

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON**

IN THE MATTER OF:

RESOLUTION NO. 22-313

APPROVE A GRANT AGREEMENT WITH THE WASHINGTON STATE BROADBAND OFFICE AWARDING LEWIS COUNTY \$23.5 MILLION TO INSTALL BROADBAND INFRASTRUCTURE IN AND AROUND WINLOCK

WHEREAS, high-speed broadband service is increasingly essential for full participation in modern life, including access for education, employment, medical care and recreation; and

WHEREAS, rural areas face a digital divide in which extending high-speed broadband service to them is cost-prohibitive, and so are left out of the digital arena; and

WHEREAS, recent years have seen an influx of public funding to overcome the difficulty in extending such service, including the Washington State Broadband Office (WSBO) Infrastructure Acceleration Grants; and

WHEREAS, through a concerted effort of Lewis County, the Lewis County PUD, the Economic Alliance of Lewis County, and ToledoTel, Lewis County won a grant award of \$23.5 million for the installation of fiber optic broadband infrastructure to every parcel within Winlock and the surrounding rural areas, which infrastructure is capable of upload and download speeds of at least 1GB per second; and

WHEREAS, Lewis County, ToledoTel and WSBO have worked through regulatory and unprecedented supply chain disruptions to reach agreement on a Grant Agreement to implement the award; and

WHEREAS, the broadband services from this project will be a game-changing boost to the Winlock area's growth, economic development and quality of life; and

WHEREAS, the Board of County Commissioners finds the Grant Agreement to be in the public interest.

NOW THEREFORE BE IT RESOLVED the Board of County Commissioners approves of the Grant Agreement and authorizes the County Manager to sign on its behalf.

DONE IN OPEN SESSION this 27th day of September, 2022.

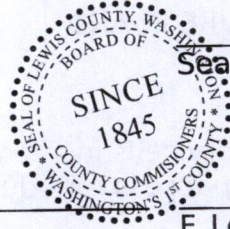
APPROVED AS TO FORM:
Jonathan Meyer, Prosecuting Attorney

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON

Amber Smith
By: Amber Smith,
Deputy Prosecuting Attorney

Lindsey R. Pollock, DVM
Lindsey R. Pollock, DVM, Chair

ATTEST:



Sean D. Swope
Sean D. Swope, Vice Chair

Rieva Lester
Rieva Lester,
Clerk of the Lewis County Board of
County Commissioners

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February 22, 2022

Mr. Erik Martin
County Manager
Lewis County
351 NW North St
Chehalis, Washington 98532

Sent via email to: Becky Butler

Dear Mr. Martin,

I am pleased to inform Lewis County that the Lewis County Broadband Expansion Project, has been conditionally approved for funding by the Washington State Broadband Office (WSBO) in response to the Fall 2021 - Broadband Infrastructure Acceleration Grant Program.

Your project is awarded up to \$ 23,500,000.00 with **Coronavirus State Fiscal Recovery Account** funds from the 2021-2023 Capital Budget appropriation made to the WSBO. The project will be contracted under contract number 21-968B0250-05 A copy of the Fall 2021 Guidelines and Project Data Sheet are attached. As stated in the Notice of Funding Opportunity, this award will be contracted as a recoverable grant.

The WSBO appreciates and shares a common goal with your community to provide equitable access to affordable internet to the Winlock area. Investing in broadband is key to ensure all residents have sufficient internet to participate in strengthening our communities.

The WSBO team looks forward to working together with your project team. If you have any questions, please contact Tammy Mastro at Tammy.mastro@commerce.wa.gov or Alden Andy at alden.andy@commerce.wa.gov.

Sincerely,

Washington State Broadband Office



Washington State Broadband Office Infrastructure Acceleration Grants Handbook 21-23

Washington State Broadband Infrastructure Accelerated Grants Program (IAG) Funded by the Coronavirus State and Local Fiscal Recovery Fund (SLFRF), adoption of the Final Rule on January 6, 2022, **31 CFR Part 35**. In addition the **Coronavirus Capital Fund, are subject to change based on the release of the final guidelines.**

Please note that this is a living document and is updated frequently. Please only save a shortcut to the document, and not a copy of the document to ensure that you have the most updated copy at all times.

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General

WSBO's mission is to enrich the lives of all Washington state residents and businesses by ensuring they have access to affordable, reliable, redundant, and scalable/future proof broadband technologies ensuring the economic viability of both urban and rural Washington State today and into the future.

Disclaimer

This handbook is a guide for recipients of funding from the Washington State Broadband Office (WSBO). As WSBO is the administrator of several grant programs, please pay close attention for any notations within this document that refer to differing requirements according to the source of funding. Please further note that this handbook is provided as a helpful resource, but does not guarantee compliance with all state and federal requirements. Recipients are responsible for compliance with all the rules and guidelines as required by the Washington State Broadband Office and the various funding sources. WSBO and the Department of Commerce (Commerce) expressly disclaim any warranty related to the compliance with federal and state requirements and will accept no responsibility for any consequences arising from the use, or reliance on this handbook.

WSBO reserves the right to update these policies at any time. Updates will be published in this document and posted at <https://www.commerce.wa.gov/building-infrastructure/washington-statewide-broadband-act/>

1. Overview

1.1 Introduction

The Washington State Broadband Office (WSBO) is authorized by state statute ([RCW 43.330.534](#)) funding opportunities to local governments, tribes, public and private entities, nonprofit organizations, and consumer-owned and investor-owned utilities to develop strategies and plans promoting deployment of broadband infrastructure and greater broadband access to unserved and underserved areas of the state. These organizations are known as applicants until such time as they are Recipients of WSBO funding.

The Infrastructure Acceleration Grant program is a subaward of the state's allocation of federal American Rescue Plan Act (ARPA) stimulus funding of Coronavirus State and Local Fiscal Recovery Funds (SLFRF) and Capital Project funds. Both funding sources are directly from the U.S. Department of the Treasury (US Treasury). All grants must adhere to any and all internal control compliance and reporting requirements for the use and expenditure of federal funding.

- ARPA funds have been issued and unique 5-digit federal assistance number assigned to the funds on [SAM.gov](#) is Assistance Listing Number (ALN) **21.027** - SLFRF and **21.029** - Capital.

WSBO may only fund technology-neutral broadband projects designed to deliver broadband service inclusive of these three (3) criteria to expand access at the lowest cost to the most unserved or underserved residents, [SSB 1086\(1\)\(f\)](#):

- As part of a contiguous network, **and**
- Delivers minimum transmission speeds of 100 megabits per second download and 100 megabits per second upload (100/100 Mbps), unless impracticable due to *geography, topography, or financial cost*, in which case speeds of 100/20 Mbps are acceptable **only if** scalable to 100/100 Mbps. [31 CFR Part 35, 35.6](#); **and**
- Is deployed in unserved areas

Unserved areas are those areas lacking access to reliable service (wireline connection) at speeds of at least 25/3 Mbps.

Broadband is defined as the technologies that provide high-speed access and other advanced telecommunications services to end users.

The IAG encourages partnerships with Government to Government, Public to Incumbent ISP, etc. The construction and deployment of broadband infrastructure projects (IAG projects) are eligible for funding if the infrastructure is designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical download and upload speeds of 100Mbps. If it would be impracticable, because of geography, topography, or excessive cost, for a Broadband Infrastructure Project to be designed to deliver services at such a speed, the Project must be designed so that it reliably meets or exceeds 100 Mbps download speeds and between 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.

Eligible broadband infrastructure project grants may include funding for related programs such as cybersecurity or digital literacy training and other programs that promote access to the Internet.

Each Recipient must identify if the project addresses one or more of the following funding priorities:

1. Delivers a physical wireline broadband connection to achieve last-mile connections to households and businesses.
2. Supports broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.
3. Pursues fiber optic investments.

Funds may be used for cybersecurity modernization, including hardware, software and protection of critical infrastructure as part of the provision of government services. Funds used for cybersecurity modernization cannot exceed the amount of revenue lost due to the public health emergency.

The final rule includes a requirement that recipients must require service providers for a broadband project that provides service to households either to participate in the Federal Communications Commission’s Affordable Connectivity Program (ACP) or provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Under [RCW 43.330.536](#), it is the goal to have:

- By 2024: 25/3 megabits per second (Mbps) scalable
- By 2026: 1/1 gigabit per second (Gbps) all anchor institutions
- By 2028: 150/150 Mbps all residents and households

1.2 WSBO Program Administration

IG is administered by WSBO as outlined below.

Washington State Broadband Office PO Box 42525 Olympia, WA 98504-2525 E-mail: WSBO@commerce.wa.gov	
Project Managers:	
Connie Rivera Broadband Infrastructure Program Manager (360) 704-9535 Connie.Rivera@commerce.wa.gov	Alden Andy Broadband Infrastructure Team Supervisor (360) 791-2595 Alden.Andy@commerce.wa.gov
Tammy Mastro Broadband Infrastructure Programs Senior Specialist (360) 791-2805 Tammy.Mastro@commerce.wa.gov	Chelsea Bagwell Broadband Infrastructure Program Specialist (360) 485-3890 Chelsea.Bagwell@commerce.wa.gov

WSBO staff is responsible for the application process including:

- Publishing program guidelines and application;
- Scoring and ranking applications;

- Conducting affordability index analysis, risk analysis, and financial review;
- Determining project readiness and negotiating final scopes of work;
- Conducting the Governor’s Executive Order 21-02 Cultural Review Process;
- Preparing and executing grant contract documents;
- Providing contract management training;
- Monitoring compliance with contract requirements and progress;
- Reviewing and approving reimbursement requests;
- Amending contracts, project completion process;
- Technical assistance, and;
- Managing contracts for completed projects.

1.3 State & Federal Requirements

Numerous state and federal requirements must be followed when implementing a WSBO-funded project. These requirements are a part of the contract between WSBO and the Recipient. Please see the Chapter 10 - Appendix for the list of Applicable State & Federal Requirements.

1.4 Site Control and Technology-Neutral Approach

All projects must be held by the Recipient for a minimum of twenty-five (25) years from the date of final payment and be used for the same purpose expressed in the application and/or contract.

Demonstrate that the project site is under the applicant's control for a minimum of 25 years, either through ownership or a long-term lease. Commit to using the infrastructure funded by the grant for the purposes of providing broadband connectivity for a minimum of 25 years ([SSB 5651, Section 1041\(1\)\(d\)\(i-ii\)](#)).

The appropriations must be used for projects that use a technology-neutral approach in order to expand access at the lowest cost to the most unserved or underserved residents.

The statewide broadband office must impose grant or contract conditions to help ensure that any project funded under this section will result in an enduring public benefit, where feasible, for at least 25 years ([SSB 5651, Section 1041\(1\)\(h\)\(i\)](#)).

1.5 SAM.gov Requirements

All Recipients must have an active registration with the [System for Award Management \(SAM\)](#) and maintains through the period of the contract, as required by [2 CFR Part 25](#).

To register an account:

- [SAM.gov | Home](#)
- Select ok when dialogue box comes up
- Select Entity Registration
- Sign In: select Accept, enter work email address (from auto-populated list) and password, Enter security code given by 2-step authentication method (i.e. phone call to my work cell)
- Select Search, In Keywords box: enter Grantee name (i.e. “City of South Bend”)

1.6 Procurement, Suspension, and Debarment Requirements

Recipients are responsible for ensuring that any procurement using ARPA funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at [2 CFR § 200.317](#) through [2 CFR § 200.322](#), as applicable. The Uniform Guidance establishes in that all procurement transactions for property or services must be conducted in a manner providing full and open competition consistent with standards outlined in 2 CFR § 200.320. Non-competitive procurements are allowed only in circumstances where at least one of the following conditions is true:

- The item is below the micro-purchase threshold.
- The item is only available from a single source.
- The public exigency or emergency will not permit a delay from publicizing a competitive solicitation.
- After solicitation of a number of sources, competition is determined inadequate.

Recipients must have and use documented procurement procedures that are consistent with the standards outlined in [2 CFR 200.317](#) through [2 CFR 200.320](#). The Uniform Guidance requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, state and federal procurement laws and regulations.

The Recipient's procurement system should include but not necessarily be limited to, the following:

- General procurement standards [2 CFR 200.318](#). A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- Competition [2 CFR 200.319](#). Procedures that ensure all procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of this section and [2 CFR 200.320](#).
- Methods of procurement to be followed [2 CFR 200.320](#).
- Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms [2 CFR 200.321](#).
- Domestic preferences for procurements [2 CFR § 200.322](#)
 - (a) As appropriate and to the extent consistent with law, the non-federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
 - (b) For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

All Recipients, their prime contractor and subcontractors (including contracted administrators and engineers) to comply with all financial management and federal requirements, and document that they are not suspended, debarred or otherwise excluded prior to contract execution (no exclusions stated), [2 CFR 200.214](#). You need to check any business professional services or contractors, including subcontractors, Suspension and debarment, professional services or contractor. Select Exclusions Tab, Right click and select print. Be sure to print the results of your search and retain them for your contract files.

1.7 Other Federal Requirements

a. Civil Rights Compliance

All Recipients are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of federal funds. Those requirements include ensuring recipients of the IAG awards do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity). Use of federal funds must be in accordance with the following authorities:

- [Title VI of the Civil Rights Act of 1964](#) (Title VI) Public Law 88-352, 42 U.S.C. 2000 d-1 et seq., and the Treasury's implementing regulations, [31 CFR Part 22](#)
- [Section 504 of the Rehabilitation Act of 1973](#) (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794
- [Title IX of the Education Amendments of 1972](#) (Title IX), 20 U.S.C. 1681 et seq., and the Department of Justice's implementing regulations, [31 CFR Part 28](#)
- [Age Discrimination Act of 1975](#), Public Law 94-135, 42 U.S.C. 6101 et seq., and the Treasury implementing regulations at [31 CFR Part 23](#)

Additional information to be collected and reviewed from Grantees will be provided as soon as additional guidance is received from the US Treasury.

b. Equipment and Real Property Management

Any purchase of equipment or real property with ARPA funds must be consistent with the Uniform Guidance at [2 CFR Part 200, Subpart D](#). Equipment and real property acquired under with SLFRF funds must be used for the originally authorized purpose. Consistent with [2 CFR § 200.311](#) and [2 CFR § 200.313](#), any equipment or real property acquired using SLFRF funds shall vest in the non-federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations

c. Relocation and Real Property Acquisition Requirements

Uniform Relocation Assistance and Real Property Acquisition Act of 1970 ([42 USC §§ 4601-4655](#)) (URA) and implementing regulations are in [49 CFR Part 24](#), as published in the Federal Register on January 4, 2005. (See URA documents located on the [Electronic Code of Federal Regulations website](#))

Acquisition

Most acquisitions are simple acquisitions requiring compliance with a minimal amount of regulations under the URA. The requirements of Subpart B do not apply to acquisitions that meet all of the following conditions ([49 CFR § 24.101b \(1\) \(i\)-\(iv\)](#)):

- No specific site or property needs to be acquired, although the Recipient may limit its search for alternative sites to a general geographic area. Where a Recipient wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly.
- The property to be acquired is not part of any intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
- The Recipient will not acquire the property if negotiations fail to result in an amicable agreement and the owner is informed in writing.
- The Recipient will inform the owner in writing of what it believes to be the market value of the property.

NOTE: Contact your IAG Project Manager if an acquisition does not meet **all** of the conditions as noted above. Compliance with all of Subpart B of the URA is required.

2. Contracts and Amendments

2.1 Overview

This Chapter outlines the contract development and contract amendments process followed by the WSBO Infrastructure team through project completion.

2.2 Assignment of Project

All award Recipients will receive a letter from WSBO specifying the amount of the award, any conditions on the award, and the name and contact information of the WSBO project manager assigned to the project.

Recipients are expected to work closely with the project managers during pre-contracting, project implementation, placed-in-service activities, and award close-out.

2.3 Scope of Work

The WSBO project manager will work with the Recipient to finalize the scope of work for the contract. The scope of work provided in the WSBO application will be reviewed and edited by the WSBO project manager. The revised scope of work will be emailed to the Recipient for review and approval.

2.4 Contract

The WSBO contract is comprised of two parts: *Specific Terms and Conditions* and *General Terms and Conditions*. The Office of the Attorney General has pre-approved the boilerplate language for the WSBO contract and related legal documents. The General Terms and Conditions are not negotiable. Limited revisions to the Specific Terms and Conditions or other legal documents may be allowed, as noted below. Substitution or addition of non-WSBO documents is subject to the approval of WSBO's Assistant Attorney General (AAG).

