



**Federal General Grant with**

**City of Yakima**

**through**

Commerce Energy Division

**Grant Number:  
22-56104-035**

**For**

**Utility Residential Customer Arrearages**

**Dated:** Tuesday, November 1, 2022

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## Face Sheet

Grant Number: 22-56104-035

**Energy Division**  
**Utility Residential Customer Arrearages**

**Subrecipient**  
 **Contractor**

<b>1. Grantee</b> City of Yakima 129 N 2nd St Yakima, WA 98901-2937		<b>2. Grantee Doing Business As (as applicable)</b> <Insert DBA name> <Insert DBA mailing address> <Insert DBA physical address> <Insert DBA location>	
<b>3. Grantee Representative</b> James A Dean Utility Customer Services Manager 509-576-6615 james.dean@yakimawa.gov		<b>4. COMMERCE Representative</b> Anneka McDonald 360-764-6103 Anneka.mcdonald@commerce.wa.gov <span style="float: right;">                     PO Box 42525                      1011 Plum St. SE                      Olympia, WA 98504                 </span>	
<b>5. Grant Amount</b> \$450,927.95	<b>6. Funding Source</b> Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> 11/1/2022	<b>8. End Date</b> 6/30/2023
<b>9. Federal Funds (as applicable)</b> \$450,927.95	<b>Federal Agency:</b> US Department of the Treasury		<b>ALN</b> 21.027  <b>Indirect Rate</b> N/A
<b>10. Tax ID #</b> N/A	<b>11. SWV #</b> SWV0007122-02	<b>12. UBI #</b> 397-005-272	<b>13. UEI #</b> FJNNX1XFJ9K3
<b>14. Grant Purpose</b> The purpose of this contract is to provide funding for public and private water, sewer, garbage, electric, and natural gas utilities to address low-income customer arrearages compounded by the COVID-19 20 pandemic and the related economic downturn that were accrued between March 1, 2020, and December 31, 2021.  COMMERCE, defined as the Department of Commerce, and the Grantee, as defined above, 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: Grantee Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Budget			
<b>FOR GRANTEE</b>  _____ Robert Harrison, City Manager  _____ Date		<b>FOR COMMERCE</b>  _____ Michael Furze, Assistant Director, Energy Division  _____ Date  <b>APPROVED AS TO FORM ONLY</b> <b>BY ASSISTANT ATTORNEY GENERAL</b> <b>APPROVAL ON FILE</b>	

## **Special Terms and Conditions**

### **1. ACKNOWLEDGEMENT OF FEDERAL FUNDING**

Federal Award Date: Not Provided  
Federal Award Identification Number (FAIN): SLFRP0002  
Total amount of the federal award: \$100,000,000.00  
Awarding official: US Department of Treasury

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 No. SLFRF 2022 awarded by 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 Energy Division, Washington State Department of Commerce.”

### **2. 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.

### **3. COMPENSATION**

COMMERCE shall pay an amount not to exceed \$450,927.95 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Grantee's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

### **4. BILLING PROCEDURES AND PAYMENT**

COMMERCE will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE via the Commerce Grants Management System.

If required, the attachments to the invoice request in the Commerce Grants Management System 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 22-56104-035. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the 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 Grant through June 30, regardless of the Grant 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, if the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

#### Disallowed Costs

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

In the event that funding provided under this grant is used for any other reason than the purpose stated in Section 14 of the Face Sheet, the Grantee must repay all grant funds that were not expended for that purpose (i.e. to address low-income customer arrearages), 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 program funded. Repayment shall be pursuant to Section 29 (Recapture) of the General Terms and Conditions.

### **5. SUBGRANTEE/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 subgrantees/subcontractors and the portion of Grant funds expended for work performed by subgrantees/subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subgrantees/subcontractors. "Subgrantees/subcontractors" shall mean subgrantees of any tier.

### **6. 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 Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

### **7. 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 – Budget

## **General Terms and Conditions**

### **1. DEFINITIONS**

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" or "Department" shall mean the Washington Department of Commerce.
- C. "Grant" or "Agreement" or "Contract" 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 Grant 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. "Modified Total Direct Costs" (MTDC) shall mean all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards 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 subaward in excess of \$25,000.
- F. "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.
- G. "State" shall mean the state of Washington.
- H. "Subaward" shall mean an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.
- I. "Subrecipient" shall mean a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.
- J. "Subgrantee/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 Grant with the Grantee. The terms "subgrantee" and "subcontractor" means any tier.

