURANCE .....	6
1.9. ORDER OF PRECEDENCE .....	6
GENERAL TERMS AND CONDITIONS .....	7
2.1. DEFINITIONS.....	7
2.2. ALLOWABLE COSTS .....	7
2.3. ALL WRITINGS CONTAINED HEREIN .....	7
2.4. AMENDMENTS.....	7
2.5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the “ADA” 28 CFR Part 35 .....	7
2.6. APPROVAL.....	7
2.7. ASSIGNMENT.....	7
2.8. ATTORNEYS’ FEES .....	7
2.9. CODE REQUIREMENTS .....	8
2.10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION .....	8
2.11. CONFORMANCE .....	8
2.12. CONFLICT OF INTEREST .....	8
2.13. COPYRIGHT .....	9
2.14. DISALLOWED COSTS .....	9
2.15. DISPUTES.....	9
2.16. DUPLICATE PAYMENT.....	10
2.17. GOVERNING LAW AND VENUE.....	10
2.18. INDEMNIFICATION .....	10
2.19. INDEPENDENT CAPACITY OF THE Grantee.....	10
2.20. INDUSTRIAL INSURANCE COVERAGE.....	10
2.21. LAWS .....	11

2.22.	ILICENSING, ACCREDITATION AND REGISTRATION .....	11
2.23.	LIMITATION OF AUTHORITY .....	11
2.24.	LOCAL PUBLIC TRANSPORTATION COORDINATION .....	11
2.25.	NONCOMPLIANCE WITH NONDISCRIMINATION LAWS .....	11
2.26.	PAY EQUITY .....	11
2.27.	POLITICAL ACTIVITIES .....	11
2.28.	PREVAILING WAGE LAW .....	12
2.29.	PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION .....	12
2.30.	PUBLICITY .....	12
2.31.	RECAPTURE.....	12
2.32.	RECORDS MAINTENANCE .....	12
2.34.	REGISTRATION WITH DEPARTMENT OF REVENUE .....	12
2.35.	RIGHT OF INSPECTION .....	13
2.36.	SAVINGS.....	13
2.37.	SEVERABILITY .....	13
2.38.	SUBCONTRACTING .....	13
2.37.	SURVIVAL .....	13
2.38.	TAXES.....	13
2.39.	TERMINATION FOR CAUSE.....	13
2.40.	TERMINATION FOR CONVENIENCE .....	14
2.41.	TERMINATION PROCEDURES .....	14
2.42.	TREATMENT OF ASSETS .....	15
2.49.	WAIVER .....	15
	ATTACHMENT A – SCOPE OF WORK .....	16
	ATTACHMENT B - BUDGET .....	17
	ATTACHMENT C - REPORTING .....	18
	ATTACHMENT D – BUDGET PROVISO LANGUAGE .....	19

**FACE SHEET**  
**Contract Number XX-XXXXX-XXX**  
**Washington State Department of Commerce**  
 Energy Division -  
**Energy Efficiency and Solar Grants Program**

<b>1. Grantee</b> <Insert legal name> <Insert mailing address> <Insert physical address> <Insert location>		<b>2. Grantee Doing Business As (optional)</b> <Insert DBA name> <Insert DBA mailing address> <Insert DBA physical address> <Insert DBA location>	
<b>3. Grantee Representative</b> <Insert name> <Insert title> <Insert phone> <Insert FAX> <Insert e-mail>		<b>4. COMMERCE Representative</b> Dever Haffner-Ratliffe                      PO Box 42525 Grant Manager                                1011 Plum St SE 360-522-3610                                Olympia WA 98504 dever.haffner@commerce.wa.gov	
<b>5. Contract Amount</b> <Insert \$ amount>	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> <Insert date>	<b>8. End Date</b> Insert date (provided funds are re-appropriated through this date)
<b>9. Federal Funds (as applicable)</b> NA		<b>10. Federal Agency</b> NA	
<b>11. CFDA Number:</b> NA		<b>12. Tax ID #</b> XX-XXXXXXX	
<b>13. SWV #</b> XXXXXXXXXX		<b>14. UBI #</b> XXX-XXX-XXX	
<b>15. DUNS #</b> XXXXXXXX		<b>16. Contract Purpose</b> <Briefly describe contract purpose>  COMMERCE, defined as the Department of Commerce and Grantee 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: Grantee Terms and Conditions including Attachment "A" – Scope of Work Attachment "B" – Budget, Attachment "C" – Reporting, Attachment "D" - BUDGET PROVISIO LANGUAGE.	
<b>FOR GRANTEE</b>  _____ <insert name>, <insert title>  _____ Date		<b>FOR COMMERCE</b>  _____ Michael Furze, Assistant Director  _____ Date  <b>APPROVED AS TO FORM ONLY          BY ASSISTANT ATTORNEY GENERAL</b>  10-18-2019 _____ Sandra Adix, Assistant Attorney General <b>SIGNATURE ON FILE</b>	