The approved contract boilerplate will include the scope of work and terms of the contract on the declaration page.

2.5 Time of Performance Requirements

The Recipient must demonstrate projects are progressing in a timely manner. WSBO may terminate contracts when projects are not progressing on schedule.

Infrastructure Projects funded with *ARPA Funds* may only be used to cover eligible costs incurred during the period of **(March 3, 2021- SLFRF or March 15, 2021 Capital) thru December 31, 2024. All project costs are to be reimbursed by October 30, 2026, subject to re-appropriation by Legislature.**

[US Treasury's Guidance](#) requires all SLFRF funds be obligated in writing (such as: executed contracts with contractor, executed change orders that include increased budgets and subcontractors) by December 31, 2024, and all projects completed and project costs reimbursed by October 30, 2026. However, Washington operates under a biennial (two-year) budget. Each appropriation in the 2021-2023 and 2023-2025 Capital Budget must, by law, lapse at the close of the biennium, June 30, 2025. If funds are not fully expended by the current biennium close date of June 30, 2025, then the contract may be extended subject to re-appropriation of remaining funds.

Since many projects take more than two years to complete, WSBO automatically requests re-appropriation to extend projects with unspent funds. However, we cannot guarantee that the Legislature will agree to extend funding through to October, 2026, nor can we legally obligate funds from one biennium to another.

Costs incurred for eligible projects planned or started prior to March 3, 2021 may be covered provided the project costs covered were incurred after March 3, 2021 for SLFRF. The Capital funds the cost incurred date is March 15, 2021.

The following section is included in your contract, defining the Period of Performance, Costs Incurred, and Reimbursement:

1. **Period of Performance.** The initial period of performance for this award begins on the date hereof and ends on June 30, 2025. If unexpended funds under this Grant are re-appropriated, the period of performance (Contract End Date) will be extended to not later than October 30, 2026.
2. **Costs Incurred Period.** As set forth in Treasury's implementing regulations, the Recipient may use funds awarded under ARPA to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024. Pursuant to federal rules, a cost shall be considered to have been incurred if the Recipient has incurred an obligation with respect to such cost by December 31, 2024.
3. **Reimbursement Period.** All requests for reimbursement of eligible costs incurred between March 3, 2021 and December 31, 2024 payable from ARPA funds must be submitted to WSBO by the earlier of October 30, 2026 or 30 days prior to the Contract End Date.

2.6 Contract Amendments Overview

Changes to the contract scope of work, budget activities, or timing to carry out contract activities require a contract amendment. The Recipient MUST contact their WSBO program manager to initiate amendments to contracts.

2.7 Scope of Work Amendment

Scope of work revisions must be requested in writing by the Recipient to their designated WSBO project manager.

Scope of work amendments may require additional environmental and/or cultural resources Governor's Executive Order (GEO) 21-02 especially where the revisions:

- Add/delete elements to the project scope of work
- Increase or change the project location / Area of Potential Effect
- Excavate at a deeper depth or different location

No work can proceed, nor reimbursement of any elements related to the proposed revised scope until the WSBO determines the scope change is allowable, and contract amendments are fully executed. The WSBO Director approves all scope changes to WSBO contracts.

2.8 Requesting Project Completion Date Extensions (only eligible if the US Treasury extends beyond 2026)

For WSBO to consider a project extension request, the Recipient must request extensions to the Project Completion Date at least 90 days before the Completion date referenced on the Declarations page of their contracts. The Recipient must request Project Completion extensions in writing to their WSBO project manager. Written requests must state the reason(s) for the delay and list the revised timeline for completion of the activities.

2.9 Requesting Jurisdiction Name Change

When the legal name of the Recipient changes, the Recipient shall send the official document showing approval of the change to their WSBO project manager for the contract file.

2.10 Requesting Contract Termination

A Recipient terminating their contract must notify the WSBO Broadband Infrastructure Programs Manager in writing indicating the request to rescind all obligations and provisions contained in the contract. All qualifying invoices for reimbursement must be received within 30 days of the date of the official termination notification.

3. Administrative and Program Requirements

3.1 Overview

The Recipient must be able to document compliance with all state and federal (if applicable) laws and regulations. Good record keeping and reporting systems are essential to document compliance. These records must be accessible to Commerce, Washington State Auditor, US Treasury, Treasury's Office of Inspector General, Government Accountability Office (GAO), and the Pandemic Relief Accountability Committee (PRAC). This Chapter provides a summary to help set up a WSBO record keeping system and a summary of reports that will be requested during the management of the contract.

Recipients of IAG funds must have a contract management system in place to ensure contractors perform in accordance with contract terms, conditions, specifications, and applicable state and federal requirements. This system must:

- Ensure prevailing wage requirements are included in bid documents and contracts.
- Verify the selected contractor and subcontractor are not excluded from receiving federal funds.
- Review contractor and subcontractor compliance with prevailing wage laws, on-site inspections, review of change order requests, project closeout, release of retainage, and record keeping.

3.2 Uniform Administrative Requirements

ARPA sub-awards are generally subject to the requirements set forth in the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, [2 CFR Part 200](#) (the "Uniform Guidance"). In all instances, your organization should review the Uniform Guidance requirements applicable to your organization's use of SLFRF funds and ARPA-funded project(s). Recipients are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements, as applicable.

All Recipients are responsible for the effective administration of this ARPA subaward of federal funds and expected to:

- Utilize sound management practices in a manner consistent with the ARPA program objectives and terms and conditions of the award.
- Implement robust internal controls and effective monitoring to ensure compliance with all state and federal regulatory and statutory requirements.

3.3 Standards of Conduct

General procurement standards [2 CFR § 200.318](#). Recipients and any subrecipient are to maintain a standard code of conduct governing the performance of their employees engaged in the award and administration of federally-funded contracts. No employee, officer or agent of the grantee or any subrecipient shall participate in the selection or in the administration of a contract supported by federal funds if there is a conflict of interest. See Attachment 3-A for sample standards of conduct.

3.4 Establishing a Filing System

The Recipient must maintain accurate and current files. It is best to keep all WSBO files in one central location. Files need to be accessible to all project funders.

3.5 Security

Files should be kept in a secure place, but accessible to the public.

3.6 Maintaining Records

All records and files pertaining to the WSBO application, engineering, and construction of the project must be stored for the life of the grant plus six years. Records of operating and maintenance costs do not have to be saved for the purposes of the WSBO grant.

3.7 Organizing a Filing System

A good filing system can be a very effective management tool. It will ensure the Recipient has all necessary documentation to meet compliance requirements. The following is suggested as a basic guide for WSBO record keeping. It is recommended that the Recipient keep separate files for each WSBO/IAG project.

The system includes major headings for administration, financial management, and compliance (as applicable):

- 1 – Application
- 2 – Grant Contract & Amendments
- 3 – Financial Management
- 4 – Non-Construction Contracts
- 5 – Procurement / Bonding
- 6 – Environmental / Cultural Review
- 7 – Prime Contractor Contracts
- 8 – Labor Construction & Standards
- 9 – Required Reports

3.8 Contract Implementation Checklist – Documents to be Submitted

The following checklist is a general guide for implementing an IAG project. The required documents that need to be submitted to your Project Manager.

Row	Task-Documents to be Submitted	Guidelines Section	YES	N/A
1	Grantees must have an active registration with the System for Award Management (SAM) and maintain through the period of contract.	1.5		
2	Scheduled Single Audit following \$750,000 or more in expenditures (all federal sources of funds) in Grantee's Fiscal year. Submit to auditreview@commerce.wa.gov	4.3		
3	If, Grantee did not expend \$750,000 in their fiscal year, no audit is required . The Grantee needs to fill out the Audit Certification Form and submit to auditreview@commerce.wa.gov .	4.3		
4	Conduct a competitive process to procure professional services (engineer, architect).	5.1		

Row	Task-Documents to be Submitted	Guidelines Section	YES	N/A
5	Professional Service OMWBE solicitation, submit copy of the posted advertisement to your Project Manager.	5.4		
6	Grantees must provide the Project Manager with Consultant eligibility documentation showing the date eligibility was verified on System for Award Management .	5.5		
7	Must conduct a competitive construction procurement. Prior to Construction advertising, send a copy of the draft bid advertisement to your Project Manager for review and approval.	6.10		
8	Construction bid OMWBE solicitation, submit copy of the posted advertisement.	6.11		
9	Contact your Project Manager when less than two bids received.	6.12		
10	Grantees must provide the Project Manager with Contractor and all lower tier sub-contractors eligibility documentation showing the date eligibility was verified on System for Award Management	6.14		
11	Submit Small Works Roster documentation.	6.20		
12	Submit Construction Procurement Documentation	6.21		
13	Submit Project Completion Report with your last A19 reimbursement request.	7.10		
14	Submit Subrecipient documentation (email contract and eligibility was verified on System for Award Management) to the project manager , if applicable	8		

Attachment 3-A: Standards of Conduct

SAMPLE

[Name of town/city/county]

STANDARDS OF CONDUCT

Purpose

The purpose of the Standards of Conduct is to ensure the efficient, fair and professional administration of federal grant funds in compliance with 2 CFR § 200.318 and other applicable federal and state standards, regulations, and laws.

Application

Standards of Conduct applies to all elected officials, employees or agents of [name of town/city/county] engaged in the selection, award or administration of contracts supported by federal grant funds.

Requirements

No elected official, employee or agent of [name of town/city/county] shall participate in the selection, award or administration of a contract supported by federal grant funds, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- the employee, elected official, or agent;
- any member of his/her immediate family;
- his/her partner; or
- an organization which employs, or is about to employ any of the above, has a financial or other interest in or tangible personal benefit from, the firm considered for contract.

The [name of town/city/county] elected officials, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors or subcontractors.

Remedies

To the extent permitted by federal, state or local laws or regulations, violation of these standards may cause penalties, sanctions or other disciplinary actions to be taken against [name of town/city/county] elected officials, employees or agents, or the contractors, potential contractors, subcontractors or their agents.

[Name of town/city/county], WASHINGTON

Chairman

Commissioner/Council

Commissioner/Council

Attest:

Clerk Signature and Date

4. Financial Management

4.1 Overview

This Chapter is designed to help the Recipient understand and implement financial management systems that comply with WSBO program requirements.

4.2 Internal Controls

Recipients must maintain effective control and accountability for the IAG funds by complying with financial management standards found in [2 CFR § 200.303](#). The Recipient should designate one person as the fiscal coordinator for the IAG(s). Only one signature is required to request reimbursement of expenditures from Commerce. However, in the absence of a fiscal coordinator, or in other circumstances, a second person should be authorized to sign the reimbursement request form.

The Recipient MUST maintain effective internal controls and accountability for WSBO funds by complying with the financial management standards and general accepted accounting principles. Methods for maintaining internal control include establishing policies and practices for approval of expenditures, bonding of staff handling cash, clearly defining grant and project management roles and responsibilities, and maintaining segregation of duties in handling and accounting for expenditures and receipting of funds.

4.3 Single Audit Requirements

Recipients that expend more than \$750,000 in federal awards (from all sources in a calendar year of the jurisdiction audit year) during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.

Each Recipient is responsible for arranging required federal audits. All federal audits must be conducted by an independent public accountant. For local governments in Washington State, that is the function of the State Auditor's Office. Audits of non-profit organizations are to be conducted by a certified public accountant procured in accordance with the implementing regulations.

Upon completion of each audit, the Recipient shall:

- Submit to Commerce the reporting package specified in [2 CFR § 200.501](#), reports required by the program-specific audit guide (if applicable) and a copy of any management letters issued by the auditor.
- Submit to Commerce follow-up and developed corrective action plans for all audit findings.

If the Recipient expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Recipient shall notify Commerce they did not meet the single audit requirement.

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

Commerce tracks audit report submission quarterly. Our Audit Review Manager may contact Recipients if required audit(s) were not submitted; or to coordinate submission of an Audit Verification Form to certify that a federal audit was not required, see Attachment 3-A for [Audit Certification Form](#). Email the form to auditreview@commerce.wa.gov.

Recipients may also refer to the provisions in the contract with Commerce, Office of Management and Budget (OMB) Compliance Supplements for audits of federal funds and related guidance and the [Federal Audit Clearinghouse](#) for additional guidance and to see examples and single audit submissions.

In addition, Recipients Audit is required to be submitted to the Federal Audit Clearing House, as required by 2 CFR 200, Subpart F

Recipients that expend \$750,000 in federal awards from any and/or all sources in any fiscal year, the Recipient must complete an audit report and submit to the [Federal Audit Clearing House](#).

4.4 Requesting Reimbursement

Once contracts are executed, the Recipient may request reimbursements for eligible and directly related costs for projects incurred since March 3, 2021 but not paid for by any other state or federal fund. Funds will only be distributed as reimbursement for incurred costs, and there will be no advance payments under *any* circumstances.

Cost Incurred Period	Funds Obligation By	Reimbursement Request Due	Last Day for Reimbursement
March 3, 2021 thru June 30, 2023	June 30, 2023	June 2, 2023	June 30, 2023
July 1, 2022 thru December 31, 2025*	December 31, 2024	October 30, 2026	December 31, 2026

*Funds are subject to re-appropriation by Legislature to extend funding past June 30, 2023.

All projects must be completed and project costs incurred, expended, and reimbursed by October 30, 2026.

Commerce utilizes an electronic vouchering method through the Contracts Management System (CMS) Online A-19 Portal. Request for reimbursement (A-19) must be completed through this system by an authorized individual by the Recipient’s organization. Online electronic vouchering provides receipt of reimbursements as quickly as possible. Recipients with barriers to using the online A-19 portal may request an A-19 form from their Project Manager.

To setup your Commerce CMS account you need to:

- Register for a [Secure Access Washington](#) (SAW) account, if you do not already have one.
- Once logged into SAW, add the Department of Commerce to your “services” and submit a CMS Access Request form (PDF) to your Project Manager.
- Upon approval, you will receive an email from CMS-noreply@commerce.wa.gov with a registration code, how-to guide and instructions for log in.

For additional support on this program, refer to the [Commerce Online A-19 Webpage for External Users](#), which includes SAW resources and the CMS User Manual.

To submit an online A-19 and project status report, Recipients will enter voucher details in the A-19 invoice screen through the CMS Portal.

Each A-19 Invoice Reimbursement Voucher must be accompanied by:

- Documentation of Expenses
- Project Status Report (Attachment 4-C) and Unified Business Identifier (UBI) Expenditure report.
- Reportable Expenses

Incomplete or improperly prepared submissions may result in payment delays. WSBO project managers will not release payments for any reimbursement requests received until Invoice, supporting documentation, and Project Status Reports are received. After approving the Invoice and Project Status Report, WSBO project managers shall promptly remit reimbursement to the Recipient. After receipt and acceptance of a fully completed A-19 voucher submittal, Recipients can expect electronic reimbursement within 7-10 days.

After contract execution, you will receive additional instructions on how to submit online requests for reimbursement.

Commerce initiated a Diverse Spend reporting process to assess how it supports diverse businesses through its pass-through funds. A Recipient requesting reimbursements must submit Unified Business Identifier (UBI) expenditure reports to collect payment data on each contractor and subcontractor by their name, contract relationship, and UBI number. Commerce will provide a fillable excel spreadsheet to submit the UBI expenditure report, including instructions.

WSBO does not directly pay the Recipient's prime contractors, sub-contractors, or any other vendors.

Final Reimbursement Request

Once the Recipient has successfully completed all contractual tasks, activities, and conditions, the Recipient shall submit a project completion report (Attachment 4-E) to their WSBO project manager. Upon WSBO's acceptance of the project completion report, the Recipient may request final reimbursements.

Retainage

Ten percent (10%) of WSBO contract funding will be withheld until the WSBO funded project scope of work is completed and a completion report is submitted to, and approved by, the WSBO project manager.

4.5 Cost Eligibility

All costs must be directly related to the scope of work of the project being funded. Recipients must determine if costs are reasonable and allowable based on [2 CFR Part 200](#).