### **2. ACCESS TO DATA**

In compliance with RCW 39.26.180, the Grantee shall provide access to data generated under this Grant to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings,

conclusions, and recommendations of the Grantee's reports, including computer models and the methodology for those models.

**3. ADVANCE PAYMENTS PROHIBITED**

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

**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. 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.

**8. 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 attorneys' fees and costs.

**9. 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 Uniform Guidance 2 CFR 200, 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 the [Federal Audit Clearinghouse](#).

**10. 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 they:



- i. Are not presently debarred, suspended, proposed for debarment, and 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 Grantee shall attach an explanation to this Grant.
- 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.

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

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

- iii. All Personal Information in the possession of the Grantee that may not be disclosed under state or federal law.
- 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 Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this 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.

## 12. **CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, COMMERCE may, in its sole discretion, by written notice to the Grantee terminate this Grant 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 Grant.

Specific restrictions apply to Granting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Grantee and their subgrantee(s) must identify any person employed in any capacity by the state of Washington that worked with the COMMERCE program executing this Grant, including but not limited to formulating or drafting the legislation, participating in procurement planning and execution, awarding Grants, and monitoring Grant, 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 Grant is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Grantee as it could pursue in the event of a breach of the Grant 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 Grant.

## 13. **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.

#### **14. 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 Grantee's name, address, and Grant number; and
- be mailed to the Director and the other party's (respondent's) Grant 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.

#### **15. DUPLICATE PAYMENT**

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

#### **16. 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.

## **17. INDEMNIFICATION**

To the fullest extent permitted by law, 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, from and against all claims for injuries or death arising out of or resulting from the performance of the Grant. "Claim" as used in this Grant, 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.

Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subgrantee 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 subgrantee's performance or failure to perform the Grant. 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.

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

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

The parties intend that an independent Grantee 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.

## **19. INDIRECT COSTS**

Grantee shall provide their indirect cost rate that has been negotiated between their entity and the Federal Government. If no such rate exists a de minimis indirect cost rate of 10% of modified total direct costs (MTDC) will be used.

## **20. INDUSTRIAL INSURANCE COVERAGE**

Grantee shall comply with all applicable provisions of Title 51 RCW. 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 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 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.

## **21. LAWS**

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

## **22. LICENSING, ACCREDITATION AND REGISTRATION**

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

## **23. LIMITATION OF AUTHORITY**

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

amendment, modification, or waiver or any clause or condition of this Grant is not effective or binding unless made in writing and signed by the Authorized Representative.

#### **24. 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 Grant may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further Grants 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 Grant 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.

#### **25. 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.
  - 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.

#### **26. POLITICAL ACTIVITIES**

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

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

#### **27. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS**

All Grantees must establish procurement policies and procedures in accordance with 2 CFR Part 200, for all purchases funded by this Grant.

The Grantee's procurement system should include at least the following:

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

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

## **28. 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.

## **29. RECAPTURE**

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, 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 Grant.

## **30. RECORDS MAINTENANCE**

The Grantee shall maintain books, records, documents, data and other evidence relating to this Grant 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 Grant.

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 Grant, 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.

**31. REGISTRATION WITH DEPARTMENT OF REVENUE**

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

**32. RIGHT OF INSPECTION**

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

**33. 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.

**34. SEVERABILITY**

The provisions of this Grant 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 Grant.

**35. SITE SECURITY**

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

**36. SUBGRANTING**

The Grantee may only subgrant work contemplated under this Grant if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subgranting, the Grantee shall maintain written procedures related to subgranting, as well as copies of all subgrants and records related to subgrants. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subgranting procedures as they relate to this Grant; (b) prohibit the Grantee from subgranting with a particular person or entity; or (c) require the Grantee to rescind or amend a subgrant.

Every subgrant shall bind the Subgrantee to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subgrantee fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subgrantee to assure fiscal conditions of this Grant. In no event shall the existence of a subgrant operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

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

**37. 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.

**38. TAXES**

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

**39. TERMINATION FOR CAUSE**

In the event COMMERCE determines the Grantee has failed to comply with the conditions of this Grant in a timely manner, COMMERCE has the right to suspend or terminate this Grant. Before suspending or terminating the Grant, 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 Grant 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 Grant and the replacement or cover Grant and all administrative costs directly related to the replacement Grant, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the Grant, 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 Grant. 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 Grant are not exclusive and are, in addition to any other rights and remedies, provided by law.