## DECLARATIONS

The Washington State Department of Commerce (Commerce) has been appropriated state funds under Section 1014 of the 2018-2019 Capital Budget (SSB 6090) (Chapter 2, Laws of 2018) to provide grants to public entities for projects that result in energy and operational cost savings/ the purchase and installation of solar energy systems.

### CLIENT INFORMATION

Legal Name	Enter Name
Contract Number	#
Award Year	2019
State Wide Vendor Number	#

### PROJECT INFORMATION

Number of Sites:	
Project City:	«ProjectCity»
Project Zip Code:	«ProjectZip»

### GRANT INFORMATION

Non-State Match Required:	Enter cost share
Maximum Percent from Commerce:	
Type of Match Accepted:	Cash
Earliest Date for Reimbursement:	Execution Date or Agreed Upon Date
Time of Performance	Through the acceptance of the third annual Monitoring and Verification Report.

### PROGRAM SPECIFIC TERMS AND CONDITIONS GOVERNING THIS GRANT

As identified herein, notwithstanding General Terms and Conditions Sections, the following Program Specific Terms and Conditions take precedence over any similarly referenced Special or General Terms and Conditions:

#### 1. **PUBLICITY (REPLACES GENERAL TERMS SECTION #2.30)**

The Grantee will make reasonable efforts to notify Commerce of potential publicity, including but not limited to media coverage, site signage, and public events. The Grantee agrees to include references to Commerce or the Energy Efficiency and Solar Grants Program as requested and approved by Commerce. The Grantee agrees to include Commerce or the Energy Efficiency and Solar program as a project funder. The Grantee agrees to notify and invite Commerce to any public events relating to this project, including but not limited to ground breaking ceremonies, ribbon cuttings, and public tours.

Contractor will allow Commerce to publicly share information on the project that is included in the application and contract. All other information shared will be coordinated with the Grantee, unless related to Chapter 42.56 RCW PUBLIC RECORDS ACT.

Unless addressed above, the Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

#### 2. **SUBCONTRACTING (REPLACES GENERAL TERMS AND CONDITIONS #2.38)**

The Grantee may only subcontract work contemplated under this Contract if it provides written notification to COMMERCE of any subcontractors who will be performing work under this Grant Agreement. The written notice must provide the names and address of the subcontractor with a brief



description of which tasks within the Grantee Scope of Work (Attachment A) that will be undertaken by the subcontractor(s).

The Grantee 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 Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Grantee 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 Grantee to COMMERCE for any breach in the performance of the Grantee'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.

### **3. TREATMENT OF ASSETS (REPLACES GENERAL TERMS SECTION #2.42)**

The parties do not anticipate that Commerce will furnish property (other than the state funds granted herein) to Grantee for use in Grantee's performance under this Contract; provided, however, that title to any other property that may be so furnished by Commerce shall remain in Commerce. Commerce claims no ownership for the materials, goods, or services purchased by the Grantee for the completion of this Contract, regardless of reimbursement status under this contract.

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

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

## **SPECIAL TERMS AND CONDITIONS**

### **CAPITAL STATE FUNDS**

#### **1.1. 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 Grantee and their contact information are identified on the Face Sheet of this Contract.

The Grantee and COMMERCE will notify the other party in writing of any of the contact information changes at any time.

#### **1.2. COMPENSATION**

COMMERCE shall pay an amount not to exceed the amount shown as grant amount on the contract Face Sheet for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

#### **1.3. CHANGES TO SCOPE OF WORK**

All changes to the scope of work must be approved by COMMERCE prior to construction. In the event that a change to the Scope of Work occurs that would have changed the outcome of the application, COMMERCE reserves the right to reevaluate the project based on the original criteria outlined in the Notice of Funding Opportunity. Revisions that fail to meet the same criteria as the original application may lose grant funds, in part or in whole. If the revised project is no longer eligible for funding, the Grantee agrees to repay grant funds as requested by COMMERCE.