Pre-Development Activities – Not to Exceed 5% of Grant (as stated in NOFA)

Up to 5% of WSBO funds granted may be used for Pre-Construction Activities, including but not limited to:

- Design, architectural, and engineering work;
- Permits, fees;
- Archeological/historic review;
- Tribal consultation
- Information technology infrastructure and material

Eligible project activities and costs include:

- Archeological/historical review
- Building permits/fees
- Capitalized equipment
- Construction labor and materials
- Construction or project management
- Demolition/site preparation
- Design, architectural, and engineering work
- Indirect Rate: federal approved indirect rate or 10 percent of the modified total direct costs, if applicable per Recipient's ARPA identified in application or project data sheet
- Landscaping
- Real property when purchased specifically for the project, and associated costs *
- Salaries and benefit expenses**

***Costs directly associated with property acquisition include:** appraisal fees, title opinions, surveying fees, real estate fees, title transfer taxes, easements of record, and legal expenses.

****Costs for salaries and benefits can only include:** the portion of payroll and benefits of employees corresponding to time spent managing ARPA Infrastructure Project.

If the eligibility of a certain cost is not clear, contact your project manager for guidance.

Expenditures must be supported with source documentation. Examples of documentation include invoices, purchase orders and timesheets. Documentation supporting each payment is to be kept on file and retained six (6) years after closeout to verify all ARPA expenditures. Payments by the Recipient to prime contractors, consultants and/or sub recipients should not be made without an invoice and supporting documentation.

For administrative costs, all Recipient employees, paid in whole or in part with ARPA funds, must prepare a time sheet that indicates the hours worked on the ARPA funded Infrastructure Project for each pay period. The amount to be distributed as ARPA Infrastructure Project payroll charges during a particular period will be based on the time and the hourly payroll cost of the employee. The applicant may submit a labor cost report (without overhead cost) or a timesheet that has been signed by the employee and supervisor.

The Recipient must submit the indirect rate approval letter from the federal cognizant agency or the "Certification of Indirect Costs" attached to the rate proposal that was submitted for their review per 2 CFR 200. If no such rate exists, a de Minimis indirect cost rate of 10% of modified total direct costs (MTDC) may be used if the recipient requested in the application or the project data sheet.

"Modified Total Direct Costs (MTDC)" means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each sub-award (regardless of the period of performance of the sub-award under the award). MTDC excludes equipment, capital expenditures, and rental costs.

4.6 Ineligible Costs

The ARPA funding is to construct broadband infrastructure construction. Therefore the following costs are not eligible for reimbursement and also do not qualify for use as matching funds:

- No funds shall be utilized to either directly or indirectly offset a reduction in the net tax resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.
- No funds may be used for deposits into any pension fund.
- Funds may not be used as non-federal match where prohibited. This includes prohibitions in utilizing these funds as a state match in the authorizing statutes and regulations of the CWSRF and DWSRF.
- Funds may not be used directly to service debt, satisfy a legal settlement or judgement, or contribute to a “rainy day” fund or financial reserve.
- Further, general infrastructure spending is not covered as an eligible use outside of water, sewer and broadband investments, or above the amount allocated under the revenue loss provision.

4.7 - Office of Financial Management (OFM)- Capital Budget Instructions Ineligible Uses

Further not allowed expenses per the [OFM Capital guidelines](#):

- Internal administrative activities, and
- Project management, and
- Fundraising, and
- Feasibility studies, and
- Computers or office equipment, and
- Rolling stock (e.g., vehicles), and
- Lease payments or rental of equipment or facilities, and
- Mortgage and property leases (including long-term leases), and
- Moving of equipment, furniture, and the like between facilities and regular maintenance costs.

4.8 Grant Match Requirements

The Recipient’s match amount is identified in the contract, share is cash.

The Recipient must provide proper documentation to support match. Without documentation demonstrating that the match requirement has been met, the Recipient will not be fully reimbursed for expenditures. If the match is properly documented and meets the applicable eligibility criteria, expenditures may be reimbursed according to the agreement.

All eligible costs used for match are to be reported and incurred within the effective dates of the agreement with each A-19 invoice.

Supporting Documentation

All match must be supported by documentation acceptable to WSBO and be verifiable from Recipient records, see Attachment 4-B: Match Submittal Form for a sample. Examples include (but are not limited to):

- Itemized receipts
- Detailed invoice from Recipient, contractors, sub-contractors, etc.
- Vendor invoices

Contributions Not Eligible for Match

- Costs used as match on another project. No expenditures or in-kind contributions used as match on one project may be used as match on another project.
- Costs paid by the same funding source. Funds that come from the same funding source as the grant or loan, even if it passes through another party to the Recipient, cannot be used as match.
- Costs financed by penalties and/or fines. The Recipient cannot use income associated with penalties and/or fines for a match.

4.9 Reporting Requirements

Project Status and Expenditure Reports

Each A-19 Reimbursement Voucher (Invoice) request must be accompanied by a Project Status Report (Attachment 4-C), which describes the progress made on the project since the last invoice was submitted. WSBO project manager will not release payment for any reimbursement request submitted until the Project Status Report is received. After approving the Reimbursement Voucher and the Project Status Report, Commerce shall promptly remit a warrant to the Recipient.

In order to receive reimbursement for eligible expenses incurred, each A-19 must include:

- Source documentation of expenses such as copies of invoices/receipts, payroll reports, consultant invoices, and contractor pay requests.
- Project Status and Expenditure Report. The Project Status and Expenditure Report forms will be emailed, right after execution of the contract.
- Reportable Expenses form for any A-19 voucher request over \$1,000. The Recipient can also enter this information manually into the CMS Portal. Commerce provides the Data Reporting Requirements, including template and instructions. Contact your Project Manager for further guidance.

Quarterly Projection Reports

Quarterly projections and expenditure reports will be required. We will be requesting an estimate and timing of when you are planning on submitting an A19 reimbursement request over a period of time. This information is used for program budgeting purpose only and **is not binding**.

Quarterly Progress Report

Project Quarterly Progress Reports are required, including if no funds have been reimbursed in the quarter (Attachment 4-D). The WSBO project manager will email the Recipient the report to fill out. All costs must be directly related to the scope of work of the project being funded.

On October 20, 2020, the Department of Justice issued a notice to the Office of Inspector General (OIG) regarding the Department's efforts to ensure that the Department's information systems are secure and that the Department's information systems are protected from unauthorized access. The notice states that the Department's information systems are critical to the Department's operations and that the Department has a responsibility to ensure that these systems are secure and protected from unauthorized access. The notice also states that the Department has a responsibility to ensure that the Department's information systems are protected from unauthorized access and that the Department has a responsibility to ensure that the Department's information systems are protected from unauthorized access.

Section 8 - Appendix B (EO 13801)

Section 8 - Appendix B (EO 13801)

Section 8 - Appendix B (EO 13801)

Section 8 - Appendix B (EO 13801)

Reporting Requirements (EEO-1)

On or before September 30 of each year, a contractor subject to Title VII of the Civil Rights Act of 1964, as amended, that has 100 or more employees, must file an “Employer Information Report EEO-1” with the EEOC or its delegate. Instructions on how to file are on the [EEOC](#) website. The contractor shall retain a copy of the most recent report filed.

Project Completion

To complete the closeout process, the Recipient must submit a Project Completion Report form, Attachment 4-E to their WSBO project manager.

Attachment 4-A: Audit Certification Form

AUDIT CERTIFICATION FORM

As a pass-through agency of federal grant funds, the Washington State Department of Commerce is required by the Office of Management and Budget (OMB) 2 CFR 200 to monitor activities of subrecipients to ensure federal awards are used for authorized purposes and ensure that subrecipients have met the OMB 2 CFR 200 Subpart F- Audit Requirements. Your entity is a subrecipient subject to such monitoring by Commerce because it is a non-federal entity that expends federal grant funds received from Commerce as a pass-through entity to carry out a federal program.

A non-federal entity expending \$750,000 or more in any fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with 2 CFR 200.501 – Audit Requirements.

Please complete the information below, provide additional documents as applicable and return via email from an authorized official's email address within the next 15 days to auditreview@commerce.wa.gov.

Organization Name:

Organization Name as reported to the Federal Audit Clearinghouse:

For Organization's Fiscal Year Ending On (FY MM/DD/YYYY):

Statewide Vendor No. (SWV#):

- We are not subject to the audit requirements of the Federal Audit Clearinghouse because:**
 - We did not expend \$750,000 or more of total federal awards from any source during the last fiscal year.
 - We are exempt for other reasons – explain: [Click or tap here to enter text.](#)
- We are subject to the requirement of the Federal Audit Requirements**
 - We completed our last federally compliant audit and have attached the audit report.
 - Our completed federally compliant audit will be available on [Click or tap here to enter text.](#)

Send this form and federally compliant audit (if required) to auditreview@commerce.wa.gov.

Authorized Official Name and Title (print):

Authorized Official Signature:

Date:

Email Address:

Phone Number:

Attachment 4-B: Match Submittal Form

WSBO Grantee:					
WSBO Project Title:					
Report Period: _____ to _____		Funding Sources			
		* Local (__%)			WSBO (__%)
Available Funds (contract amount)					
Previously Expended Funds					
Invoices/Activities	Amounts				
		<i>Expended funds</i>	\$0.00		\$0.00
A19 Reimbursement # _____		Available Funds	\$0.00		\$0.00

WSBO funds are disbursed on reimbursement basis-only for eligible costs within the approved project's scope of work. **WSBO funds will be reimbursed and the identified match funds will paid out, in concert at the same percentages as the total project cost split, until WSBO funds or matching funds are exhausted.**

**Or, the recipient can submit actual match amount, via invoices to the period of expenses have incurred.*

Attachment 4-C: Project Status Report Form

PROJECT STATUS REPORT

Submitted By: _____

Reporting Period: _____

This form must accompany each A19 voucher request for reimbursement.

Grantee:	
Grant Agreement Number:	
Project Name:	
Scheduled Project Completion Date:	6/30/2025 (subject to reappropriation)

Project Progress

Describe the progress made to date on the project's scope of work (see Declarations page in Grant Agreement).

Approximately, what percentage of the project is complete?		%
--	--	---

When do you expect the project to be completed (month/day/year)? / /

If the scheduled completion date is different from the one above, what factors led to the change?

Attachment 4-D: Quarterly Progress Report Form

Quarterly Progress Report

(Due, if no A19-Invoices have been submitted during this time.)

Project Information	Reporting Period
WSBO Contract Number:	<input type="checkbox"/> July 1 – September 30
Applicant Name:	<input type="checkbox"/> October 1 – December 31
Completed by:	<input type="checkbox"/> January 1 – March 31
Phone:	<input type="checkbox"/> April 1 – June 30
Date of Submittal:	Year: _____

1. Review the contract scope of work, describe the progress made to date and percentage of completion.
2. Describe any significant problem(s) or unforeseen costs that have or will affect the project's timeline or successful completion of the project, (i.e. any delays or changes to the project as described in the contract scope of work).
3. Are any contract amendments needed? Yes No
If yes, please explain:
4. Please provide copies of any press releases or news articles related to the project that were released or published during this reporting period.
5. Provide notice of ground breakings, ribbon cutting ceremonies, etc.

Attachment 4-E: Project Completion Report Form

Infrastructure Acceleration Grant (IAG) - PROJECT COMPLETION REPORT

This form must be completed and submitted, along with electronic photos of the completed project, with your final A-19 reimbursement request.

WSBO Recipient:	
Contract Number:	
Project Name:	
Initiation of Operations Date:	
Total Project Funds Expended (include all funds)	
Source	Amount
WSBO Expenditures to Date	
Amount of Final Reimbursement	
Total WSBO Funds Used	
Please identify other funding sources below:	
TOTAL PROJECT FUNDING: <i>(Include all sources and the WSBO grant amount used.)</i>	
Briefly summarize the results of your Planning Project:	
<p>Please email high resolution digital photographs of the completed project with this report. By providing images, Recipient hereby consents to and authorizes the use and reproduction in print or electronic format by Commerce or anyone authorized by Commerce, of any and all photographs which have been provided to Commerce without compensation.</p>	

What is the next step for this project?

For example, will a construction project result from this grant? Please include estimated timeframes for next steps.

Certification of Final Report Accuracy:

I hereby certify that the information entered above and any attachments hereto are true and correct to the best of my knowledge and belief. Further, I certify that the infrastructure project was completed as described in the WSBO application and WSBO contract scope of work.

Signature of Authorized Official

Title

Print Name

Date of Signature

5. Procuring Professional Services

5.1 Overview

The Recipient already under contract with an engineering or architectural consultant may continue to use that consultant for their project if they were originally hired through a competitive process.

Recipients must verify immediately that their current consultant and the owner or president is not excluded from receiving federal funds by using the [System for Award Management \(2 CFR 200.214\)](#).

If they are disbarred or have exclusions, the Recipient will need to conduct a new procurement process for professional service.

Alternatively, a Recipient that needs to hire engineering or architectural consultants is required to use a competitive selection process. The Recipient can demonstrate compliance with this requirement using the following Procurement Methods to secure professional services.

Recipients must comply with both state and federal competitive procurement requirements, using the most stringent standards of the two. All local governments in Washington must follow the uniform requirements of chapter [39.80 RCW](#) when procuring professional architecture and engineering services. When using IAG funds for professional services, Recipients must also incorporate federal provisions from [2 CFR 200 Subpart D](#).

5.2 Implement Standards of Conduct

The Recipient and any subrecipient are to maintain a standard code of conduct governing the performance of their employees engaged in the award and administration of IAG-funded contracts. No employee, officer, or agent of the Recipient shall participate in the selection or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. A sample of a Standards of Conduct is located in Attachment 3-A.

5.3 Advertise

To demonstrate a competitive selection process was used by advertising, publish the request for professional services in a newspaper of general circulation. The advertisement must be publicized at a minimum of once a week for two weeks. At least 14-calendar days from the last publication date must be allowed for respondents to prepare and submit their proposals. The announcement should state the general scope and nature of the project or work and how to contact the Recipient for additional information.

a. Evaluation of Proposals and Statement of Qualifications

The Recipient must have a documented system for reviewing proposals and statements of qualifications submitted in response to the published and distributed advertisement. The system must include the use of selection criteria established prior to solicitation, evaluation of cost and rates, and be thorough, uniform, and well documented.

b. Select Firm Most Advantageous to the Project

The Recipient needs to document why they selected the chosen firm and indicate why the chosen firm is the most qualified for the job. Select the firm (under the Request for Proposals method) whose proposal is most advantageous to the project considering all factors, or the most qualified (under Request for Statement of

Qualifications method). In the case of the latter method, contract negotiations must then be conducted to determine the fair and reasonable price of services.

The Recipient should negotiate a contract with the most qualified firm for architectural and engineering services at a price they determine to be fair and reasonable. In making a determination, the Recipient should take into account the estimated value of the services to be performed, as well as the scope and complexity of the project. If the Recipient is unable to negotiate a satisfactory contract with the firm selected at a price the Recipient determines to be fair and reasonable, negotiations with that firm shall be formally terminated and the Recipient shall select other firms in accordance with [RCW 39.80.040](#).

5.4 Encourage MBE, WBE, Local and Small Business Participation

Take affirmative steps to solicit statements of qualifications and proposals from local businesses and minority- and women-business owners. To comply with affirmative action requirements, Recipients must, at a minimum:

- Post the RFQ/RFP notification on the [State Office of Minority and Women's Business Enterprises \(OMWBE\)](#) website, select "Bids & Opportunities" and then click on the "OMWBE WebAdmin" link. Jurisdictions utilizing MRSC Rosters must document posting of the MRSC Rosters- Small Works and Consultant Rosters Legal Notice (routinely displayed year round) on the OMWBE website,
OR
- Develop a list of minority- and women-owned businesses and send the RFQ/RFP notification to five consultants from the list. You can use the directory on the OMWBE website or develop your own local list.

Document the posted advertisement or the email from the OMWBE website showing date posted or provide documentation that the advertisement was sent to MWBE consultants.

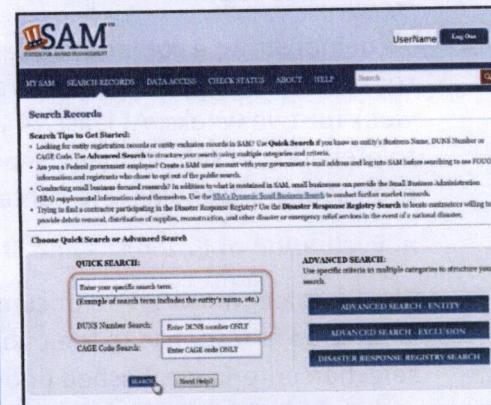
Post the invitation to bid advertisement on the [State Office of Minority and Women's Business Enterprises \(OMWBE\)](#), select the Bids & Opportunities button and follow the instructions. Submit documentation OMWBE posting to your Project Manager.