**40. 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.

**41. TERMINATION PROCEDURES**

Upon termination of this Grant, COMMERCE, in addition to any other rights provided in this Grant, may require the Grantee to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this Grant 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 Grant.



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 Grant.

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

- A. Stop work under the Grant on the date, and to the extent specified, in the notice;
- B. Place no further orders or subgrants for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant 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 subgrants 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 subgrants;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subgrants, 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 Grant 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 Grant, which is in the possession of the Grantee and in which COMMERCE has or may acquire an interest.

#### **42. 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 Grant, 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 Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, 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 Grant.
- 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 Grant.
- E. All reference to the Grantee under this clause shall also include Grantee's employees, agents or subgrantees/subcontractors.

43. **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.

## **Attachment A: Scope of Work**

Section 128 (199), 2022 Supplemental Operating Budget proviso states:

\$100,000,000 of the coronavirus state fiscal recovery fund federal appropriation is provided solely for grants for public and private water, sewer, garbage, electric, and natural gas utilities to address low-income customer arrearages compounded by the COVID-19 20 pandemic and the related economic downturn that were accrued between March 1, 2020, and December 31, 2021.

- (a) By May 27, 2022, each utility that wishes to participate, must opt-in to the grant program by providing the department the following information:
  - i. Current arrearage balances for residential customers as of March 31, 2022; and
  - ii. Available information on arrearage balances of low-income customers, including customers who received assistance from the low-income home energy assistance program, low-income water assistance program, or ratepayer-funded assistance programs between April 1, 2020, and March 31, 2022, as of March 31, 2022. If a utility does not have access to information regarding customer participation in these programs, the department must distribute funding to the community action program serving the same service area as the utility instead of the utility.
- (b) In determining the amount of funding each utility may receive, the department must consider:
  - i. Each participating utility's proportion of the aggregate amount of arrearages among all participating utilities;
  - ii. Utility service areas that are situated in locations experiencing disproportionate environmental health disparities;
  - iii. American community survey poverty data; and
  - iv. Whether the utility has leveraged other fund sources to reduce customer arrearages.
- (c) The department may retain up to one percent of the funding provided in this subsection to administer the program.
- (d) Each utility shall disburse funds directly to customer accounts by December 31, 2022. Funding shall only be distributed to customers that have participated in the low-income home energy assistance program, low-income water assistance program, or ratepayer-funded assistance programs.
- (e) Utilities may, but are not required to, work with other utilities or use community action agencies to administer these funds following the eligibility criteria for the low-income home energy assistance program and the low income household water assistance program.
- (f) By March 1, 2023, each utility who opted into the grant program must report to the department, utilities and transportation commission, and state auditor on how the funds were utilized and how many customers were supported.
- (g) Utilities may account for and recover in rates administrative costs associated with the disbursement of funds provided in this subsection.

## Tasks and Deliverables

### **Task 1: Funding Priorities**

Recipients will be asked to respond in the Smartsheet link provided by Commerce.

1. How is your utility planning to prioritize funds to support qualifying customers in need?

Please choose all that apply.

- Customers who have received Low-Income Home Energy Assistance (LIHEAP) assistance and/or Low-Income Household Water Assistance (LIHWAP)
- Income level
- Longest held balances
- Largest balances
- Renter-held accounts
- All customers with qualifying debt
- Other

2. Please rank prioritization in the order of which customers will receive funding first:

Rank in the order of 1 = the highest priority, 6 = the lowest priority and 0 = does not apply.

- Customers who have received Low-Income Home Energy Assistance (LIHEAP) assistance and/or Low-Income Household Water Assistance (LIHWAP).\*
- Income level\*
- Longest held balances\*
- Largest balances
- Renter-held accounts
- All customers with qualifying debt

3. Based on your answer to the previous question, do you plan to:

- Apply funding to all prioritized customers equally?
  - Yes
  - No
- Eliminate debt of prioritized customer class before moving to the next priority group?
  - Yes
  - No
- Apply some other criteria or strategy?

### **Task 2: Impacted and Disproportionality Impacted Reporting**

Grantee must ensure that funding is only distributed to customers that have participated in the low-income home energy assistance program, low-income water assistance program, or ratepayer-funded assistance programs. As used within this Contract, “low-income customers” are customers who fall within the Impacted/Disproportionately Impacted table listed below.