#### **1.4. MATCH**

If the Grantee fails to provide the agreed to match, including resulting from a change in project costs to the Grantee, COMMERCE reserves the right to reduce the award amount to maintain the agreed to match requirements.

#### **1.5. BILLING PROCEDURES AND PAYMENT**

COMMERCE will pay Grantee upon acceptance of the applicable deliverable and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more than once per month.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and amount of funds requested. The invoice shall include the Contract Number referenced on the contract Face Sheet.

The Grantee is required to maintain documentation to support invoiced costs and cost share obligations. The Grantee shall make these documents available to COMMERCE if requested.

COMMERCE will pay Grantee the amounts set forth in Attachment B upon full completion of each Milestone. Upon full completion of each Milestone, Grantee will provide an invoice and any required supporting documentation to the Representative of COMMERCE. Except as may be agreed by COMMERCE in its discretion, COMMERCE shall only be obligated to make payments upon demonstration of completion of all Deliverables within a given Milestone. However, it is acknowledged that in the event that Deliverables of a Milestone is delayed due to circumstances outside Grantee's control, COMMERCE may, in its sole discretion, reasonably negotiate with Grantee regarding paying for the Milestone Deliverables that are completed.

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 account designated by the Grantee, as associated with the State Wide Vendor Number.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Grantee for services rendered if the Grantee 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 Grantee shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Grantee, if the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

#### **Disallowed Costs**

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

### **1.6. SUBCONTRACTOR DATA COLLECTION**

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

### **1.7. HISTORIC OR CULTURAL ARTIFACTS**

Prior to approval and disbursement of any funds awarded under this Contract, Grantee shall complete the requirements of Governor's Executive Order 05-05, where applicable, or Grantee shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. Grantee agrees that the Grantee is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources s discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Grantee shall, in accordance with Governor's Executive Order 05-05, coordinate with Commerce and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. Grantee agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

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

The Grantee shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

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

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

In the event that the Grantee finds it necessary to amend the Scope of Work the Grantee may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

#### **1.8. INSURANCE**

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

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Grantee shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

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

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

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

#### **1.9. 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
- Current Washington State Capital Budget Proviso language (See Attachment D
- Other Special Terms
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Attachment C – Reporting

## **GENERAL TERMS AND CONDITIONS CAPITAL STATE FUNDS**

### **2.1. DEFINITIONS**

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

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

### **2.2. ALLOWABLE COSTS**

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

### **2.3. ALL WRITINGS CONTAINED HEREIN**

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

### **2.4. AMENDMENTS**

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

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

The Grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

### **2.6. APPROVAL**

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

### **2.7. ASSIGNMENT**

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

### **2.8. 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 attorney's fees and costs.

## **2.9. CODE REQUIREMENTS**

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

## **2.10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

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

1. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
2. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
3. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this 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 Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

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

## **2.11. CONFORMANCE**

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

## **2.12. CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the Grantee 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, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the Grantee in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Grantee and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the (YOUR PROGRAM NAME) including but not limited to formulating or drafting the legislation, participating in grant

procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the Grantee may be disqualified from further consideration for the award of a Grant.

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

## **2.13. COPYRIGHT**

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

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

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

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

## **2.14. DISALLOWED COSTS**

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

## **2.15. 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 Grantee's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

#### **2.16. DUPLICATE PAYMENT**

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

#### **2.17. GOVERNING LAW AND VENUE**

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

#### **2.18. INDEMNIFICATION**

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subcontractor or its employees.

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

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

#### **2.19. INDEPENDENT CAPACITY OF THE GRANTEE**

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

#### **2.20. INDUSTRIAL INSURANCE COVERAGE**

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this



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 Grantee.

**2.21. LAWS**

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

**2.22. LLICENSING, ACCREDITATION AND REGISTRATION**

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

**2.23. LIMITATION OF AUTHORITY**

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

**2.24. LOCAL PUBLIC TRANSPORTATION COORDINATION**

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

**2.25. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Contract, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee'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 Grantee may be declared ineligible for further contracts with COMMERCE. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

**2.26. PAY EQUITY**

The Grantee agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- a. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- b. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
  - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
  - (ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
  - (iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by the Department, if the Department or the Department of Enterprise services determines that the Grantee is not in compliance with this provision.