5.5 Professional Service Check for Eligibility

Before awarding a contract, Recipients must verify that the selected firm and the owner or president is not excluded from receiving federal funds using the [System for Award Management \(SAM\)](#)(2 CFR § 200.214).

For additional guidance, see [Is your contractor banned from receiving federal funds? Don't wait to find out. – Office of the Washington State Auditor](#).

Recipients must provide the Project Manager with Consultant eligibility documentation showing the date eligibility was verified. Recipients are also responsible for ensuring that all lower-tier sub-consultants associated with the project are not excluded.



5.6 Prepare the Contract

Prepare the contract agreement. The contract should include the following provisions:

- Effective date of contract
- Detailed descriptions of the extent and character of the work to be performed
- Time for performance and completion of contract services, including project milestones
- Specifications of deliverables or other services to be provided by both parties
- Conditions and terms under which the agreement can be terminated by either party, or remedies for violation/breach of contract
- Authority and source of funds, and provisions for compensation of services
- Maximum amount payable under the contract with fee and payment schedules, if appropriate
- Errors and Omissions (engineering firms only)
 - Engineering firms must be licensed to do business at Washington State, be in compliance with the Board of Professional Registration requirements, and insured with proper errors and omissions insurance and/or bonding.
- Conflict of interest provisions
- Access to records and records retention clauses
- Scope of Services
- Detailed description of the extent and character of work to be performed
- Time of performance and completion of contract services, including milestones, if any
- Specifications of materials or other services to be provided by both parties
- Method of Compensation
- Provisions for compensation for services
- Maximum amount payable under the contract
- Fee and payment schedules, if appropriate

5.7 Contract and Amendments

Funds need to be obligated in writing executed contracts and amendments with consultant that include increased budgets by December 30, 2024.

5.8 Monitor Performance

The Recipient should establish a system to monitor performance of retained engineers, architects, or consultants. At a minimum, the system should provide for reconciling the bills against applicable documentation and receiving, at the minimum, a monthly update on the project status, problems, etc. The scope of work provides the basis for monitoring and evaluating the performance of the engineer, architect, or consultant by specifically identifying performance measures.

5.9 Record Keeping and Reporting

The Recipient is required to maintain records which identify:

- The procurement method used and why it was selected;
- The rationale used for selecting the contract type;
- Reasons for selecting and rejecting bidders/qualified firms; and,
- The basis for the contract cost or price

The Recipient is also required to keep a copy of the legal notice or affidavit of publication and outreach efforts to minority-owned, women-owned and local business.

Maintain documentation of the procurement process in project files for six years after all funds have been expended AND project closeout, whichever is longer.

6. Procuring Construction Contracts

6.1 Overview

When procuring construction contracts, the Recipient must follow the procurement standards in [2 CFR §§ 200.318 through 200.327](#). Construction projects expected to exceed \$50,000, must be bid competitively, through a sealed bid process.

This Chapter guides you through the process for procuring construction contractors.

It is the responsibility of the Recipient to understand their local procedures and policies and assure that the most stringent of the federal and state requirements are adhered to.

Information in this Chapter outlines a competitive bid process applicable to construction projects where the construction project must be competitively bid through a sealed bid process or small purchase procedure.

Construction contracts are normally procured by sending an Invitation for Bid (IFB) to interested contractors. The IFB contains all the information the contract will need to bid on a project. Once completed and submitted by the bidder, the IFB, if the lowest responsible bid, becomes the basis for the contract between the contractor and the Recipient.

6.2 Implement Written Standards of Conduct

The Recipient are to maintain written standards of conduct governing the performance of their employees engaged in the award and administration of contracts supported with federal funds ([2 CFR 200.318\(c\)](#)). No employee, officer or agent of the Recipient shall participate in the selection or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. A sample of a Standards of Conduct, see Attachment 3-A.

6.3 Develop the Bid Documents with Scope of Work

The bid documents contain all the information the contractor will need to bid on a project. Bid documents are composed of the components of the construction contract including, but not limited to, the proposal form, the contract provisions, the contract plans, and addenda.

The proposal submitted by the lowest, responsive and responsible bidder becomes the basis for the construction contract.

6.4. Public Works Bidder Responsibility Criteria

The Washington Legislature adopted amended [RCW 39.04.350](#). It adds an additional criterion to the list of mandatory bidder responsibility criteria that the Recipient must verify and document before awarding any public works project, regardless of cost. This means that the Recipient must ensure that the required sworn statement is obtained prior to award of the public works project.

6.5 What is a Responsible Bidder?

Responsible Bidders, as defined in [RCW 39.04.010](#) and [39.04.350](#), must meet a number of mandatory criteria. The bidder must:

- Be a registered contractor
- Have a current Unified Business Identifier (UBI) number

- Have industrial insurance/workers' comp coverage, which means they normally cannot be sued for damages if a work-related injury or illness occurs. For more details, see L&I's publication [Employers' Guide to Workers' Compensation Insurance in Washington State](#).
- Have an Employment Security Department (ESD) account
- Have a state excise tax registration number
- Not be disqualified from bidding under [RCW 39.06.010](#) or [39.12.065\(3\)](#)
- Not have any apprenticeship violations, if applicable
- Certify through a sworn statement or an unsworn declaration under penalty of perjury that they are not a willful violator of labor laws in reference to [RCW 49.48.082](#) within the past three years. MRSC has developed a [model statement](#) (.docx) to satisfy this requirement.
- **Effective July 1, 2019:** Have received training, provided by the Washington State Department of Labor and Industries (L&I) or by a provider whose curriculum has been approved by L&I, on the requirements related to public works and prevailing wages. However, bidders that have completed three or more public works projects and maintained a valid business license in Washington for at least three years are exempt from this requirement.

6.6 Labor Agreements

Recipients are required to describe how they will use strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while supporting economic recovery through strong employment opportunities for workers. Recipients must also report whether any of the following practices are being utilized:

- Prioritization of local hires.
- A Community Benefit Agreement, with a description of any such agreement.

All projects over \$10 million are also required to meet the following additional requirements:

- A. A Recipient may provide Davis Bacon certification. If the Recipient does not provide such certification, the Recipient must provide following information:
 - Number of employees of contractors and sub-contractors working on the project (number)
 - Number of employees on the project hired directly (number)
 - Number of employees on the project hired through a third party (number)
 - Wages and benefits of workers on the project by classification (rich text field)
 - Are any of the wages at rates less than those prevailing? (Y/N)
- B. A Recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. § 158(f)). If the Recipient does not provide such certification, the Recipient must provide a project workforce continuity plan, detailing:
 - How the Recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project.

- How the Recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project.
- How the Recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries and fatalities.
- Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market.
- Whether the project has completed a project labor agreement.

6.7 Labor Standards / Prevailing Wages

All projects are required to pay state prevailing wages, as applicable. All projects are required to pay all laborers and mechanics employed by contractors and subcontractors in the performance of such projects Washington state prevailing wages per [RCW 39.12](#). State prevailing wages are determined and enforced by the Washington State Department of Labor and Industries (L&I) based on collective bargaining agreements or – if collective bargaining agreements are not available – wage surveys or other methods.

The state prevailing wage law is modeled after the federal Davis-Bacon Act, enacted to protect employees of contractors performing public works construction from substandard earnings, and preserve local wage standards. State prevailing wage is triggered when construction projects use public funds to build schools, roads and other projects. Recipient contractors and subcontractors are required to pay prevailing wages to all workers for public works and maintenance contracts regardless of the dollar value of the contracts. During construction, Recipients are responsible for enforcing prevailing wage requirements.

L&I offers a number of publications, tools and resources to assist in complying with these requirements, including:

- LNI.wa.gov
- [Awarding Agencies](#) web page
- [The Washington State Prevailing Wage Law](#) publication

Additional Resources:

- [MRSC - Public Works Contracts](#)
- [MRSC - Prevailing Wages](#)
- [Prevailing Wage in Public Works \(Chapter 39.12 RCW\)](#)

The Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded solely with award funds from the ARPA program.

Recipients may be otherwise subject to the requirements of the Davis Bacon Act, when ARPA award funds are used on a construction project in conjunction with funds from another federal program (such as CDBG, DWSRF or other federal funding) that requires enforcement of the Davis-Bacon Act.

6.8 License, Bonding, and Insurance for Contractors

The contractor must be licensed, bonded and insured in Washington State. Contractors are not required to have payment or performance bonds, which exceed normal bonding requirements. However, this type of bonding can reduce the Recipient's exposure to risk by ensuring liability is covered. We encourage you to have payment or performance bonds for loan agreements over \$100,000. A performance bond guarantees that the

Recipient will complete the contract according to its terms, including price and time. In case of default, the owner receives the amount of the bond, which is usually the amount of the construction contract. A payment bond guarantees that subcontractors and suppliers receive the money they are due from the principal contractor, which reduces the possibility of liens against the project. We recommend that Recipient ensure that the bonding company and the insurance company recognize them and the Department of Commerce-ARPA Program as interested parties to be notified if the contractor terminates the bond or insurance.

It is important for the contract to specify that the contractor will notify the Recipient if it terminates the bond. Recipients must notify their Project Manager if payment or performance bonds are terminated for any reason.

6.9 Domestic Preferences for Procurements ([2 CFR § 200.322](#))

As appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all awards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

- “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

6.10 Advertise for Bids

The Recipient is ready to advertise after all of the provisions and requirements are incorporated in the bid documents. Bids must be solicited by public advertising. The advertisement must be published once a week for two weeks in a major newspaper of general circulation. A **minimum of 14 calendar days must be allowed from the second publication date and the bid opening date**. The advertisement must be posted in a public place.

Prior to advertising, send a copy of the draft bid advertisement to your Project Manager for review and approval.

At a minimum, a bid advertisement should include the following information:

- Project owner (Recipient)
- Title of project
- Description of work
- Where the bid documents may be obtained
- Bid opening date, time and location
- Contact person and phone number
- Specify that a five percent (5%) bid guarantee is required in form of a cashier’s check, money order, or surety bond (Code cities, second class cities, and towns: [RCW 35.23.352](#)) or (Counties [RCW 35.23.352](#)) or (Port Districts [RCW 53.08.130](#)) or (Water/sewer Districts [RCW 57.08.050](#))

- Basis for rejecting bids
- Statement that all contractors must be licensed in the State of Washington to conduct business
- List of the funding sources for the project, including the ARPA ARPA funds (see statement below)
- Requirement that state prevailing wages must be paid*
- **The following statements must be included in the advertisement for bids:**
 - “All work performed on this project will be subject to the higher of the prevailing state or federal wage rates (if applicable due to other federal funds are in the project).”
 - “The (Town/City/County) of _____ is an Equal Opportunity and Affirmative Action Employer.”
- “This project is (funded/partially funded), by federal award number SLRFP0002 (ARPA SLFRF) or CPFFN0145 (ARPA Capital) awarded to Washington State Broad Band Office by the U.S. Department of the Treasury.”
 - “Small, Minority- and Women-owned firms are encouraged to submit bids.”

6.11 Take Affirmative Steps to Attract MBE and WBE Bidders

Take affirmative steps to solicit bids from local businesses, and minority and women owned businesses. To comply with affirmative action requirements, Recipients must, at a minimum:

Post the invitation to bid advertisement on the [State Office of Minority and Women’s Business Enterprises](#) (OMWBE), select the Bids & Opportunities button and follow the instructions. Submit documentation OMWBE posting to your Project Manager.

Include documentation from OMWBE that confirms posting of the bid advertisement to the *OMWBE Bids & Contracting Opportunities* webpage in the project’s file.

6.12 Conduct Bid Opening

Recipients must open bids in public at the time and place stated in the advertisement. **A successful bid opening is when two or more responsible bidders have submitted bids.** You can delay the bid opening, but you must notify all bidders in advance. If you delay a bid opening, all bidders should have the opportunity to withdraw their bids or resubmit them before the new bid opening date and time (cost of equipment or materials could increase). You should conduct the public bid opening in a business-like manner. You must read each bid aloud during the meeting and determine the apparent low bidder. You must maintain a description of the bid review and tabulation process in your project files.

Contact your Project Manager when fewer than two bids are received.

If you receive no bids, or the received bids are too costly, re-advertise the bid ad in a wider geographic area. We encourage borrowers to maintain a list of reputable general contractors that have done good work for them in the past or have bid previous projects in order to alert them of the bid request.

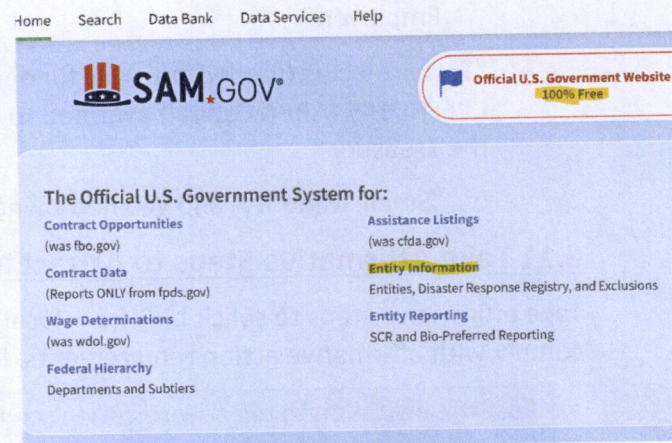
6.13 Select the Lowest Responsible Bidder

The bids received should show in detail the estimated total cost of the work, a unit price for each component of the project, its overall individual cost, and the estimated completion schedule for each phase. The lowest responsible bidder must:

- Be licensed to work in the State of Washington;
- Have the ability, capacity, and skill to perform the work described in the contract scope of work, and comply with requirements within the indicated timeframes;
- Have good character, integrity, reputation, judgment, experience, and efficiency;
- Be able to perform within the time specified; and
- Demonstrate successful performance of previous construction contracts or services, and demonstrate compliance with laws relating to the loan contract or services.

6.14 Check Contractor Eligibility

Before awarding a contract, Recipients must verify that the selected contractor and the owner or president is not excluded from receiving federal funds using the System for Award Management at www.SAM.gov. (2 CFR § 200.214).



Recipients must provide the Project Manager with documentation showing the date eligibility was verified. Recipients are also responsible for ensuring that all lower-tier subcontractors associated with the project are not excluded.

6.15 Check Contractor State Registration

Recipients must verify that the successful bidder was registered and licensed with the state of Washington prior to bidding on the project. Subcontractors also must be registered and licensed in the state of Washington. The Department of Labor and Industries – [Verify a Contractor, Tradesperson or Business](#).

6.16 Award the Construction Contract

Recipients must award the contract within 30-days, or reject all bids. The contract must be awarded to the lowest responsible bidder whose bid conforms to all material terms and conditions of the invitation for bids.

6.17 Execute the Construction Contract

All the clauses and provisions that were in the construction IFB packet must be incorporated into the construction contract. All provisions required in the prime contract must also be passed on by the prime contractor to all subcontractors, including the Labor Standards Provisions.

Execute the construction contract, applicable bonding and insurance documents.

6.18 Conduct Pre-Construction Conference

Prior to starting construction, all parties should attend a pre-construction conference to go over the project details and state (federal, if applicable) requirements.

6.19 Send Notice of Contract Award

Within 10 days after contract award and signing, the Recipient must submit a Notice of Contract Award and Start of Construction (Attachment 6-A) form to the Project Manager.

6.20 Small Works Roster Procedures (only applicable to local governments)

When a construction contract or construction materials are less than \$50,000, the small purchase procedures may be used. If the jurisdiction has a lower ceiling for small purchases, then this lower ceiling should be followed.

Obtain at least three (3) qualified proposals when using small purchase procurement process.

- Efforts must be made to seek at least one proposal from a certified minority or women business enterprise (MBE/WBE).
- Document all steps taken, quotation/proposals received, and MWBE outreach efforts. Legal notice of the request for proposals is not required. When using small purchase procedures, verify the selected firm's references and ability to perform the scope of work. See also the limited public works process described in [RCW 39.04.155\(3\)](#).
- The MRSC website has more information about the specific limits that jurisdictions have for using this procurement methodology at www.mrsc.org.