In this task Grantee will review the current State and Local Recovery Funds (SLRF) guidance for reporting and responsibilities.

Review the reporting guidelines within this link: [Utility-Moratorium - Washington State Department of Commerce](#)

1. Grantees will be asked to respond in the Smartsheet link provided by Commerce.

- a. What Impacted and/or Disproportionately Impacted population does this project primarily serve?
- b. If this project primarily serves more than one Impacted and/or Disproportionately Impacted population, please select up to two additional populations served.
  - i. Grantee will report from the following options:

	Impacted	Disproportionately Impacted
Assistance to Households	<ul style="list-style-type: none"> <li>• Low- or-moderate income households or populations<sup>9</sup></li> <li>• Households that experienced unemployment</li> <li>• Households that experienced increased food or housing insecurity</li> <li>• Households that qualify for certain federal programs<sup>10</sup></li> <li>• For services to address lost instructional time in K-12 schools: any students that lost access to in-person instruction for a significant period of time</li> <li>• Other households or populations that experienced a negative economic impact of the pandemic other than those listed above (please specify)</li> </ul>	<ul style="list-style-type: none"> <li>• Low-income households and populations<sup>11</sup></li> <li>• Households and populations residing in Qualified Census Tracts</li> <li>• Households that qualify for certain federal programs<sup>12</sup></li> <li>• Households receiving services provided by Tribal governments</li> <li>• Households residing in the U.S. territories or receiving services from these governments</li> <li>• For services to address educational disparities, Title I eligible schools<sup>13</sup></li> <li>• Other households or populations that experienced a disproportionate negative economic impact of the pandemic other than those listed above (please specify)</li> </ul>

<sup>9</sup> Low or moderate-income households and communities are those with (i) income at or below 300 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS) or (ii) income at or below 65 percent of the Area Median Income for the county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD).

<sup>10</sup> For Impacted households, these programs are Children’s Health Insurance Program (“CHIP”); Childcare Subsidies through the Child Care and Development Fund (“CCDF”) Program; Medicaid; National Housing Trust Fund (“HTF”), for affordable housing programs only; Home Investment Partnerships Program (“HOME”), for affordable housing programs only.

<sup>11</sup> Low-income households and communities are those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by HHS or (ii) income at or below 40 percent of Area Median Income for its county and size of household based on the most recently published data by HUD.

<sup>12</sup> For Disproportionately Impacted households, these programs are Temporary Assistance for Needy Families (“TANF”), Supplemental Nutrition Assistance Program (“SNAP”), Free- and Reduced-Price Lunch (“NSLP”) and/or School Breakfast (“SBP”) programs, Medicare Part D Low-Income Subsidies, Supplemental Security Income (“SSI”), Head Start, Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”), Section 8 Vouchers, Low-Income Home Energy Assistance Program (“LIHEAP”), and Pell Grants.

<sup>13</sup> For educational services and other efforts to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school service as eligible. “Title I eligible schools” means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

### **Task 3: Promoting Equitable Outcomes**

Please describe how your jurisdiction’s planned or current use of funds prioritizes economic and racial equity as a goal, names specific targets intended to produce meaningful equity results at scale, and articulates the strategies to achieve those targets. In addition, please explain how your jurisdiction’s overall equity strategy translates into the specific services or programs offered by your jurisdiction.

Please also describe any constraints or challenges that impacted project success in terms of increasing equity.

1. Grantees will be asked to respond in the Smartsheet link provided by Commerce.

#### **Task 4: Expenditure Reporting**

1. All Grantees are required to submit Project and Expenditure Reports with each invoice submitted for payment.
  - a. Grantees must submit a detailed expenditure report of all expenses (totaling the requested reimbursement amount) and backup invoice documentation. The expenditure report/ledger must include:
    - i. Adopted budgets
    - ii. Dates of expenditures
    - iii. Expense categories (aligning with the categories from Impacted and Disproportionately Impacted Table)
  - b. Number of households with unpaid service bills.
    - i. Number of months
    - ii. Arrearage amount
2. Subawards, Contracts, Grants, Loans, Transfers, and Direct Payments: Each Grantee shall also provide detailed obligation and expenditure information for any contracts and grants awarded, loans issued, transfers made to other government entities, and direct payments made by the recipient that are greater than \$50,000.

## Attachment B: Budget

Item	Description	Amount
1	Grant for residential customer arrearages	\$450,927.95
	<b>Total Grant Amount</b>	<b>\$450,927.95</b>