**2.27. POLITICAL ACTIVITIES**

Political activity of Grantee 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.

#### **2.28. PREVAILING WAGE LAW**

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

#### **2.29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

#### **2.30. PUBLICITY**

This section is superseded by Program Specific Terms and Conditions #1.

~~The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.~~

#### **2.31. RECAPTURE**

In the event that the Grantee 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 Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this contract.

#### **2.32. RECORDS MAINTENANCE**

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

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

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

#### **2.34. REGISTRATION WITH DEPARTMENT OF REVENUE**

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

### **2.35. RIGHT OF INSPECTION**

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

### **2.36. SAVINGS**

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

### **2.37. SEVERABILITY**

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

### **2.38. SUBCONTRACTING**

This section is superseded by Program Specific Terms and Conditions #2

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

~~If COMMERCE approves subcontracting, the Grantee 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 Grantee to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.~~

~~Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Grantee 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 Grantee to COMMERCE for any breach in the performance of the Grantee's duties.~~

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

### **2.37. SURVIVAL**

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

### **2.38. TAXES**

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

### **2.39. TERMINATION FOR CAUSE**

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

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

#### **2.40. TERMINATION FOR CONVENIENCE**

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

#### **2.41. TERMINATION PROCEDURES**

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

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

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Grantee 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 Grantee 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 Grantee and in which COMMERCE has or may acquire an interest.

#### **2.42. TREATMENT OF ASSETS**

This section is superseded by Program Specific Terms and Conditions #3.

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

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

#### **2.49. 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**

## ATTACHMENT B - BUDGET

## ATTACHMENT C - REPORTING

During the construction phase of the Scope of Work, the Grantee must provide quarterly written reports and host a quarterly phone meeting with Commerce for project update purposes. Phone contact should cover current status of the project and any barriers that are potentially affecting the project schedule.

The Grantee shall provide a report to Commerce a minimum of quarterly, or with submitted invoices. Quarterly reports are due no later than 15 days after the end of each quarter or at the time of invoice. The report form will be provided by Commerce. The intent is to collect a description of the project activity that occurred during the period, including but not limited to:

1. A narrative summarizing project activities, risks and issues mitigated, and lessons learned;
2. The project milestones met to date and anticipated in the subsequent quarter (such as through a project Gantt Chart schedule provided quarterly in Microsoft Project format showing actual progress to date along with the baseline schedule developed at project kickoff etc.);
3. Any additional metrics required from the capital budget proviso, legislature, governor's office, or Commerce;
4. Quarterly updated budget projections for project expenditures;
5. The grant expenditures to date and anticipated in the next quarter.

After project construction has ended and the Notice of Commencement of Energy Savings has been issued, the Grantee must provide an annual Monitoring & Verification report to Commerce as outlined in the Scope of Work.



## ATTACHMENT D – BUDGET PROVISOR LANGUAGE

### 2018 Enacted Supplemental Capital Budget

#### Section 1014

#### Energy Efficiency and Solar Grants (30000882)

The appropriations in this section are subject to the following conditions and limitations:

(1)(a) \$3,675,000 for fiscal year 2018 and \$3,675,000 for fiscal year 2019 is provided solely for grants to be awarded in competitive rounds to local agencies, public higher education institutions, school districts, and state agencies for operational cost savings improvements to facilities and related projects that result in energy and operational cost savings.

(b) At least twenty percent of each competitive grant round must be awarded to small cities or towns with a population of five thousand or fewer residents.

(c) In each competitive round, the higher the leverage ratio of nonstate funding sources to state grant and the higher the energy savings, the higher the project ranking.

(d) For school district applicants, priority consideration must be given to school districts that demonstrate improved health and safety through:

(i) Reduced exposure to polychlorinated biphenyl; or

(ii) Replacing outdated heating systems that use oil or propane as fuel sources as identified by the Washington State University extension energy program. Priority consideration must be given to applicants that have not received grant awards for this purpose in prior biennia.

(2) \$1,750,000 is provided solely for grants to be awarded in competitive rounds to local agencies, public higher education institutions, school districts, and state agencies for projects that involve the purchase and installation of solar energy systems, including solar modules and inverters, with a preference for products manufactured in Washington