Recipients submit Small Works Roster documentation as stated above to your Project Manager.

6.21 Construction Procurement Documentation

After the bid opening and before construction begins, Recipients must submit the following documentation to the Project Manager:

- Affidavit of publication of the advertisement for bids
- Confirmation with dates of bid advertisement posted to OMWBE webpage
- Bid Tabulation
- Contractor/Sub-contractors Sam.gov exclusions search, showing date checked
- Notice of Contract Award (see Attachment 6-A for the form)
- Preconstruction conference meeting notes, if applicable

6.22 Maintain Procurement Records

Maintain documentation of the procurement process in project files for six years after all funds have been expended and project closeout.

Attachment 6-A: Notice of Contract Award

Washington State Broadband Office – Infrastructure Acceleration Grant Program

Notification of Contract Award and Start of Construction

The form must be filled out for the general contractor working on the awarded project. Please attach your verification that the contractor and subcontractor were checked on www.sam.gov for suspension and debarment. This form must be completed within 10-days after contract award.

Contract Information

Recipient:	
Project Name:	
Contract #:	

Construction Procurement

Bid Opening/Closing Date:	# Of Bids Received:	SAM.gov Verification Date ¹ :
Construction Contract Award Date:	Construction Contract Amount:	Construction Start Date:
Contractor Name:	Contractor UBI #:	
Names/Addresses of Disadvantaged Business Enterprise Solicited (if applicable):		

Labor Standards (if applicable)

Federal Wage Decision #:	Modification #:
Published Date:	10-Day Wage Verification Date ² :

Person Responsible for Compliance³:

Email Address:

Phone #:

¹ Date verification was made at SAM.gov that contractor is not excluded from receiving federal funds.

² Date the Recipient (or representative) determined if modifications were made to the federal wage (if applicable) decision contained in the bid document (must occur 10 days prior to the scheduled bid opening.)

³ Person responsible for enforcing the labor standards requirements for this project.

7. Managing Construction Projects

7.1 Overview

Recipients undertaking a state funded construction project must have a contract management system in place to ensure contractors perform in accordance with contract terms, conditions, specifications, and applicable state requirements. This system includes conducting the pre-construction conference, review of contractor and subcontractor compliance with Labor Standards, on-site inspections, review of change order requests, project closeout, release of retainage, and record keeping.

7.2 Conduct the Pre-construction Conference

After awarding and signing the construction contract and before the contractor is issued a Notice to Proceed, the Recipient or its representative, is responsible for holding a pre-construction conference for the general contractor and subcontractors, engineers and other professional service providers, and other interested parties. The pre-construction conference should cover the following:

- Responsibilities of the engineer, Recipient, contractor, and any other agencies or parties contributing to or involved in the project.
- General contract provisions, including specifications, Notice to Proceed, completion schedule, guarantees and warranties for materials, workmanship, change orders, etc.
- Project inspection and reporting responsibilities of the engineer and Recipient.
- Labor Standards requirements, prevailing wage rates, apprentices and trainees, fringe benefits, weekly payroll, and additional classification requests.
- Requirements for final acceptance of work, special testing, and/or site cleanup.
- Distribution of necessary forms such as certified payroll, posters, and prevailing wage rates to the contractor and subcontractors.

Maintain a record of the pre-construction conference in the project file, and send a copy to your Project Manager.

7.3 Issue Notice of Contract Award and Notice to Proceed

Once the pre-construction conference is conducted, the Recipient can issue the Notice of Contract Award and Notice to Proceed to the contractor. The notice conveys the authorization to the contractor to begin work on the project. Send a copy to your Project Manager.

7.4 Contract Work Hours and Safety Standards Acts

The Contract Work Hours and Safety Standards Act (CWHSSA) applies to all construction contracts in excess of \$100,000 involving the employment of laborers or mechanics. The CWHSSA requires that applicable workers are paid at least one and one-half times their basic rate of pay for hours worked in excess of 40 hours in a standard workweek. In the event of violations, the contractor or subcontractor shall be liable to any affected employee for their unpaid wages as well as to the United States Treasury for liquidated damages.

Contractors may not require any laborer or mechanic to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to their health or safety as determined under construction safety or health standards transmitted by the Department of Labor.

7.5 Certified Payroll Reports

Effective January 1, 2020, contractors must file certified payroll reports at least once per month for all prevailing wage jobs (regardless of project amount) and submit them directly to L&I through the agency's online Prevailing Wage Intent and Affidavit (PWIA) system ([RCW 39.12.120](#)). The local government agency is not responsible for reviewing or checking the reports.

Contractors must always provide weekly certified payroll reports for federal projects. For questions regarding the federal law, contact the federal Department of Labor.

7.6 Conduct Payroll Reviews

Contractors are required to use the L&I online system's to submit their weekly certified payroll report.

If a project has Community Development Block Grant (CDBG), Drinking Water State Revolving Funding (DWSRF), or another Federal Funding Source:

The first construction invoice for the project needs to have the approval of the Labor Standards Packet or 21-Day Labor package approval by CDBG, DWSRF or other Federal Funding Project Manager. This documentation and completion/approval of the labor standards packet is required to be submitted to your Project Manager.

7.7 Conduct Technical Inspections

During construction, the Recipient is responsible for monitoring contractor/subcontractor progress and compliance with technical requirements of the project. Typically, this monitoring process is the responsibility of the project engineer, consulting engineer, or architect; however, the Recipient should designate someone locally with oversight responsibility. The purpose of the technical monitoring process is to ensure that the project is constructed as planned, within budget and estimated timeframes, and within specified quality and quantity standards.

7.8 Affidavits of Wages Paid

[RCW 39.12.040](#) requires every Recipient, contractor and subcontractor on the project to file an Affidavit of Wages Paid (.doc) soon after the work has been completed. These statements also must be filed with [L&I Contractor Portal](#), and approved by the Industrial Statistician before being submitted Recipient administering the contract. The Recipient administering the contract may not release retainage until the contractor and subcontractors have filed approved Affidavits of Wages Paid. These requirements should also be stated in the specifications and contract.

It is the Recipient's responsibility to confirm that the affidavits have been approved before releasing retainage. Agencies can Search Prevailing Wages Intents and Affidavits at the L&I website. Contractors must keep accurate work and pay records, and submit certified copies upon request.

Awarding Agency Portal

Create a "My L&I" Account to sign up for L&I's Awarding Agency Portal. You can check the status of items for multiple contractors working on your project at the same time with the portal, including:

- Verify valid Unified Business Identifier
- Contractor registration and licensing
- Contractor Public Works and Prevailing Wage Law training

- State Debarment
- Intent for Pay Prevailing Wages
- Affidavits of Wage Paid

A contract Awarding Agency is an entity that includes, but is not limited to, state and local governments, fire districts, public hospitals, port districts, housing authorities and non-profits.

7.9 Maintain Project Records

The Recipient is required to maintain project records that document all financial, monitoring and inspection transactions, and progress reviews that occur during the life of the project. Recipients must maintain copies of weekly certified payrolls and any corrected certified payrolls, copies of correspondence and resolution of overtime violations, and copies of employee interviews in the project files for six years after all funds have been expended and project closeout.

7.10 Project Completion Requirements

To close this project, the ARPA is requesting an Initiation of Operations Date. Initiation of operation means the date specified by the municipality on which use of the project begins for the purpose that it was planned, designed and built. Initiation of operation means the actual date the Recipient begins using, or could begin using, the facilities for its intended purpose.

To complete the closeout process, the Recipient must submit the Project Completion Report (Attachment 4-E).

The Project Completion Report is to be submitted, along with electronic photos of the completed project, with your final A-19 reimbursement request.

8. Subrecipient

This chapter describes the procedures and requirements involved in using a subrecipient to administer IAG funded activities. This chapter incorporates applicable procurement, civil rights, and recordkeeping requirements. For a complete understanding of these requirements for specific compliance areas, refer to those chapters of these program guidelines.

8.1 What is a Subrecipient?

A subrecipient is a non-profit, for profit (Broadband Internet Service Provider) organization or agency that is provided IAG program funds by an ARPA Recipient (WSBO) for the subrecipient's use in carrying out agreed-upon eligible activities. The subrecipient is subject to the same administrative requirements as those described in these program guidelines for the Recipient (WSBO).

A subrecipient differs from a contractor. A contractor is selected through a competitive procurement process and is paid ARPA funds by the Recipient in compensation for specific services. A contractor is only paid ARPA funds by the Recipient in compensation for services.

8.2 Subrecipient Agreement

a. Check for Federal Eligibility

When entering into an agreement with the Recipient and throughout the contract period, the Recipient must verify that the subrecipient is not excluded from participation in transactions by any federal department or agency ([2 CFR 200.214](#)). Recipient can use this website at [System for Award Management](#) to check federal eligibility. Recipient must document the status of eligibility in the grant file and provide the Project Manager with documentation showing the date eligibility was verified, prior to executing an agreement.

b. Standards of Conduct

The subrecipient [2 CFR 200.318](#), must have a written Standard of Conduct which safeguards against conflict of interest by its officers, employees, subcontractors and agents in the selection, award or administration of contracts supported with IAG funds. A sample Standards of Conduct is available in Chapter 3, Attachment 3-A.

c. Agreement

Once selected, the Recipient must execute a written agreement with the designated subrecipient. If properly written and executed, the Recipient agreement can be both a management tool for the Recipient and an orientation and educational document for the subrecipient. The agreement must include:

- Scope of Work/Services
- Intended Beneficiaries
- Budget
- Method of Payment
- Performance Schedule
- Deed of Trust or Indefeasible Right of Use (IRU)
- Termination Clause
- Annual Audit Requirement Clause referencing [2 CFR 200.501](#)

- Required Federal Standard Provisions
- Monitoring and Evaluation Criteria
- Record Keeping
- Insurance Requirements
- Indemnification/Hold Harmless Clause
- Use and Reversion of Assets or Disposition of Property, if applicable

Amendments to the subrecipient agreement are occasionally necessary if there are changes in the scope or schedule of work. The Recipient should consult their WSBO project manager regarding any proposed amendments to the subrecipient agreement.

8.3 Cost Eligibility

All subrecipients are subject to the federal cost principles applicable to [2 CFR Part 200, Subpart E](#).

8.4 Monitoring Subrecipient Performance

Recipients must monitor the subrecipient's compliance with ARPA requirements. The ARPA financial management, procurement, civil rights, equal employment, and recordkeeping requirements described in these program guidelines accompany the receipt of ARPA funds apply to the subrecipient as well as the Recipient.

The Recipient must track the subrecipient's progress through regular status reports or meetings. Reimbursements to the subrecipient must reflect the timely performance of accomplishing these measurable objectives and be supported by documentation of eligible expenses.

8.5 Reporting

The Recipient must collect and maintain documentation of the subrecipient's performance and compliance with the funding source requirements.

8.6 Compliance Monitoring Process

The IAG Program Manager will review the subrecipient agreement to ensure that it includes the required contract items and federal provisions. The Recipient must provide oversight and monitor the subrecipient throughout the project.

8.7 Deed of Trust or Indefeasible Right of Use Agreement

All subrecipients shall enter into a Deed of Trust or Indefeasible Right of Use (IRU) Agreement with the Recipient for any ARPA funded construction, acquisition, or rehabilitation that is not owned by the Recipient. The Deed of Trust or IRU shall require the subrecipient to operate the facility or system for the original purpose (for which it received IAG funds) until at least twenty-five (25) years after the latest of:

- Acquisition
- Final completion of rehabilitation or construction or until the return of all IAG funds used for the project.

The Deed shall be executed within thirty (30) days of acquisition or substantial completion of any construction activity. The Recipients shall keep the property free and clear of all other charges, liens, or encumbrances impairing the security of the Deed.

9. Archaeological and Cultural Resources Review

9.1 Cultural Resources Review Overview

In order to protect the rich cultural heritage of Washington state, Governor Jay Inslee signed [Executive Order 21-02 \(EO 21-02\)](#) in April 2021. This Executive Order replaces and immediately follows Executive Order 05-05. This Executive Order reflects the Governor's commitment that impacts to cultural resources must be considered as part of any state funded project,

Recipients of funds must consult with the Department of Archaeology & Historic Preservation (DAHP) and any Indian tribes that may have cultural and/or historic interest or concerns in the project's vicinity. The National Environmental Policy Act (NEPA) does not apply to ARPA funding, however, the STATE Environmental Policy Act, as well as EO 21-02 DO apply to ARPA funding.

With an exception, at this time the ARPA Capital funds required a NEPA checklist.

Consultation is started early in the planning process for pre-construction, construction, demolition or acquisition. Pre-construction activities include but are not limited to: planning, design and feasibility studies, engineering, permitting, bid documents, acquisition, etc. that will culminate in construction, demolition or land acquisition. Projects completed in phases may be reviewed on a case-by-case basis.

The Recipient will not move forward with construction activities that will disturb soils (such as, trenching, completing geo-tech work, grading, clearing, etc.), or construction activities until 21-02 is completed and the WSBO has issued a final compliance letter.

If ground-disturbing activities occur prior to the Recipient receiving the final compliance letter, ARPA funding will be jeopardized.

Important Note: Your initial submission of EO 21-02 and SEPA paperwork does not mean that the process is complete. Ground-disturbing activities must wait until the final compliance letter has been received.

A government-to-government relationship must be properly adhered to for the cultural review. As such, it is the WSBO's responsibility to contact the Tribes and the DAHP. WSBO will notify the Recipient when a cultural resources survey is necessary. The Recipient is responsible for hiring a qualified archaeologist to conduct the surveys and for submitting draft surveys to WSBO for final approval.

9.2 Projects Receiving Additional State or Federal Funding

The Recipient must follow the more stringent of state and federal environmental and cultural review processes in order to comply with WSBO requirements. The Recipient is responsible for informing WSBO of additional funding sources, and submit any necessary compliance documentation that has been completed to date. Otherwise, any steps of the process not adequately documented must undergo another review.

WSBO coordinates reviews with other funding agencies, as appropriate.

9.3 Process Administration – Getting Started

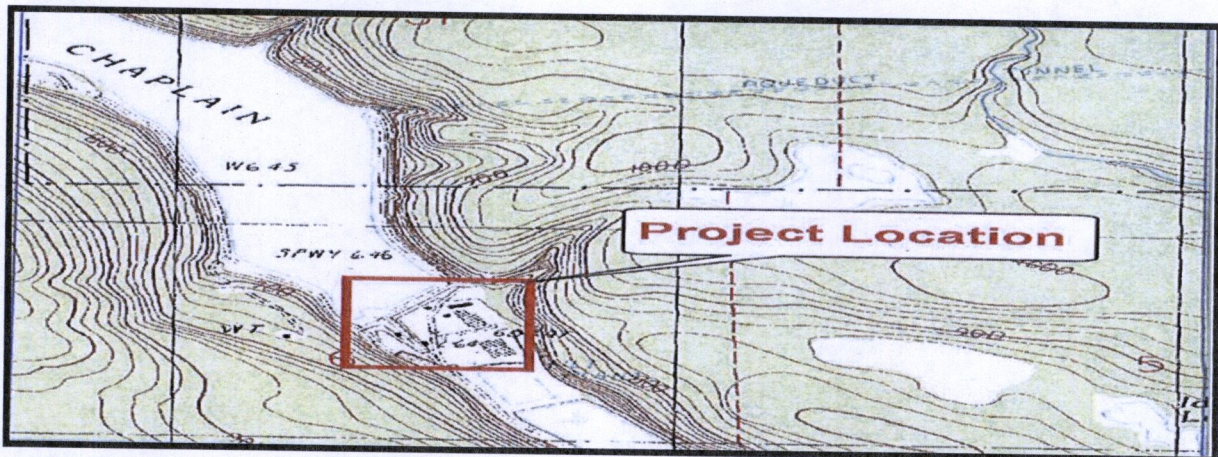
The Recipient starts the process by submitting an EZ1 form (downloaded from the DAHP webpage) to WSBO. See EO 21-02 Historical and Cultural Resource Review Checklist, Attachment 9-A.

WSBO conducts the consultation with the DAHP and the potentially affected Tribes.

