**POULSBO AGREEMENT DISTRIBUTION SCHEDULE**

**SUBJECT**: **Department of Commerce – Growth Management Act Update Grant**

**CONFORM AS TO DATES & SIGNATURES**

(X) Approved by the Mayor: 05/22/14
(X) Completion: 06/30/15
(_) Recorded: n/a

**DISTRIBUTE CONFORMED COPIES AS FOLLOWS**:

(_) City Attorney
(1) Clerk's Department: Original
(X) Posted to Library Drive
(_) Posted to Web Site
(_) Finance:
(_) Fire District #18
(_) Mayor
(_) Municipal Court
(_) MRSC
(_) Parks/Recreation
(_) Planning/Building
(_) Police
(_) Public Works/Engineering:

Kylie Purves
City Clerk

June 30, 2014
Date

# Department of Commerce

Innovation is in our nature.

**Interagency Agreement with**

City of Poulsbo

through

Washington State Department of Commerce
Growth Management Services

**For**

Growth Management Act
Update Grant

**Start date:**

July 1, 2014

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Attachment A, Statement of Work

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# FACE SHEET

**Contract Number: 15-63200-020**

**Washington State Department of Commerce**
**Local Government & Infrastructure Division**
**Growth Management Services**
**Growth Management Act – Update Grant**

| **1. Contractor** | **2. Contractor Financial Representative** |
|---|---|
| City of Poulsbo<br>200 NE Moe Street<br>Poulsbo, WA 98370 | Sonya Roberts<br>Accounting Technician/Grants<br>Phone: (360) 394-9881<br>sroberts@cityofpoulsbo.com |
| **3. Contractor Representative** | **4. COMMERCE Representative** |
| Barry Berezowsky<br>Planning Director<br>Phone: (360) 394-9882<br>bberezowsky@cityofpoulsbo.com | Joyce Phillips<br>Senior Planner<br>(360) 725-3045<br>joyce.phillips@commerce.wa.gov<br>PO Box 42525<br>1011 Plum Street SE<br>Olympia, WA 98504-2525 |

| **5. Contract Amount** | **6. Funding Source** | **7. Start Date** | **8. End Date** |
|---|---|---|---|
| $9,000.00 | **Federal:** ☐ **State:** ☒ **Other:** ☐ **N/A:** ☐ | July 1, 2014 | June 30, 2015 |

| **9. Federal Funds (as applicable)** | **Federal Agency:** | **CFDA Number** |
|---|---|---|
| N/A | N/A | N/A |

| **10. Tax ID #** | **11. SWV #** | **12. UBI #** | **13. DUNS #** |
|---|---|---|---|
| N/A | SWV0000315-00 | N/A | N/A |

**14. Contract Purpose**

The city will revise its development regulations and comprehensive plan meeting the requirements of RCW 36.70A.130(5)(b). Specifically, the city will (1) revise subdivision, permit procedures and clearing/grading ordinances; (2) review BAS and update CAO as appropriate; and (3) update the comprehensive plan, incorporating 2014 buildable lands analysis, capital facilities' functional plans, and 2010 Census and other technical data.

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" – Statement of Work and Attachment "B" – Budget.

| **FOR CONTRACTOR** | **FOR COMMERCE** |
|---|---|
| Rebecca Erickson, Mayor<br>City of Poulsbo | Kendee Yamaguchi, Assistant Director<br>Local Government and Infrastructure Division |
| 5/22/14<br>Date | 6/6/2014<br>Date |
| | **APPROVED AS TO FORM ONLY**<br>**BY ASSISTANT ATTORNEY GENERAL** |

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

## 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 Contractor and their contact information are identified on the Face Sheet of this Contract.

## 2. COMPENSATION

COMMERCE shall pay an amount not to exceed **nine thousand dollars ($9,000)** for the performance of all things necessary for or incidental to the performance of work as set forth in the Statement of Work. 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. The maximum amount to be paid to the Contractor for authorized expenses shall not exceed **$9,000**, which amount is included in the Contract total above.

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.

## 3. 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 upon satisfactory acceptance of each deliverable and status report according to the schedule in Attachment A (Statement of Work) and the Payment Disbursement Schedule in Attachment B (Budget). Each status report, and the final closeout report, shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and the expenditures to date. The deliverables, status reports, closeout report, and invoices shall include the Contract Number **15-63200-020**.

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.

Section 2, Advance Payments Prohibited, of the General Terms and Conditions attached hereto, does not apply to this Contract and is hereby deleted in its entirety.

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.

## 4. 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 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.
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 an/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.

## 5. 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 – Statement of Work
- Attachment B – Budget
- add any other attachments incorporated by reference on the Face Sheet

**GENERAL TERMS AND CONDITIONS**
**INTERAGENCY AGREEMENT**
**STATE FUNDS**

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 attorney's 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.

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

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

**B. State Funds Requirements**

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

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

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

**C. Documentation Requirements**

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

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

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

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

If the Contractor is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to Commerce; no other report is required.

**9. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

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

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

**B.** The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply

to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

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

**10. 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.

**11. COPYRIGHT PROVISIONS**

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

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

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

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

**12. 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.

**13. 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.

**14. 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.

**15. 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, from and against, all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

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

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

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

**16. 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.

**17. 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.

**18. LAWS**

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

**Washington State Laws and Regulations**

A. Affirmative action, RCW 41.06.020 (1).
B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
C. Disclosure-campaign finances-lobbying, Chapter 42.17A RCW.
D. Discrimination-human rights commission, Chapter 49.60 RCW.
E. Ethics in public service, Chapter 42.52 RCW.
F. 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.

**19. 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.

**20. 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 or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent

**21. 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.

**22. 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.

**GENERAL TERMS AND CONDITIONS**
**INTERAGENCY AGREEMENT**
**STATE FUNDS**

**23. 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.

**24. 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.

**25. 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.

**26. 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.

**27. 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.

**28. 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.

**29. 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.

**30. 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.

**31. 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.

**32. 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.

**33. 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.

**34. 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.

**35. TERMINATION PROCEDURES**

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

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

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

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

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

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

**36. TREATMENT OF ASSETS**

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

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

B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the

Contractor to maintain and administer that property in accordance with sound management practices.

C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.

D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

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

**37. 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.

**Statement of Work**

Contractor: City of Poulsbo

Summary: The city will revise its development regulations and comprehensive plan meeting the requirements of RCW 36.70A.130(5)(b). Specifically, the city will (1) revise subdivision, permit procedures and clearing/grading ordinances; (2) review BAS and update CAO as appropriate; and (3) update the comprehensive plan, incorporating 2014 buildable lands analysis, capital facilities' functional plans, and 2010 Census and other technical data.

| Goals / Actions & Deliverables | Description | Start Date | End Date |
|---|---|---|---|
| **Goal 1.0** | **Review comprehensive plan and development regulations, including critical areas ordinance, to determine if there are any sections that need revision.** | | |
| Action 1.1 | Review the comprehensive plan using the Commerce periodic update checklist. | 07/01/14 | 09/30/14 |
| Action 1.2 | Review development regulations, including the critical areas regulations, using the Commerce periodic update checklist. | 07/01/14 | 09/30/14 |
| Deliverable 1.1 | Completed Commerce periodic update checklists for comprehensive plan and development regulations. | | 09/30/14 |
| Deliverable 1.2 | First grant status report due. | | 09/30/14 |
| Performance Measure 1.0 | Grantee has completed the checklists required to complete the review of relevant plans and regulations. | | 09/30/14 |
| **Goal 2.0** | **Update Subdivision, Clearing/Grading and Permit Procedure Ordinances.** | | |
| Action 2.1 | Research other city and county jurisdictions' development regulations, Commerce/state resources, MSRC, etc. | 07/01/14 | 09/30/14 |

| Goals / Actions & Deliverables | Description | Start Date | End Date |
|---|---|---|---|
| Action 2.2 | Analyze collected research. Collect feedback from other departments on the current ordinances and requests for revisions. | 09/30/14 | 10/31/14 |
| Action 2.3 | Prepare first draft of an updated subdivision ordinance, clearing/grading ordinance and permit procedure ordinance. | 11/01/14 | 12/19/14 |
| Deliverable 2.1 | Second grant status report due. | | 12/31/14 |
| Deliverable 2.2 | Updated draft subdivision, clearing/grading, and permit procedure ordinances. | | 12/31/14 |
| Performance Measure 2.0 | Grantee has produced updated, subdivision, clearing/grading, and permit procedure ordinances. | | 12/31/14 |
| **Goal 3.0** | **Update Critical Areas Ordinance.** | | |
| Action 3.1 | Review updates to Best Available Science. | 07/01/14 | 09/31/14 |
| Action 3.2 | Identify scope of work for professional services and issue RFP. | 07/01/14 | 09/31/14 |
| Action 3.3 | Research other city and county jurisdictions' development regulations, Commerce/state resources, MSRC, etc. | 07/01/14 | 10/31/14 |
| Action 3.4 | Analyze collected research. | 11/01/14 | 12/31/14 |
| Action 3.5 | Receive deliverables from environmental consultant. | 11/01/14 | 12/31/14 |
| Action 3.6 | Research Critical Area maps as appropriate. Confirm and update critical area designations. | 12/31/14 | 01/30/15 |
| Action 3.7 | Prepare first draft of appropriate amendments to the Critical Areas Ordinance. | 01/02/15 | 04/30/15 |

| Goals / Actions & Deliverables | Description | Start Date | End Date |
|---|---|---|---|
| Deliverable 3.1 | Third grant status report due. | | 03/31/15 |
| Deliverable 3.2 | Draft Critical Areas Ordinance with identified revisions and updated maps. | | 05/29/15 |
| Performance Measure 3.0 | Grantee has produced a revised Critical Areas Ordinance and maps. | | 05/29/15 |
| **Goal 4.0** | **Transmit updated draft subdivision, clearing/grading, permit procedure and critical areas ordinances to Commerce.** | | |
| Action 4.1 | Submit draft subdivision, clearing and grading, permit processing, and critical areas development regulations to Commerce with Notice of Intent to Adopt. | | 06/30/15 |
| Deliverable 4.1 | Grant closeout report due. | | 06/30/15 |
| Performance Measure 4.0 | Grantee has produced an acceptable updated version of the development regulations and the critical areas ordinance. | | 06/30/15 |

Status Reports Due By:

| | |
|---|---|
| 1st Status Report | September 30, 2014 |
| 2nd Status Report | December 31, 2014 |
| 3rd Status Report | March 31, 2015 |
| Closeout Report | June 30, 2015 |

Status Reports Requirements:

A. The Contractor shall submit a brief status report, and a final closeout report, on a form approved by COMMERCE which describes the progress made on the work program outlined in Attachment "A." These progress reports will be submitted on a quarterly calendar cycle.

B. The Contractor shall furnish, along with or prior to submitting the final invoice voucher, one copy of each final deliverable designated in Attachment "A." and a final closeout report.

## Budget

The budget shall consist of the following elements:

1. Category of Expenditures

| SFY 2015 | Commerce Funds | Other Funds (Local) | Total Expenses |
|---|---|---|---|
| Salaries and Benefits | $7,000 | $65,000 | $72,000 |
| Goods and Supplies | $0 | $1,000 | $1,000 |
| Professional Services | $2,000 | $0 | $2,000 |
| Other Goods and Services: | $0 | $0 | $0 |
| **Total** | **$9,000** | **$66,000** | **$75,000** |

2. Budget Summary:

| | SFY 2015 | Total |
|---|---|---|
| Commerce Funds | $9,000 | $9,000 |
| Other Funds (Local) | $66,000 | $66,000 |
| **Total** | **$75,000** | **$75,000** |

3. Payment Disbursement Schedule:

| | Amount |
|---|---|
| After submission of the first status report and scheduled deliverables on or before September 30, 2014. | $2,700 |
| After submission of the second status report and scheduled deliverables on or before December 31, 2014. | $2,700 |
| After submission of the third status report and scheduled deliverables on or before March 31, 2015. | $2,700 |
| Upon completion of the contract and submission of closeout report and final deliverables on or before June 30, 2015. | $900 |

4. Special Budget Provisions:

   A. For Contracts over $30,000, 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.

   B. For Contracts under $30,000 the total amount of transfers of funds between line item budget categories shall not exceed twenty (20) percent of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed twenty percent, the total budget shall be subject to justification and negotiation of a Contract amendment by the Contractor and COMMERCE.

   C. A sum of ten (10) percent of funds shall be withheld until all tasks, activities, and final products defined in Attachment "A" have been successfully completed by the Contractor and accepted fully by COMMERCE.

5. Reimbursement Provisions

   A. Funds will be disbursed per the schedule established in Attachment "B."

   B. Only eligible project-related costs will be reimbursed. Ineligible costs include, but are not necessarily limited to: capital expenses, such as land acquisition or construction costs; purchase of machinery; hosting expenses, such as meals, lodging, or transportation incurred by persons other than staff and volunteers working directly on the project; lobbying or political influencing; and other costs which are not directly related to the project.

   C. Within twenty (20) days after receiving and approving the voucher, COMMERCE shall remit to the Contractor a warrant covering COMMERCE's share of the costs incurred for work performed.

   D. The final invoice voucher covering costs incurred for work performed on or before 06/30/2015 must be submitted by the Contractor prior 7/10/2015, to allow COMMERCE sufficient time to process it. Payment of the final voucher shall be contingent upon COMMERCE's receipt and approval of any status reports and deliverables designated in Attachment "A."