9.4 Things That May Hinder Progress

The following items may delay progress on a project's environmental or cultural review:

- Project Review Sheet (EZ1 Form) is incomplete or contains incorrect information.
 - Project location is not clearly identified
 - Project description is not detailed enough
 - Township, range, and section is incorrect
- The assumption that the cultural review is complete upon submittal of the EZ1 Form is **not correct**. The EZ1 Form is used to **initiate** the cultural review and identify potential further actions that may be required.
- Not completing the Historic Property Inventory (HPI) form when a structure or building is going to be modified or demolished. WSBO will notify you if additional actions are required by the DAHP.
- A 7.5 Series USGS Quad map is not submitted with the EZ Form, and the project area is not identified. Example:



- Revising the project scope of work or acquiring additional relevant information may result in another cultural resource review process.
- ANY area being used for the project needs to be included in the review. This includes any staging area where equipment will be kept, not just the actual locations where the ground will be disturbed.

9.5 DAHP Consultation

The EO 21-02 process requires the Recipient to define the construction project area for potential impact, and identify any building or structures 45-years or older that are located within the project site. For projects that plan to alter structures 45-years of age or older, an online inventory survey must be completed by the Recipient.

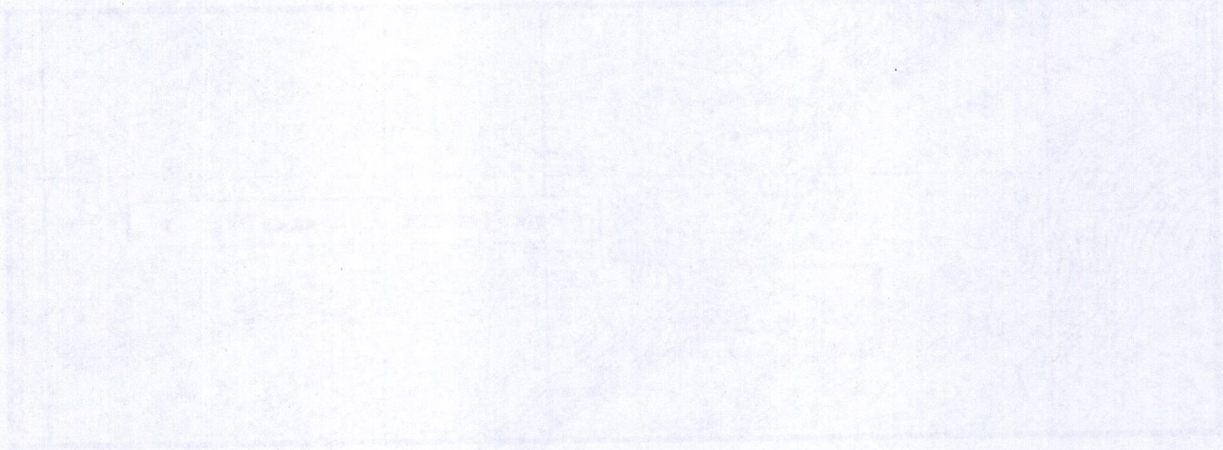
The DAHP can issue a broad range of responses to the submittal. A common response is a "No Effect Upon Cultural/Historic Properties" letter. If you receive such a letter, you have completed the DAHP portion of the review.

If the DAHP requires more information (completion of additional forms, cultural survey, unanticipated discovery plan (Attachment 9-B), etc.) you must comply with the request. It is possible that you will need to hire a professional archaeologist to address this. Only when the DAHP concurs with the additional materials provided is the DAHP portion of EO 21-02 complete.

9.6 Tribal Consultation

Tribal consultation is initiated by WSBO sending a letter to the potential affected Tribal government(s). The letter details any project information describing the location and extent of the project, along with a map of the impacted area.

The Tribe(s) will be allowed at least 30-days to respond. There may be no response, or there may be a wide range of response to the information provided. As with the DAHP, if additional materials are required, they must be provided to the Tribe(s) and they must concur with the findings.



Attachment 9-A: EO 21-02 Checklist

1a. Section 106 of the National Historic Preservation Act (Federal Funding or permitting- **this is not applicable for the ARPA SLRF, only EO21-02 needs to be conducted**). If your project has other Federal funding in the same project as your ARPA SLRF project, then that federal agency is the lead on this process.

Note: ARPA Capital funding require NEPA Checklist, at this time the funding could be subject to Section 106. Final Guidance hasn't been released from the US Treasury.

Is the project subject to Section 106 of the National Historic Preservation Act? If so, EO 21-02 does not apply.

- Provide your WSBO program manager documents from the lead federal agency (i.e. Project's EZ/Project Review, Tribal notification(s) and response(s), DAHP determination/concurrence letter).
- The WSBO program manager reviews submitted documentation, and concurs that no other steps need to be taken.
- Process Complete

1b. Executive Order 21-02 (State Funding and not subject to review under Section 106)

Department of Archaeology and Historic Preservation (DAHP) Consultation

Step 1:

- Recipient** submits, by email, Form EZ1 to WSBO.
- If a historic property is involved, **Recipient** completes* Historic Property Inventory Form through DAHP's online Wisaard Database.
- Notify WSBO that the online inventory was completed*
- WSBO will initiate consultation with the DAHP**

Step 2a:

The DAHP issues a "No Effect upon Cultural/Historic Properties" letter

- DAHP consultation complete

Step 2b:

The DAHP requires further information (may occur several times)

- Provide requested information to the DAHP and WSBO

Step 3:

The DAHP issues final concurrence letter

- DAHP consultation complete

2. Indian Tribes consultation (may involve multiple Tribes)

Step 1:

- WSBO will initiate consultation with the Tribe(s) and will send email notification to the:**
 - Tribal Cultural Resource Contact
 - Tribal Historic Preservation Officer

- Tribal Chair
- Recipient

Step 2a:

No response received from Tribe after at least 30-days

- WSBO will follow-up with a phone call, email, and possibly office visit
If there is an issue WSBO may set up a meeting with interested Tribes for a possible site visit with Recipient for a site visit.
- Tribal consultation complete

Step 2b:

Tribe issues “No Impact” letter

- Tribal consultation complete

Step 2c:

Tribe requests further information (may occur several times)

- Provide requested information to WSBO
- Tribal consultation complete

Step 3:

Tribe issues final concurrence letter

- Tribal consultation complete

3. Cultural Resource Review Process Completion. Recipient has completed:

WSBO has completed:

- DAHP Consultation, and
- Tribal Consultation

4. Next Steps

WSBO will issue consultation completion email/letter notification that the EO 21-02 consultation have been met are complete. Coping DAHP and the Interested Tribes that commented on the project of their interest.

- Recipient may begin construction.

If you have any questions, please contact:

Connie Rivera

State Broadband Office Infrastructure Programs Manager

[Washington State Department of Commerce](http://www.wa.gov/department-of-commerce)

(360) 704-9535 cell | Work hours: 7 to 5:30, Monday-Thursday.

Attachment 9-B: Unanticipated Discovery Plan Template

PLAN AND PROCEDURES FOR THE UNANTICIPATED DISCOVERY OF CULTURAL RESOURCES AND HUMAN SKELETAL REMAINS

PROJECT, COUNTY WASHINGTON

1. INTRODUCTION

The plans to construct the project. The purpose of this project is to . The following Unanticipated Discovery Plan (UDP) outlines procedures to follow, in accordance with state and federal laws, if archaeological materials or human remains are discovered.

2. RECOGNIZING CULTURAL RESOURCES

A cultural resource discovery could be prehistoric or historic. Examples include:

- An accumulation of shell, burned rocks, or other food related materials
- Bones or small pieces of bone,
- An area of charcoal or very dark stained soil with artifacts,
- Stone tools or waste flakes (i.e. an arrowhead, or stone chips),
- Clusters of tin cans or bottles, logging or agricultural equipment that appears to be older than 50 years,
- Buried railroad tracks, decking, or other industrial materials.

When in doubt, assume the material is a cultural resource.

3. ON-SITE RESPONSIBILITIES

STEP 1: STOP WORK. If any employee, contractor, or subcontractor believes that they have uncovered a cultural resource at any point in the project, all work in the immediate area of the discovery must stop (typically a 10 foot radius, but depends on site conditions). The discovery location should be secured at all times.

STEP 2: NOTIFY MONITOR. If there is an archaeological monitor for the project, notify that person. If there is a monitoring plan in place, the monitor will follow its provisions.

STEP 3: NOTIFY CONSTRUCTION SITE PROJECT MANAGEMENT. Contact the Project Managers:

Jurisdiction:		Firm:	
Name:		Name:	
Title:		Title:	
Number:		Number:	
Email:		Email:	

The Construction Site Project Manager or their designee will make all other calls and notifications. If human remains are encountered, treat them with dignity and respect at all times. Cover the remains with a tarp or

other materials (not soil or rocks) for temporary protection in place and to shield them from being photographed. Do not call or speak with the media about the remains specifically.

4. FURTHER CONTACTS AND CONSULTATION

A. Construction Site Project Manager’s Responsibilities:

- **Protect Find:** The Construction Site Project Manager is responsible for taking appropriate steps to protect the discovery site. All work will stop in an area adequate to provide for the total security, protection, and integrity of the resource. Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the discovery site. Work in the immediate area will not resume until treatment of the discovery has been completed following provisions for treating archaeological/cultural material as set forth in this document.
- **Direct Construction Elsewhere On-site:** The Construction Site Project Manager may direct construction away from cultural resources to work in other areas prior to contacting the concerned parties.
- **Contact the Department of Archaeology and Historic Preservation (DAHP):** If the DAHP has not yet been contacted, the Construction Site Project Manager will do so.
- **Identify Find:** The Construction Site Project Manager will ensure that a qualified professional archaeologist examines the find to determine if it is archaeological. This will either be an archaeological consultant hired by the Construction Site Project or staff from DAHP.
 - If the discovery is determined not archaeological, work may proceed with no further delay.
 - If the discovery is determined to be archaeological, the Construction Site Project Manager will continue with notification.
 - If the discovery is human remains or funerary objects, the Construction Site Project Manager will ensure that the DAHP State Physical Anthropologist examines the find. If the discovery is determined to be human remains, the procedure described in Section 5 will be followed.
- **Notify DAHP:** The Construction Site Project Manager will contact the involved federal or permitting agencies (if any) and the Department of Archaeology and Historic Preservation (DAHP).

Federal and/or Permitting Agencies:

Agency: Name: Title: Number: Email:		Agency: Name: Title: Number: Email:	

Department of Archaeology and Historic Preservation:

Dr. Allyson Brooks State Historic Preservation Officer 360-586-3066 or 360-586-3064	Dr. Rob Whitlam State Archaeologist 360-586-3080
--	---

Department of Commerce:

Connie Rivera Broadband Infrastructure Programs Manager Washington State Broadband Office (360) 704-9535 Connie.Rivera@commerce.wa.gov	Alden (AL) Andy Broadband Infrastructure Program Supervisor Washington State Broadband Office (360) 791-2595 Alden.Andy@commerce.wa.gov
---	--

The Construction Site Project Manager will contact the interested and affected Tribes. Tribes consulted on this project are:

Tribe: Name: Title: Number: Email:		Tribe: Name: Title: Number: Email:	
Tribe: Name: Title: Number: Email:		Tribe: Name: Title: Number: Email:	

B. Further Activities:

- Archaeological discoveries will be documented as described in Section 6.
- Construction in the discovery area may resume as described in Section 7.

5. SPECIAL PROCEDURES FOR THE DISCOVERY OF HUMAN SKELETAL MATERIAL

Any human skeletal remains, regardless of antiquity or ethnic origin, will at all times be treated with dignity and respect.

If the project occurs on federal lands (e.g., national forest or park, military reservation) or Indian lands (e.g., reservations, allotments, communities) the provisions of the Native American Graves Protection and Repatriation Act of 1990 apply, and the responsible federal agency will follow its provisions. Note that state highways that cross federal and Indian lands are on easements and are not owned by the state.

If the project occurs on non-federal lands, it will comply with applicable state laws, and the following procedure:

A. Notify Law Enforcement Agency and Coroner’s Office:

- In addition to the actions described in Sections 3 and 4, the Construction Site Project Manager will immediately notify the local law enforcement agency and coroner’s office.

- The medical examiner (with assistance of law enforcement personnel) will determine if the remains are human, whether the discovery site constitutes a crime scene, and will notify DAHP if the remains are determined to be non-forensic.

Agency: _____

Number: _____

B. Participate in Consultation:

- Per RCW 27.44.055, RCW 68.50, and RCW 68.60, DAHP will have jurisdiction over non-forensic human remains and will make a determination of whether the remains are Indian or not, and notify all affected tribes.

C. Further Activities:

- Documentation of human skeletal remains and funerary objects will be agreed upon through the consultation process described in RCW 27.44.055, RCW 68.50, and RCW 68.60.
- When consultation and documentation activities are complete, construction in the discovery area may resume as described in Section 7.

6. DOCUMENTATION OF ARCHAEOLOGICAL MATERIALS

Archaeological deposits discovered during construction will be assumed eligible for inclusion in the National Register of Historic Places under Criterion D per 36CFR800.13(c) until a formal Determination of Eligibility is made. If the project does not have a federal nexus/compliance requirement, contact the Construction Site Project Manager or DAHP regarding the possible need for an Emergency Excavation Permit per RCW27.53. In general, expect that:

- All prehistoric and historic cultural material discovered during project construction will be recorded by a professional archaeologist on State of Washington cultural resource site or isolate form using standard techniques. Site overviews, features, and artifacts will be photographed; stratigraphic profiles and soil/sediment descriptions will be prepared for subsurface exposures. Discovery locations will be documented on scaled site plans and site location maps.
- Cultural features, horizons and artifacts detected in buried sediments may require further evaluation using hand-dug test units. Units may be dug in controlled fashion to expose features, collect samples from undisturbed contexts, or interpret complex stratigraphy. A test excavation unit or small trench might also be used to determine if an intact occupation surface is present. Test units will be used only when necessary to gather information on the nature, extent, and integrity of subsurface cultural deposits to evaluate the site's significance. Excavations will be conducted using state-of-the-art techniques for controlling provenience.
- Spatial information, depth of excavation levels, natural and cultural stratigraphy, presence or absence of cultural material, and depth to sterile soil, regolith, or bedrock will be recorded for each probe on a standard form. Test excavation units will be recorded on unit-level forms, which include plan maps for each excavated level, and material type, number, and vertical provenience (depth below surface and stratum association where applicable) for all artifacts recovered from the level. A stratigraphic profile will be drawn for at least one wall of each test excavation unit.
- Sediments excavated for purposes of cultural resources investigation will be screened through 1/8-inch mesh, unless soil conditions warrant ¼-inch mesh.

- All prehistoric and historic artifacts collected from the surface and from probes and excavation units will be analyzed, catalogued, and temporarily curated. Ultimate disposition of cultural materials will be determined in consultation with the federal agencies (if any), DAHP, and the affected tribes.

If assessment activity exposes human remains (burials, isolated teeth, or bones), the process described in Section 5 above will be followed.

7. PROCEEDING WITH CONSTRUCTION

Project construction outside the discovery location may continue while documentation and assessment of the cultural resources proceed. A Cultural Resources Specialist (either from DAHP, a consulting Tribe, or a professional consultant) must determine the boundaries of the discovery location. In consultation with DAHP and affected tribes, the Construction Site Project Manager will determine the appropriate level of documentation and treatment of the resource. If federal agencies are involved, the agencies will make the final determinations about treatment and documentation.

Construction may continue at the discovery location only after the process outlined in this plan is followed and DAHP (and the federal agencies, if any) determine that compliance with state and federal laws is complete.

10. Appendix

10.1 State Requirements

Title	Relevant Law or Regulation
Insurance Coverage	Non-Profits: Contractual Requirement Self-Insured: RCW 48.62
Labor Regulations	Title 49 RCW
Preservation of Archaeological and Cultural Resources	Executive Order 21-02 RCW 27.44 Indian Graves and Records RCW 27.53 Archaeological Sites and Resources RCW 68.60 Abandoned and Historic Cemeteries and Historic Graves WAC 25-48 Archaeological Excavation and Removal Permits
Public Works	Title 39 RCW
State Environmental Policy Act (SEPA)	Chapter 43.21C RCW

10.2 Federal Requirements

Title	Relevant Law or Regulation
Age Discrimination Act of 1975	42 U.S.C. 6101 et seq. ,31 CFR Part 23
Annual Audit Requirement Clause	2 CFR 200.501
Conflicts of Interest	2 CFR 200.318(c), 2 CFR 200.112
Contract Hours and Safety Standards Act	40 U.S.C. 3702 and 3704 29 CFR Part 5
Cost Principles	2 CFR Part 200, Subpart E
Equipment and Real Property Management	2 CFR Part 200, Subpart D 2 CFR 200.311 , 2 CFR 200.313
Labor Agreements	29 U.S.C. 158(f)
New Restrictions on Lobbying	31 CFR Part 21

Title	Relevant Law or Regulation
Procurement, Suspension, and Debarment Requirements	2 CFR 200.317 through 2 CFR 200.322
Reducing Text Messaging While Driving	Executive Order 13513 , 74 CFR 51225
Relocation and Real Property Acquisition Requirement	42 U.S.C. 4601-4655 49 CFR Part 24
SAM.gov Requirements	2 CFR Part 25 , 2 CFR 200.214
Section 504 of the Rehabilitation Act of 1973	29 U.S.C. 794
Sections 602 & 603 of the Social Security Act	Sections 602 & 603
Standards of Conduct	2 CFR 200.318
Title II of the Americans with Disabilities Act of 1990	42 U.S.C. 12101 et seq.
Title IX of the Education Amendments of 1972	20 U.S.C. 1681 et seq. 31 CFR Part 28
Title VI of the Civil Rights Act of 1964	42 U.S.C. 2000d-1 et seq. 31 CFR Part 22
Uniform Administrative Requirements	2 CFR Part 200

10.3 Quick References for WSBO Funding

- Washington State Broadband Office
<https://www.commerce.wa.gov/building-infrastructure/washington-statewide-broadband-act/>
- Washington State Labor & Industries - Prevailing Wage
www.lni.wa.gov
- Office of Minority & Women’s Businesses
www.omwbe.wa.gov
- Municipal Research and Services Center (MRSC)
www.mrsc.org
- Washington Small Business Development
www.wsbdc.org

- Washington Society of Certified Public Accountants
www.wscpa.org
- Washington Utilities and Transportation Commission
<http://www.utc.wa.gov/>

10.4 Glossary

Acronym	Meaning
A-19 Reimbursement Voucher	The form used to request reimbursement for incurred PWB loan project expenses.
ALN	Assistance Listing Number: For SLFRF this is 21.027 and for Capital this is 21.029
ARPA	American Rescue Plan Act
ARPA Recipient or 'Recipient'	WSBO's title with regards to the funding received by the federal agency as the pass thru agency. This funding is then passed on to Recipients (also called subrecipients).
CFR	Code of Federal Regulations
CMS	Contract Management System
Commerce	Washington State Department of Commerce.
Competitive Bid Process	All construction activities must be contracted out to the lowest responsible bidder through a competitive bidding process.
Contractor	Firm selected through a competitive procurement process and is paid ARPA SLFRF funds by the Recipient (WSBO) in compensation for specific services.
ARPA	Coronavirus State and Local Fiscal Recovery Fund and Capital Fund
CWHSSA	Contract Work Hours and Safety Standards Act
Department of Archaeology and Historic Preservation (DAHP)	Washington State Department of Archaeology and Historic Preservation, which reviews cultural resource activities for federal and state funded projects.
Electronic Funds Transfer (EFT)	RECIPIENTS are encouraged to sign up for EFT to have funds transferred to their accounts electronically rather than through the mail by State Warrant.
ESD	Employment Security Department

Acronym	Meaning
Executed Contract	A contract is considered “executed” once the document is signed by the RECIPIENT and the Commerce.
GAO	Government Accountability Office
GEO	Governor’s Executive Order
IAG	Infrastructure Acceleration Grant
IFB	Invitation for Bid
IRU	Indefeasible Right of Use
ISP	Internet Service Provider
Lowest Responsible Bidder	A term used to determine the successful contractor for a construction project that has been competitively bid.
MRSC	Municipal Research and Services Center
MTDC	Modified Total Direct Costs: all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each sub-award. <i>Excludes equipment, capital expenditures, and rental costs.</i>
OMB	Office of Management and Budget
OMWBE	Office of Minority and Women’s Business Enterprises
PRAC	Pandemic Relief Accountability Committee
Prevailing Wages	Hourly wage and usual benefits paid in the largest city in each county, to the majority of workers, laborers, and mechanics as determined by the Washington State Department of Labor and Industries for each trade and occupation employed in the performance of public work.
PWIA	Prevailing Wage Intent and Affidavit
RCW	Revised Code of Washington
Recipient	The receiving organization of funds from WSBO, may also be referred to as a subrecipient
RFP	Request for Proposals
RSQ	Request for Statement of Qualifications

Acronym	Meaning
SAM	System for Award Management
SAW	Secure Access Washington: https://secureaccess.wa.gov/
Statewide Vendor Number (SWV)	A vendor number established through the Washington State Office of Financial Management
Subcontractor	Firm selected through a competitive procurement process and is paid by the Recipient in compensation for specific services.
UBI	Unified Business Identifier
US Treasury	U.S. Department of the Treasury
WAC	Washington Administrative Code
WSBO	Washington State Broadband Office



Capital Agreement with

Lewis County

through

Washington State Broadband Office – Infrastructure Acceleration Grant
America Rescue Plan Act, State and Local Fiscal Recovery Funds

For: Lewis County Broadband Expansion Project

Start date: July 1, 2021

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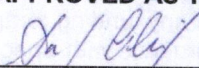
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Contract Number: 22-96810-005

**Washington State Department of Commerce
Local Government Division
State Broadband Office
ARPA State and Local Fiscal Recovery Funds Grant**

1. Grantee Lewis County Treasurer P.O. Box 29 Chehalis, WA 98532		2. Grantee Doing Business As (optional) Lewis County Auditor		
3. Grantee Representative Becky Butler Budget Administrator 360-740-1198 Becky.butler@lewiscountywa.gov		4. COMMERCE Representative Chelsea Bagwell Broadband Infrastructure Specialist (360) 485-3890 Chelsea.Bagwell@commerce.wa.gov <div style="float: right; text-align: right;"> PO Box 42525 1011 Plum Street SE Olympia, WA 98504-2525 </div>		
5. Grant Amount \$23,500,000.00	6. Funding Source Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date July 1, 2021	8. End Date June 30, 2025, Contingent on reappropriation; June 30, 2023 if funds are not reappropriated.	
9. Federal Funds (as applicable) \$23,500,000.00		Federal Agency US Dept. Treasury	ALN (CFDA #): 21.027	Indirect Rate: 10%
10. SWV # 0001232-36	11. UBI # 212-002-978	13. UNIQUE ENTITY ID # PAEFFMRVTLZ6		
14. Grant Purpose The outcome of this performance-based Grant Agreement is to undertake a legislatively approved project that furthers the goals and objectives of Infrastructure Projects Program as referenced in Attachment A – Scope of Work.				
COMMERCE, defined as the Department of Commerce and Grantee acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Attachment "A" – Scope of Work, Attachment "B" – Certification of Availability of Funds to Complete the Project, Attachment "C" – Certification of the Payment and Reporting of Prevailing Wages, Attachment "D" – Certification of the 10% the Modified Total Direct Costs the following documents incorporated herein by reference: Grantee's Application for Funding and the Washington State Broadband Office Infrastructure Acceleration Grants Handbook 21-23 prepared by Commerce.				
FOR GRANTEE _____ Erik Martin, County Manager _____ Date APPROVED AS TO FORM ONLY _____ Amber Smith, Deputy Prosecuting Attorney Sr. _____ Date		FOR COMMERCE _____ Mark K. Barkley, Assistant Director, Local Government Division _____ Date APPROVED AS TO FORM ONLY  _____ Sandra Adix Assistant Attorney General <u>August 08, 2022</u> Date		

DECLARATIONS

CLIENT INFORMATION

Grantee Name: **22-96810-005**
 Grant Number: Lewis County

PROJECT INFORMATION

Project Name: **Lewis County Broadband Expansion**
 Project City: Winlock
 Project State: Washington
 Project Zip Code: **98596**

GRANT INFORMATION

Grant Amount: **\$23,500,000**
 Local Match(10% of the grant amount expended): **\$ 2,350,000**
 Appropriation Number: **ESSB 1080, Section 1086**
 Re-appropriation Number (if applicable):
 Grant End Date: **June 30, 2023; may be extended up to June 30, 2025, contingent on State and Federal reappropriation**
 Biennium: 2021-2023
 Biennium Close Date: June 30, 2023
 Earliest Date for Reimbursement: March 3, 2021
 Time of Performance: **In accordance with Special Terms and Conditions Number 4**

FUNDING INFORMATION

Federal Funding: Sec. 602 Coronavirus State Fiscal Recovery Funds of Title VI of Social Security Act as added by American Rescue Plan Act of 2021 (ARPA or "Act"), Title IX, Subtitle M, Sec. 9901, Public Law 117-2, codified at 42 U.S.C. 802 et seq.
 Federal Award Agency: US Department of Treasury
 Amount of Federal Funds Obligated by this Action: \$23,500,000

ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

Extension of Grant Upon Reappropriation.

Notwithstanding Special Term and Condition No. 4, the End Date of this Grant **may be extended upon written notice to Grantee from Commerce** for a period of time consistent with the effective date of any re-appropriation of funds, and/or with terms reflecting new Federal requirements for ARPA funds, if any. In Commerce's sole discretion, after review of any funding re-appropriation terms and applicable Federal law or guidance, a contract amendment in accordance with Special Term and Condition No. 4 may be required to extend the End Date.

**SPECIAL TERMS AND CONDITIONS
CAPITAL
FEDERAL FUNDS**

1. AUTHORITY

Funding for this Grant has been provided in the 2021-2023 biennial state Capital Budget, SSB 1080, pursuant to Federal grants to Washington State under the American Rescue Plan Act of 2021 (ARPA or "Act"), sec. 9901, Public Law 117-2, codified at 42 U.S.C. 802 et seq. The parties anticipate that funding under this Grant that is unexpended in the 2021-23 state biennium may be re-appropriated in future biennia, subject to Federal requirements.

2. ACKNOWLEDGEMENT OF FEDERAL FUNDING

Federal Award Identification Number (FAIN): SLRFP0002
Total amount of the federal award: \$23,500,000

Federal Awarding Agency: US Department of Treasury
Research & Development (R&D): award will not be used for R&D

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

"This project was supported by grant awarded by the US Department of the Treasury. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of the Treasury. Grant funds are administered by the America Rescue Plan Act, State and Local Fiscal Recovery Funds, Washington State Department of Commerce."

3. GRANT 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 Grant.

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

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

4. PERIOD OF PERFORMANCE, COSTS INCURRED, REIMBURSEMENT

- a) Period of Performance. The initial period of performance for this award begins on the date hereof and ends on June 30, 2023. If unexpended funds under this Grant are re-appropriated, the period of performance (Contract End Date) will be extended to not later than October 30, 2026.
- b) Costs Incurred Period. As set forth in Treasury's implementing regulations, Grantee may use funds awarded under ARPA to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024. Pursuant to Federal rules, a cost shall be considered to have been incurred if the Grantee has incurred an obligation with respect to such cost by December 31, 2024.
- c) Reimbursement Period. All requests for reimbursement of eligible costs incurred between March 3, 2021 and December 31, 2024 payable from ARPA funds must be submitted to COMMERCE by the **earlier of** October 30, 2026 or 30 days prior to the Contract End Date.
- d) In the event the grantee can't complete the full scope of work, due to material/supply chain delays, the parties may agree to amend the scope of work.

5. COMPENSATION

COMMERCE shall pay an amount not to exceed the total contract amount listed 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.

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6. BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES

When the grant is used to fund the acquisition of real property, the value of the real property eligible for reimbursement under this grant shall be established as follows:

- A. Grantee purchases of real property from an independent third-party seller shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser, or a current property tax statement.
- B. Grantee purchases of real property from a subsidiary organization, such as an affiliated LLC, shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser or the prior purchase price of the property plus holding costs, whichever is less.

7. EXPENSES

Grantee 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 Grantee for authorized expenses shall not exceed the total contract amount listed on the contract Face Sheet.

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

8. INDIRECT COSTS

Grantee shall provide their indirect cost rate that has been negotiated between their entity and the federal government as set forth on the Face Sheet, Sec. 9. If no such rate exists a de Minimis indirect cost rate of 10% of modified total direct costs (MTDC) can be used (requested in the application or the project data sheet).

9. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the Grantee for eligible Project expenditures, up to the maximum payable under this Grant Agreement. When requesting reimbursement for expenditures made, the Grantee shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed for the billing period. The Grantee can submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Grants Management System (CMS), which is available through the Secure Access Washington (SAW) portal.

Cash match from the Grantee (or its subcontractor or subrecipient) shall consist of 10% of each invoice. If, in total, COMMERCE reimburses the Grantee for less than the maximum permissible grant amount under this contract, the total matching funds required shall be correspondingly reduced to 10% of the amount reimbursed.

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

The voucher must be certified (signed) by an official of the Grantee with authority to bind the Grantee. The final voucher shall be submitted to COMMERCE within sixty (60) days following the completion of work or other termination of this Grant Agreement, or if work is not completed or Grant terminated, within fifteen (15) days following the end of the state biennium unless Grant Agreement funds are reappropriated by the Legislature in accordance with Additional Special Terms and Conditions set forth in the Declarations page above.

Each request for payment must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request

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received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the Grantee.

COMMERCE will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE **not more often than monthly**.

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 Grantee.

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

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

Invoices and End of Fiscal Year

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

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

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

Duplication of Billed Costs

The Grantee shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Grantee, to extent that 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.

Withholding

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

10. SUBCONTRACTOR DATA COLLECTION

Grantee 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.

11. HISTORICAL OR CULTURAL RESOURCES, HUMAN REMAINS

Certain capital construction projects may be subject to the requirements of Washington State Executive Order 21-02 "Archaeological and Cultural Resources". Grantee will cooperate with Commerce as may be required, to fulfill the requirements of EO-21-02. In the event that historical or cultural artifacts are discovered at the Project site during construction or rehabilitation, the Grantee or subcontractor shall immediately stop work and notify the local historical preservation officer and the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. If human remains are discovered, the Grantee shall immediately stop work and report the presence and location of the remains to the coroner and local enforcement, then contact DAHP and any concerned tribe's cultural staff or committee.

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12. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

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

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

13. DEBARMENT

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - ii. Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv. Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this Grant, the Grantee shall attach an explanation to this Grant.
- C. The Grantee agrees by signing this Grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Grantee further agrees by signing this Grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

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

The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, currently available online at [eCFR :: 22 CFR Part 513 Subpart A -- General](http://www.ecfr.gov/current/title-22/chapter-I/subchapter-A/part-513/subpart-A)

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14. 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. Failure to maintain the required insurance coverage may result in termination of this Grant.

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 a written request by COMMERCE, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Grant, if required or requested, 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, 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.

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, 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.

Automobile Liability. In the event that performance pursuant to this Grant involves the use of vehicles, owned or operated by the Grantee 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 Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Grantee and licensed staff employed or under contract to the Grantee. 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 Grantee 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 Grant shall be \$100,000 or the highest of planned reimbursement for the Grant 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 Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Grantee as beneficiary.

Grantees and Local Governments that Participate in a Self-Insurance Program.

Self-Insured/Liability Pool or Self-Insured Risk Management Program – Grantee may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to

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obtain permission from COMMERCE, the Grantee shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. Grantee'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.

Annually Grantee shall provide upon written request by COMMERCE a summary of coverages and a letter of self-insurance, evidencing continued coverage under Grantee'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.

For avoidance of doubt, the self-insurance provisions herein supersede General Term and Condition 23 if the Grantee self-insures for Industrial Insurance.

15. COMPLIANCE WITH APPLICABLE LAW AND REGULATIONS

- A. Grantee agrees to comply with the requirements of 42 U.S. Code § 802 - Coronavirus State fiscal recovery fund, regulations adopted by Treasury pursuant to subsection (f) of that section, and guidance issued by Treasury regarding the foregoing. Grantee also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Grantee shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- B. Federal regulations applicable to this award include, but are not necessarily limited to the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.

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- x. Prohibition on certain telecommunications and video surveillance services or equipment 2 CFR § 200.216.
- C. Statutes and regulations prohibiting discrimination applicable to this award include, but are not necessarily limited to the following:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

16. FEDERAL EXCLUSION

These terms add to the terms in Section 12 Certification Regarding Debarment, Suspension or Ineligibility and Voluntary Exclusion — Primary and Lower Tier Covered Transactions in General Terms and Conditions. The Grantee also agrees to access the Federal Exclusion List at www.sam.gov and provide Federal Exclusion documentation to Commerce and to keep a copy on file with the Grantee's project records.

17. REGISTRATION WITH THE SYSTEM FOR AWARD MANAGEMENT (SAM)

By signing this Grant, the Grantee accepts the requirements stated in 48 CFR 52.204-7 to register with the System for Award Management at the [SAM website \(https://www.sam.gov\)](https://www.sam.gov). To register in SAM, a valid Unique Entity Identifier (UEI) is required. The Grantee is responsible for the accuracy and completeness of the data within the SAM database and for any liability resulting from the Government's reliance on inaccurate or incomplete data. The Grantee must remain registered in the SAM database after the initial registration. The Grantee is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in SAM to ensure it is current, accurate and complete. The Grantee shall provide evidence documenting registration and renewal of SAM registration to Commerce.

In the event of the Grantee's noncompliance or refusal to comply with the requirement stated above, Commerce reserves the right to suspend payment until the Grantee cures this noncompliance.

18. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Grant Agreement are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the Period of Performance, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of COMMERCE, and shall meet and renegotiate the Grant Agreement accordingly.

19. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this Grant Agreement and does not assert and will not acquire any ownership interest in or title to the

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capital facilities and/or equipment constructed or purchased with state funds under this Grant Agreement; provided, however, that COMMERCE may be granted a security interest in real property, to secure performance and funds awarded under this Grant Agreement. For the avoidance of doubt, the foregoing replaces in its entirety the introductory paragraph of Section 46 of the General Terms and Conditions. This provision does not extend to claims that COMMERCE may bring against the Grantee in recapturing funds expended in violation of this Grant Agreement.

For avoidance of doubt, this provision supersedes General Term and Condition 46, concerning treatment of assets, in its entirety.

20. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY

- A. The Grantee understands and agrees that any and all real property or facilities owned by the Grantee that are acquired, constructed, or otherwise improved by the Grantee using state funds under this Grant Agreement, shall be held and used by the Grantee for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least twenty five (25) years from the date the final payment is made hereunder.
- B. This provision shall not be construed to prohibit the Grantee from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this Grant Agreement.
- C. In the event the Grantee is found to be out of compliance with this section, the Grantee shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 34 (Recapture provision of the General Terms and Conditions).

21. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE

- A. The Grantee understands and agrees that any facility leased by the Grantee that is constructed, renovated, or otherwise improved using state funds under this Grant Agreement shall be used by the Grantee for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least twenty five (25) years from the date the final payment is made hereunder.
- B. In the event the Grantee is found to be out of compliance with this section, the Grantee shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 34 (Recapture Provision).

22. TERMINATION FOR FRAUD OR MISREPRESENTATION

In the event the Grantee commits fraud or makes any misrepresentation in connection with the Grant application or during the performance of this Grant Agreement, COMMERCE reserves the right to terminate or amend this Grant Agreement accordingly, including the right to recapture all funds disbursed to the Grantee under the Grant.

23. FRAUD AND OTHER LOSS REPORTING

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

24. SUBCONTRACTORS

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No prior approval of subcontracting to a Subcontractor of any tier shall be required and the first three paragraphs of Section 40 of the General Terms and Conditions shall be deemed to refer to "subrecipient" rather than Subcontractor or subcontracting. The parties acknowledge and agree that Grantee may perform work under this agreement using subrecipients and that Grantee is wholly responsible for selection of subrecipients and to ensure their compliance with applicable law.

25. COPYRIGHT PROVISIONS

Per the Scope of Work, Section 16 is not intended to apply to any architectural and engineering work funded by this Grant.

26. ORDER OF PRECEDENCE

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Certification of the Availability of Funds to Complete the Project
- Attachment C – Certification of the Payment and Reporting of Prevailing Wages
- Attachment D– Certification of the Modified Total Direct Costs

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1. DEFINITIONS

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

- A. "Authorized Representative" shall mean the Director of Commerce and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Grant" 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. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Grant, 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 Grant under a separate contract with the Grantee. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ADMINISTRATIVE COST ALLOCATION

Administrative costs that may be allowed are set forth in the Special Terms and Conditions. Administrative services shared by other programs shall be assigned to this Grant based on an allocation plan that reflects allowable administrative costs that support services provided under each Grant administered by the Grantee. An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed.

3. ALLOWABLE COSTS

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

4. ALL WRITINGS CONTAINED HEREIN

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

5. AMENDMENTS

This Grant 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.

6. 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.

7. 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.

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8. ASSIGNMENT

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

9. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorney's fees and costs.

10. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

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

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

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

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - ii. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this contract, the Grantee shall attach an explanation to this contract.
- C. The Grantee agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Grantee further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

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LOWER TIER COVERED TRANSACTIONS

- i. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - ii. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.
- E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

12. 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.

13. 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 Grant 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 Grantor 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 Grant 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.

14. 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.

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15. 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 Commerce program administering this contract, 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 Contractor 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.

16. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant 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 Grant, but that incorporate pre-existing materials not produced under the Grant, 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 Grant, 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 Grant. 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 Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

17. DISALLOWED COSTS

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

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18. DISPUTES

Except as otherwise provided in this Grant, 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 Grant 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 Grant 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.

19. 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.

20. GOVERNING LAW AND VENUE

This Grant 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.

21. 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.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to 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.

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22. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The Grantee and its employees or agents performing under this Grant 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.

23. 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 Grant, 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.

24. 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.

25. LICENSING, 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 Grant.

26. 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 Grant.

27. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, 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.

The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

28. 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. Grantee 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.

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(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 Grant 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.

29. 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 lobbying or for working for or against ballot measures or for or against the candidacy of any person for public office.

30. 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.

31. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR 200 for all purchases funded by this contract.

All recipients of funds under this Contract, including Contractor and subrecipients or subcontractors of any tier, must follow the procurement standards in 2 CFR §§ 200.318 through 200.327, including ensuring that the procurement method used for the contracts are appropriate based on the dollar amount and conditions specified in 2 CFR § 200.320.

The Grantee's procurement system should include but not necessarily be limited to, the following:

- A. General procurement standards 2 CFR [§ 200.318](#). A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Competition 2 CFR [§ 200.319](#). Procedures that ensure all procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](#).
- C. Methods of procurement to be followed 2 CFR [§ 200.320](#).
- D. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms 2 CFR [§ 200.321](#).
- E. Domestic preferences for procurements 2 CFR [§ 200.322](#).

32. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Grant 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 Grant provided, however, that reasonable fees or bona fide technical consultant, managerial,

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or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

33. PUBLICITY

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.

34. 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.

35. 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.

The Grantee 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.

36. REGISTRATION WITH DEPARTMENT OF REVENUE

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

37. RIGHT OF INSPECTION

At no additional cost all records relating to the Grantee's performance under this Grant 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 Grant. The Grantee shall provide access to its facilities for this purpose.

38. 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 Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

39. 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.

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40. SUBCONTRACTING

The Grantee may only subcontract work contemplated under this Grant 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 Grant; (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 Grant. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Grant. 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.

41. SURVIVAL

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

42. 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.

43. 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.

44. TERMINATION FOR CONVENIENCE

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

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45. 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:

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

46. TREATMENT OF ASSETS

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.

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- 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.

47. 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 Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

48. WORK HOURS AND SAFETY STANDARDS

The Grant Work Hours and Safety Standards Act (40 U.S.C. 327-333)-Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Grant Work Hours Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

SCOPE OF WORK

Funds awarded under this grant will be used for capital expenditures for the Lewis County. A brief description of the project.

The Winlock Broadband Expansion project is a partnership between Lewis County and ToledoTel. ToledoTel will install and maintain a fiber optic network connecting over 2,345 premises in and around the Winlock area to a fiber-to-the-home (FTTP) network infrastructure, and will light the network as an ISP, while Lewis County maintains ownership of the fiber network for at least 25 years. The vast majority of the premises served are residential lots, although there are a handful of businesses among them. Fiber will be installed along existing road rights of way, through existing franchises with the city of Winlock, Lewis County, and the Washington State Department of Transportation. It will also extend up private roads and drives, in the previously disturbed area, to existing premises. When a property is undeveloped, a slack line will remain in the right of way, but it will not be run up into an undeveloped parcel or otherwise create a new disturbed area there.

This project includes some 250 miles of buried fiber and about 3 miles of attaching fiber to preexisting utility poles, consisting of all rights of way within the telephone exchange area containing Winlock and its surroundings. The fiber will be buried within existing rights of way in conduit, with buried vaults for splicing placed about every 1500-2000 feet. The vaults are a maximum of 24 inches wide, 24 inches deep, and 36 inches long. The process for laying the conduit is to use a utility plow that makes a narrow trench a few inches wide, into which the conduit is inserted. The trench then collapses and can be compacted back down around the conduit for stability and longevity. This process keeps ground disturbance to a minimum. Fiber is then blown or pulled through the conduit afterwards from surface access points, preventing the need to excavate the conduit or cable. Additional fiber can be added later through this same surface-access technique.

ToledoTel will complete the minimum amount of mainline fiber construction necessary to begin connecting subscriber locations as soon as possible. The project's original goal was to connect 820 subscriber locations by the end of 2022; 1,640 locations by the end of 2023; 1,870 locations by the end of 2024; 2,100 locations by the end of 2025; and 2,220 locations by the end of 2026. Due to delays in obtaining the contract and beginning work, the goal is to connect as many of these locations as quickly as possible to catch up to this original timeline. Lewis County will ensure that Toledo Tel performs the work as described.

The broadband technology funded by this grant will result in minimum service speed to each of the above premises that reliably meets or exceeds 100 megabits per second download (Mbps) and between at least 20 Mbps and 100 Mbps and be scalable to a minimum of 100 Mbps symmetrical download and upload speeds.

Grantee must require that all retail internet service providers using the broadband funded through this grant to either participate in the Federal Communications Commission's Affordable Connectivity Program (ACP), or otherwise provide access to a broad-based affordability program to consumers with low incomes in the broadband infrastructure proposed service area that provides benefits commensurate with The project needs to meet all applicable Local, State, and/or Federal standards.

The location of the project is in Winlock and surrounding rural areas.

Project activities will include and not be limited to:

- **Engineering** Includes detailed design engineering, permitting and rights of way, creation of construction documents
- **Procurement** Identification, ordering, receiving, and inventory of all necessary materials and equipment.
- **Construction** Advertisement of bids for ISP contractor. Contractor Selection. Construction Management. Advertisement of bids for drops contractor, selection. Management
- **Customer Connection/Completion** Installation of network equipment in customer homes. Network connections and provision of internet service.

The project needs to meet all applicable Local, State, and/or Federal standards.

The "Copyright Provisions", Section 16 of the General Terms and Conditions, are not intended to apply to any architectural and engineering design work funded by this grant.

CERTIFICATION PERFORMANCE MEASURE – SCOPE OF WORK

The Grantee, by its signature, certifies that the declaration set forth above has been reviewed and approved by the Grantee's governing body as of the date and year written below.

Erik Martin, County Manager

DATE

CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT

Estimated Project Cost:	Amount
Architecture and Engineering	\$3,500,000.00
Design contingency	50,000.00
Construction and Equipment	18,950,000.00
Construction contingency	1,000,000.00
Construction Management	2,245,000.00
Indirect Cost- 10% Modified Total Direct Cost MTDC*	65,000.00
Permits	40,000.00
Estimated Total Project Cost	\$25,850,000.00

*MTDC includes: Direct salaries, wages and applicable fringe benefits, materials and supplies, Services, Travel and up to the first \$25,000 of each subaward (regardless of the period of performance). MTDC excludes: Equipment, Capital expenditures and the portion of each subaward in excess of \$25,000.

Type of Funding	Source Description	Amount
Grant	Washington State Department of Commerce	\$23,500,000
Other Grants		
Grant #1		\$
Total Other Grants		\$0.00
Other Loans		
Loan #1		\$
Total Loans		\$0.00
Other Local Revenue		
Source #1		
Total Local Revenue		
Other Funds		
Source #1	Toledo Tel Agreement	\$2,350,000
Total Other Funds		\$2,350,000
Total Project Funding		\$25,850,000

CERTIFICATION PERFORMANCE MEASURE - AVAILABILITY OF FUNDS

The Grantee, by its signature, certifies that project funding from sources other than those provided by this Grant Agreement and identified above has been reviewed and approved by the Grantee's governing body or board of directors, as applicable, and has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this Grant Agreement, as of the date and year written below. The Grantee shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for COMMERCE's review upon reasonable request.

Erik Martin, County Manager

DATE

CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES

The GRANTEE, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the Project funded by this Grant Agreement, 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.

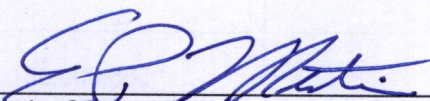
GRANTEE certifies that "all laborers and mechanics employed by contractors and subcontractors in the performance of the project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate state entity pursuant to a corollary state prevailing-wage-in construction law (commonly known as "baby Davis-Bacon Acts").

GRANTEE certifies that "the indicated project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)).

For any funds are used by the GRANTEE for the purpose of construction, applicable State Prevailing Wages must be paid.

CERTIFICATION PERFORMANCE MEASURE – PREVAILING WAGES

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body as of the date and year written below.



Erik Martin, County Manager

9-27-22

DATE

CERTIFICATION OF THE 10% OF THE MODIFIED TOTAL DIRECT COSTS (MTDC)

Grantee Name: Lewis County

Any non-Federal entity that has never received a negotiated indirect cost rate may elect to charge a de Minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. If chosen, this methodology must be used consistently for all Federal awards. Costs must be consistently charged as either direct or indirect costs. [§ 200.414 \(5\) \(f\) Indirect \(F&A\) costs.](#)

The intent of this verification is to assure that calculation of MTDC is done with the necessary accounting expertise to comply with the costs rules in 2 CFR, Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.

TOTAL DIRECT COSTS AMOUNT <i>Salaries + Benefits + Travel + Supplies + Contracted Services</i>	Approved Budget
a. Direct Salaries and Fringe Benefits	\$650,000.00
b. Travel	
c. Consumable Supplies	
d. Contract Services (contract amount)*:	
e. Contract Services (contract amount)*:	
f. Contract Services (contract amount)*:	
g. Subtract the amount of the <i>Contracted Services</i> line item that is over \$25,000*	
Total = MTDC base amount (add the above the rows "a-g", subtract row "h")	\$650,000.00
10% of the Base Amount = MTDC Indirect Total	\$65,000.00

[§ 200.68 Modified Total Direct Cost \(MTDC\)](#). Modified Total Direct Cost is defined as: *All direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel and sub-awards and subcontracts up to the first \$25,000 of each sub-award or subcontract (regardless of the period of performance of the sub-awards and subcontracts under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each sub-award and subcontract in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.*


 Erik Martin, County Manager

9/28/22
 DATE



DocuSign Routing Form

SBO Unit

Review by (Title):	Name:	Date:	Initials:
Contract Manager	Chelesa Bagwell		
SBO Infrastructure Programs Manager	Connie Rivera		
LGD Deputy Assistant Director (before AD signature)	Tony Hanson		

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 Program: WSBO
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 Certificate Pages: 5 Initials: 0
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mark.barkley@commerce.wa.gov

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Becky Butler

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BOCC AGENDA ITEM SUMMARY

Resolution: 22-313

BOCC Meeting Date: Sept. 27, 2022

Suggested Wording for Agenda Item:

Agenda Type: Deliberation

Approve a grant agreement with the Washington State Broadband Office awarding Lewis County \$23.5 million to install broadband infrastructure in and around Winlock

Contact: Becky Butler

Phone: 360-740-1198

Department: CM - County Manager (including Budget)

Description:

This resolution approves a grant agreement with the Washington State Broadband Office awarding Lewis County \$23.5 million for the installation of fiber optic broadband infrastructure within Winlock and the surrounding rural areas.

Approvals:

User	Status
Grace Jimenez	Pending
PA's Office	Pending

Publication Requirements:

Publications:

Additional Copies:

Eric Eisenberg

Cover Letter To: