



## **Empire Health Foundation**

### **REQUEST FOR PROPOSALS (RFP)**

**RFP NO. 2020-11**

**NOTE:** *You are responsible for sending your name, address, e-mail address, and telephone number to the RFP Coordinator in order for your organization to receive any RFP amendments or bidder questions/agency answers.*

**PROJECT TITLE:** Andy Hill Cancer Research Endowment Performance Audit 2020

**PROPOSAL DUE DATE:** December 7, 2020, 4:00 p.m. *Pacific Time*

**ESTIMATED TIME PERIOD FOR CONTRACT:** **January 19, 2021–June 30, 2021**

**CONSULTANT ELIGIBILITY:** This procurement is open to those consultants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

#### **CONTENTS OF THE REQUEST FOR PROPOSALS:**

1. Introduction
2. General Information for Consultants
3. Proposal Contents
4. Evaluation and Award
5. Exhibits
  - A. Certifications and Assurances
  - B. Service Contract with General Terms and Conditions

## TABLE OF CONTENTS

<b>1. Introduction</b> .....	<b>3</b>
1.1 Purpose and Background .....	3
1.2 Objectives and Scope of Work .....	3
1.3 Minimum Qualifications .....	4
1.4 Funding .....	4
1.5 Period of Performance .....	4
1.6 Contracting with Current or Former State Employees .....	5
1.7 Definitions .....	5
1.8 ADA .....	5
<b>2. General Information for Consultants</b> .....	<b>6</b>
2.1 RFP Coordinator .....	6
2.2 Estimated Schedule of Procurement Activities .....	6
2.3 Submission of Proposals .....	7
2.4 Proprietary Information/Public Disclosure .....	7
2.5 Revisions to the RFP .....	7
2.6 Complaint Process .....	8
2.7 Responsiveness .....	8
2.8 Most Favorable Terms .....	8
2.9 Contract and General Terms & Conditions .....	8
2.10 Costs to Propose .....	8
2.11 No Obligation to Contract .....	9
2.12 Rejection of Proposals .....	9
2.13 Commitment of Funds .....	9
2.14 Electronic Payment .....	9
2.15 Insurance Coverage .....	9
<b>3. Proposal Contents</b> .....	<b>10</b>
3.1 Letter of Submittal .....	10
3.2 Technical Proposal .....	10
3.3 Management Proposal .....	11
3.4 Cost Proposal .....	13
<b>4. Evaluation and Contract Award</b> .....	<b>14</b>
4.1 Evaluation Procedure .....	14
4.2 Evaluation Weighting and Scoring .....	14
4.3 Notification to Proposers .....	14
4.4 Debriefing of Unsuccessful Proposers .....	15
4.5 Protest Procedure .....	15
<b>5. RFP Exhibits</b> .....	<b>17</b>
Exhibit A Certifications and Assurances	
Exhibit B Service Contract Format including General Terms and Conditions	

# 1. INTRODUCTION

## 1.1. PURPOSE AND BACKGROUND

Empire Health Foundation (hereinafter “EHF”), serving as Program Administrator for the Andy Hill Cancer Research Endowment (hereinafter “CARE Fund”), is initiating this Request for Proposals (RFP) to solicit proposals from firms interested in participating on a project to conduct an independent performance audit of the CARE Fund. Revised Code of Washington (RCW) [43.348.060\(2\)](#) requires that the CARE Fund and the Department of Commerce (hereinafter “COMMERCE”) periodically, but not less often than every three years, conduct a request for proposal and retain the services of an independent auditor with experience in performance auditing of research granting entities similar to the CARE Fund. The audit will evaluate the CARE Fund’s strategic plan, program, and the program administrator and publish a report assessing its performance and providing recommendations for improvement.

The CARE Fund was signed into law by Governor Jay Inslee in July 2015. The first CARE Fund board of directors were appointed in June 2016 and began meeting in October 2016. In June 2017, a program administrator was selected to work with the board to carry out the duties outlined in Chapter [43.348 RCW](#). The CARE Fund has awarded 17 grants in six rounds of grantmaking, the first of which were awarded in December 2017. More information about the CARE Fund and its grant programs can be found on its website [www.wacarefund.org](http://www.wacarefund.org).

EHF intends to award one contract to provide the services described in this RFP.

## 1.2. OBJECTIVES AND SCOPE OF WORK

The CARE Fund legislation was signed into law in 2015, enabling the State to provide up to \$10 million annually to fund cancer research in Washington State. The legislation requires fiscal and public accountability through an independent performance audit. The performance audit must evaluate the CARE Fund’s strategic plan, current grant programs, and program administrator. EHF issues this RFP with the intent of procuring services to complete an independent performance audit of the CARE Fund for the period June 6, 2017 to June 30, 2020.

The focus of the performance audit is to evaluate the CARE Fund’s strategic plan, the program’s process for awarding grants against the statutory requirements stated in Chapter 43.348 RCW, and the program administrator performance on its scope of work. The performance audit shall include a review the degree to which the CARE Fund meets the following:

- Strategic plan requirements as outlined in RCW 43.348.005(2)
- Requirements related to grant awards and grants management
- Program Administrator’s execution of the duties stated in Chapter 43.348 RCW and its service contracts with COMMERCE

Excluded from the performance audit is the scientific performance or economic impact of grant awards. Further excluded from the performance audit is the independent financial audit.

The selected independent auditor will deliver the following:

1. **Audit Plan.** The auditor will develop a performance audit plan based on Chapter 43.348 RCW and a comprehensive risk assessment model, developed by the auditor, which identifies in priority order the program and operational areas to audit. The audit plan will adhere to Generally Accepted Government Auditing Standards (GAGAS) and the Government Accountability Office’s (GAO) Auditing Standards and provide the methodology that will be used to address the audit objectives above and as prescribed in RCW 43.348.060.

The audit plan will also describe the nature and extent of the audit procedures to be used for collecting and analyzing evidence, including the specific steps and tests the auditors will

perform. The auditor will design the audit methodology to obtain sufficient and appropriate evidence to address the audit objectives, reduce audit risk to an acceptable level, and provide reasonable assurance that the evidence is sufficient and appropriate to support the findings and conclusions. The plan will also include the expected dates for completing field work for each audit objective. The auditor shall allow and recommend within their scope, a reasonable amount of time, which can be negotiated, for the CARE Fund to cure any findings or recommendations. The cure times should be factored in to the overall timeline, with the project completion date remaining the same.

2. Draft Report. The auditor will provide a written draft performance audit report that includes observations, conclusions, and actionable recommendations for the CARE Fund. The findings in the draft audit report must be fully supported with sufficient and appropriate evidence as required by the GAO's Government Auditing Standards. The auditor must communicate its findings, conclusions, and recommendations, and provide the CARE Fund staff an opportunity to review and comment per GAGAS.
3. Draft Final Report. The auditor will provide a written draft final performance audit report that contains observations, conclusions, and actionable recommendations for the CARE Fund. The draft final audit report must be fully supported with sufficient and appropriate evidence as required by the GAO's Government Auditing Standards and contain the following:
  - a. Executive Summary
  - b. Objectives, scope, and methodology of the audit
  - c. Audit results, including findings, conclusion, and recommendations
  - d. Statement confirming the auditor's compliance with GAO auditing standards
  - e. Summary of the views of the CARE Fund staff and board of directors
  - f. Nature of any confidential or sensitive information omitted, if applicable

The auditor will create a presentation to convey the results of the audit and make an in-person or web conference presentation to the CARE Fund board of directors and staff.

4. Final Report. The auditor will submit a final audit report to EHF. The auditor will provide 15 hard copies and one electronic copy of the final report. The final report must contain the following:
  - a. Executive summary
  - b. Objectives, scope, and methodology of the audit
  - c. Audit results, including findings, conclusion, and recommendations
  - d. Statement confirming the auditor's compliance with GAO auditing standards
  - e. Summary of the views of the CARE Fund staff and board of directors to auditor recommendations
  - f. Nature of any confidential or sensitive information omitted, if applicable

### **1.3 MINIMUM QUALIFICATIONS**

Minimum qualifications include:

- Licensed to do business in the state of Washington
- Demonstrated experience in conducting program performance audits of research granting entities similar to the Endowment
- Demonstrated experience in conducting performance audits of governmental programs or agencies in compliance with GAGAS

### **1.4 FUNDING**

EHF has budgeted an amount not to exceed One Hundred Thousand Dollars (\$100,000) for this contract. Proposals in excess of \$100,000 will be considered non-responsive and will not be evaluated.

Any contract awarded as a result of this procurement is contingent upon the availability of funding.

## 1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about January 19, 2021 and end by June 30, 2021. Amendments extending the period of performance, if any, shall be at the sole discretion of EHF.

## 1.6 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. Proposers should familiarize themselves with the requirements prior to submitting a proposal that includes current or former state employees.

## 1.7 DEFINITIONS

Definitions for the purposes of this RFP include:

**Apparent Successful Contractor:** The consultant selected as the entity to perform the anticipated services, subject to completion of contract negotiations and execution of a written contract.

**Consultant:** Individual or company interested in the RFP and that may or does submit a proposal in order to attain a contract with EHF.

**Contractor:** Individual or company whose proposal has been accepted by EHF and is awarded a fully executed, written contract.

**COMMERCE:** The Department of Commerce is the agency of the state of Washington that has contracted with Empire Health Foundation (EHF) to conduct the administrative functions of the CARE Fund.

**EHF:** Empire Health Foundation (EHF) is the program administrator of the CARE Fund that is issuing this RFP.

**Proposal:** A formal offer submitted in response to this solicitation.

**Proposer:** Individual or company that submits a proposal in order to attain a contract with EHF.

**Request for Proposals (RFP):** Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the consultant community to suggest various approaches to meet the need at a given price.

## 1.8 ADA

COMMERCE complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFP Coordinator to receive this Request for Proposals in Braille or on tape.

## 2. GENERAL INFORMATION FOR CONSULTANTS

### 2.1. RFP COORDINATOR

The RFP Coordinator is the sole point of contact for this procurement. All communications from the Consultant regarding this RFP shall be with the RFP Coordinator, as follows:

Name	Jaclyn Perez
E-Mail Address	jaclyn.perez@commerce.wa.gov
Phone Number	(360) 725-4049

Any other communication will be considered unofficial and non-binding. Consultants are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Consultant.

Prospective Proposers interested in responding to this RFP are encouraged to email the RFP Coordinator by November 17, 2020, indicating their interest with the firm's name, address, and email address where future notifications can be sent.

### 2.2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	Nov 13, 2020
Question & answer period	Nov 13–19, 2020
Issue last addendum to RFP	Nov 20, 2020
Proposals due	Dec 7, 2020
Evaluate proposals	Dec 8–22, 2020
Announce "Apparent Successful Contractor" and send notification via e-mail to unsuccessful proposers	Dec 23, 2020
Hold debriefing conferences (if requested)	Dec 28–29, 2020
Negotiate contract	Dec 23, 2020–Jan 18, 2021
Begin contract work	Jan 19, 2021

EHF reserves the right to revise the above schedule.

## **2.3 SUBMISSION OF PROPOSALS**

### **ELECTRONIC PROPOSALS:**

The proposal must be **received via email by the RFP Coordinator** no later than 4:00 p.m., Pacific Time, on December 7, 2020.

Proposals must be submitted electronically as an attachment to an e-mail to the RFP Coordinator, at the e-mail address listed in Section 2.1. Attachments to e-mail shall be in Microsoft Word format or PDF. Zipped files cannot be received and cannot be used for submission of proposals. The cover submittal letter and the Certifications and Assurances form must have a scanned signature of the individual within the organization authorized to bind the Consultant to the offer. EHF or COMMERCE does not assume responsibility for problems with Consultant's e-mail. If COMMERCE email is not working, appropriate allowances will be made.

Proposals may not be transmitted using facsimile transmission.

Consultants should allow sufficient time to ensure timely receipt of the proposal by the RFP Coordinator. Late proposals will not be accepted and will be automatically disqualified from further consideration, unless COMMERCE e-mail is found to be at fault. All proposals and any accompanying documentation become the property of EHF and COMMERCE and will not be returned.

## **2.4 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

Proposals submitted in response to this competitive procurement shall become the property of EHF and COMMERCE. All proposals received shall remain confidential until the Apparent Successful Contractor is announced; thereafter, the proposals shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of your document, must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Consultant is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right-hand corner of the page. Marking the entire proposal exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Consultant has marked as "Proprietary Information," EHF or COMMERCE will notify the Consultant of the request and of the date that the records will be released to the requester unless the Consultant obtains a court order enjoining that disclosure. If the Consultant fails to obtain the court order enjoining disclosure, EHF or COMMERCE will release the requested information on the date specified. If a Consultant obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 42.56 RCW, or other state or federal law that provides for nondisclosure, EHF and COMMERCE shall maintain the confidentiality of the Consultant's information per the court order.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

## **2.5 REVISIONS TO THE RFP**

In the event it becomes necessary to revise any part of this RFP, addenda will be provided via e-mail to all individuals who have made the RFP Coordinator aware of their interest.

EHF also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract.

## **2.6 COMPLAINT PROCESS**

Vendors may submit a complaint to the RFP Coordinator based on any of following:

- a) The solicitation unnecessarily restricts competition;
- b) The solicitation evaluation or scoring process is unfair; or
- c) The solicitation requirements are inadequate or insufficient to prepare a response.

A complaint must be submitted to the RFP Coordinator at any time prior to 5 days before the bid response deadline. The complaint must meet the following requirements:

- a) The complaint must be in writing;
- b) The complaint must be sent to the RFP coordinator in a timely manner;
- c) The complaint should clearly articulate the basis for the complaint; and
- d) The complaint should include a proposed remedy.

The RFP Coordinator will respond to the complaint in writing. COMMERCE'S action or inaction in response to the complaint will be final. There will be no appeal process

## **2.7 RESPONSIVENESS**

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Consultant is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

COMMERCE also reserves the right at its sole discretion to waive minor administrative irregularities.

## **2.8 MOST FAVORABLE TERMS**

EHF reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Consultant can propose. There will be no best and final offer procedure. COMMERCE or EHF does reserve the right to contact a Consultant for clarification of its proposal.

The Apparent Successful Contractor should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some, or all, of the Consultant's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to EHF.

## **2.9 CONTRACT GENERAL TERMS & CONDITIONS**

The apparent successful contractor will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The Consultant may submit exceptions as allowed in the Certifications and Assurances form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances form. EHF will review requested exceptions and accept or reject the same at its sole discretion.

## **2.10 COSTS TO PROPOSE**

EHF will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP

#### **2.11 NO OBLIGATION TO CONTRACT**

This RFP does not obligate EHF to contract for services specified herein.

#### **2.12 REJECTION OF PROPOSALS**

EHF reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

#### **2.13 COMMITMENT OF FUNDS**

The President of EHF or their delegate is the only individual who may legally commit EHF to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

#### **2.14 ELECTRONIC PAYMENT**

The successful contractor will be provided a form to complete with the contract to authorize such payment method.

#### **2.15 INSURANCE COVERAGE**

The Contractor is to furnish EHF with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth within the contract.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to EHF within fifteen (15) days of the contract effective date. Standard insurance requirements are included within the sample contract and its special terms and conditions attached as Exhibit B.

### **3. PROPOSAL CONTENTS**

#### **ELECTRONIC PROPOSALS:**

Proposals must be written in English and submitted electronically to the RFP Coordinator in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP)
2. Technical Proposal
3. Management Proposal
4. Cost Proposal

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal but should assist the Consultant in preparing a thorough response.

Items marked “mandatory” must be included as part of the proposal for the proposal to be considered responsive, however, these items are not scored. Items marked “scored” are those that are awarded points as part of the evaluation conducted by the evaluation team.

#### **3.1. LETTER OF SUBMITTAL (MANDATORY)**

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Consultant and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
3. Legal status of the Consultant (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue. If the Consultant does not have a UBI number, the Consultant must state that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.
5. Location of the facility from which the Consultant would operate.
6. Identify any state employees or former state employees employed or on the firm’s governing board as of the date of the proposal. Include their position and responsibilities within the Consultant’s organization. If following a review of this information, it is determined by COMMERCE that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.

#### **3.2. TECHNICAL PROPOSAL (SCORED)**

The Technical Proposal must contain a comprehensive description of services including the following elements:

- A. Project Approach/Methodology:** Include a complete description of the Consultant's proposed approach and methodology for the project. This section should convey Consultant's understanding of the proposed project.
- B. Work Plan:** Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Consultant's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of the CARE Fund staff. The Consultant may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.
- C. Project Schedule:** Include a project schedule indicating when the elements of the work will be completed. Project schedule must ensure that any deliverables requested are met.
- D. Outcomes and Performance Measurement:** Describe the impacts/outcomes the Consultant proposes to achieve as a result of the delivery of these services including how these outcomes would be monitored, measured, and reported to EHF.
- E. Risks:** The Consultant must identify potential risks that are considered significant to the success of the project. Include how the Consultant would propose to effectively monitor and manage these risks, including reporting of risks to the EHF contract manager.
- F. Deliverables:** Fully describe deliverables to be submitted under the proposed contract. Deliverables must support the requirements set forth in Section 1.2, Objectives and Scope of Work.

### 3.3. MANAGEMENT PROPOSAL

#### A. Project Management (SCORED)

- 1. **Project Team Structure/Internal Controls:** Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.
- 2. **Staff Qualifications/Experience:** Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide resumes for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments, and any other pertinent information. The Consultant must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the AGENCY.

#### B. Experience of the Consultant (SCORED)

- 1. Indicate the experience the Consultant and any subcontractors have in the following areas:
  - a. Performance auditing, or consulting for, research grantmaking entities similar to the CARE Fund
  - b. Performance auditing, or consulting for, government agencies or programs

2. Indicate other relevant experience that indicates the qualifications of the Consultant, and any subcontractors, for the performance of the potential contract.
3. Include a list of contracts the Consultant has had during the last five years that relate to the Consultant's ability to perform the services needed under this RFP. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.
4. The proposer must demonstrate that their staff collectively possess:
  - i. Recent experience auditing, consulting, or managing government agencies or research granting entities
  - ii. Ability and capacity to deliver the proposed services, including assessing the efficiency, economy, and effectiveness of government or research granting entities
  - iii. Management approach, methodology, and implementation strategies for managing and delivering their product.
  - iv. Methods for maintaining staff qualifications
  - v. Skills to communicate clearly, succinctly, and effectively both orally and in writing
5. The proposer must provide copies of two performance audit reports in which the proposing entity was the lead auditor and one set of corresponding sample work papers performed in the last two years in accordance with Government Auditing Standards.
6. The proposer must have an internal quality control system in place and participate in an external peer review of their performance auditing engagement practices at least once every three years. The peer review must be conducted by reviewers independent of the proposer and must meet all requirements of GAGAS
7. When providing auditing services, the proposer must follow the American Institute of Certified Public Accountants' (AICPA) code of professional conduct and/or the code of professional conduct of the Washington State Board of Accountancy.
8. The proposer must be aware of and comply with the Washington State Ethics in Public Service laws and rules. Refer to Chapter 42.52 RCW and Chapter 292 WAC.
9. The proposer must provide the names, affiliations and contact information of three relevant client references from past engagements.

**C. Related Information (MANDATORY)**

1. If the Consultant or any subcontractor contracted with the state of Washington during the past 24 months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
2. If the Consultant's staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
3. If the Consultant has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Consultant's position on the matter. COMMERCE will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of

the past experience. If no such termination for default has been experienced by the Consultant in the past five years, so indicate.

**D. References (MANDATORY)**

List names, addresses, telephone numbers, and fax numbers/e-mail addresses of three (3) business references for the Consultant and three (3) business references for the lead staff person for whom work has been accomplished and briefly describe the type of service provided. COMMERCE may or may not, at COMMERCE's discretion, contact references. COMMERCE may evaluate references at COMMERCE'S discretion.

**3.4. COST PROPOSAL**

The maximum fee for this contract must be One Hundred Thousand Dollars (\$100,000) or less to be considered responsive to this RFP.

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but to the Consultant whose proposal best meets the requirements of this RFP.

**A. Identification of Costs (SCORED)**

Identify all costs in U.S. dollars including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Consultant is to submit a fully detailed budget including staff costs and any expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Consultants are required to collect and pay Washington State sales and use taxes, as applicable.

Costs for subcontractors are to be broken out separately.

**B. Computation**

The score for the cost proposal will be computed by dividing the lowest cost bid received by the Consultant's total cost. Then the resultant number will be multiplied by the maximum possible points for the cost section.

## 4. EVALUATION AND CONTRACT AWARD

### 4.1. EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team(s), to be designated by COMMERCE, which will determine the ranking of the proposals.

The RFP Coordinator may contact the Consultant for clarification of any portion of the Consultant's proposal.

### 4.2. EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

<u>Technical Proposal (58%)</u>		<u>58 Points</u>
Project Approach & Methodology	10 Points (maximum)	
Quality of Work Plan	18 Points (maximum)	
Project Schedule	10 Points (maximum)	
Project Deliverables	20 Points (maximum)	
<u>Management Proposal (34%)</u>		<u>34 Points</u>
Project Team Structure and Internal Controls	15 points (maximum)	
Staff Qualifications/Experience	15 points (maximum)	
Experience of the Consultant	4 points (maximum)	
<u>Cost Proposal (8%)</u>		<u>8 Points</u>
	<b>TOTAL</b>	<b>100 POINTS</b>

### 4.3. NOTIFICATION TO PROPOSERS

EHF will notify the Apparently Successful Contractor of their selection in writing upon completion of the evaluation process. Individuals or firms whose proposals were not selected for further negotiation or award will be notified separately by e-mail.

### 4.4. DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Any Consultant who has submitted a proposal and been notified that they were not selected for contract award may request a debriefing. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Unsuccessful Consultant Notification is e-mailed to the Consultant. Debriefing requests must be received by the RFP Coordinator via email at [jaclyn.perez@commerce.gov](mailto:jaclyn.perez@commerce.gov) no later than 4:00 PM, local time, in Olympia, Washington on the third business day following the transmittal of the Unsuccessful Consultant Notification. The debriefing must be held within three (3) business days of the request.

Discussion at the debriefing conference will be limited to the following:

- Evaluation and scoring of the firm's proposal;
- Critique of the proposal based on the evaluation;
- Review of proposer's final score in comparison with other final scores without identifying the other firms.

Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted by videoconference or on the telephone and will be scheduled for a maximum of one hour.

#### **4.5. PROTEST PROCEDURE**

Protests may be made only by Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Consultant is allowed five (5) business days to file a protest of the acquisition with the RFP Coordinator. Protests must be received by the RFP Coordinator no later than 4:00 PM, local time, in Olympia, Washington on the fifth business day following the debriefing. Protests may be submitted by e-mail but must then be followed by the document with an original signature.

Consultants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Consultants under this procurement.

All protests must be in writing, addressed to the RFP Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFP number, the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination, or conflict of interest on the part of an evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the procurement document.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) EHF'S assessment of its needs or requirements.

Upon receipt of a protest, a protest review will be held by COMMERCE. The EHF President or an employee delegated by the President who was not involved in the procurement will consider the record and all available facts and issue a decision within five (5) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Consultant that also submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold COMMERCE'S action; or
- Find only technical or harmless errors in COMMERCE'S acquisition process and determine COMMERCE to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide COMMERCE options which may include:
  - Correct the errors and re-evaluate all proposals, and/or
  - Reissue the solicitation document and begin a new process, or
  - Make other findings and determine other courses of action as appropriate.

If COMMERCE determines that the protest is without merit, EHF will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

## **5. RFP EXHIBITS**

Exhibit A Certifications and Assurances

Exhibit B Service Contract Format with General Terms and Conditions

**CERTIFICATIONS AND ASSURANCES**

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract:

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by EHF without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. If there are exceptions to these assurances, I/we have described them in full detail on a separate page attached to this document.
5. I/we understand that EHF will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of EHF and COMMERCE, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly, to any other Proposer or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
9. I/we grant EHF and COMMERCE the right to contact references and other, who may have pertinent information regarding the ability of the Consultant and the lead staff person to perform the services contemplated by this RFP.
10. If any staff member(s) who will perform work on this contract has retired from the state of Washington under the provisions of the 2008 Early Retirement Factors legislation, his/her name(s) is noted on a separately attached page.

We (circle one) **are / are not** submitting proposed Contract exceptions. (See Section 2.12, Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.

**On behalf of the Consultant submitting this proposal, my name below attests to the accuracy of the above statement.**

\_\_\_\_\_  
Signature of Proposer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# **EHF CONTRACT TEMPLATE**

## “Contractor” -- Client Service Agreement

This Service Agreement (hereafter referred to as “Agreement”) is entered into between the **[Contractor Name]** (hereafter referred to as “Contractor”), having an administrative office at **[Contractor Address]**, and **Empire Health Foundation** (hereafter referred to as “Client”), having offices at 1020 W. Riverside Ave. Spokane, WA 99201. Contractor is a team of consultants, and the work will be performed by one or more consultants assigned by Contractor as detailed in Attachment A: Scope of Work. Contractor shall follow all applicable terms of the Client’s Contract #21-87101-100 (Attachment B) with the Washington State Department of Commerce, as now or hereafter amended.

- 1. Term.** This Agreement shall be in effect from date of execution (hereafter referred to as “Effective Date”) of the Agreement, and unless terminated earlier as provided in Section 8, shall expire on **[Contract End Date]**.
- 2. Services.** Contractor agrees to provide services to the Client in accordance with the terms and provisions of this Agreement and as described in the attached Scope of Work (Attachment A). The deliverables described in the Statement of Work are to be delivered to **[Client Project Lead Name and Email]**.
- 3. Timeline.** See Attachment A: Scope of Work for detailed timeline for project milestones and deliverables unless modified or extended by mutual agreement.
- 4. Fees, expenses, and payment schedule.** Unless a written change order was requested and approved by the Client, the cost for services provided under the Scope of Work shall not exceed **[Contract Amount]** without prior mutual written agreement. The cost is inclusive of all related expenses incurred by Contractor under this Agreement.

Contractor may opt to bill on a monthly basis for work performed to-date or upon completion of all deliverables. Payment from the Client is due within 30 days of receipt of invoice.

In an effort to reduce costs and environmental impact, Contractor may submit invoices electronically by email to: **[Client Project Lead Email]**.

Client shall not pay the Contractor, if the Contractor has charged or will charge the state of Washington or any other party under any other contract or agreement, for the same services or expenses.

- 5. 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 Agreement and prior to normal

completion, Client may terminate the Agreement without the 30-day written Notice of Termination requirement. In lieu of termination, the Agreement may be amended to reflect the new funding limitations.

6. **Management.** *[Contractor Project Lead Name]* and *[Client Project Lead Name]* will manage this project.
7. **Changes to Agreement.** Modifications or extensions to this Agreement shall not be made without prior mutual written agreement.
8. **Termination of Agreement.** This Agreement may be terminated by either party by providing thirty (30) days written Notice of Termination, beginning on the second day after the mailing. Where invoices are transmitted electronically, a Notice of Termination may be sent via email. If this Agreement is so terminated, Client will remain obligated to pay for all invoiced services performed through the effective date of the Notice of Termination.
9. **Confidentiality.** Information shared in the performance of this Agreement is confidential information and/or proprietary. At all times, Contractor will respect the confidentiality of the Client and will not, directly or indirectly, except as may be required due to service of valid legal process on Contractor, disclose any confidential information that has been obtained by or disclosed to Contractor as a result of this Agreement. Confidential information may include: Client financial, personnel, scientific processes, scientific discoveries, proprietary and other nonpublic information relating to the Client and its operations.

If Contractor acquires any knowledge of any trade secrets or confidential matters of the Client or program applicants, Contractor agrees to keep secret all such trade secrets or confidential matters of the Client and program applicants and not to disclose them to anyone outside the Contractor, either during or after the Contractor's engagement hereunder, except with the Client's written consent.

The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information and Protected Health Information under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

10. **Materials.** Any deliverables to be produced by Contractor under this Agreement shall be "work for hire" as the term is defined for copyright and other purposes, and shall be and become the property of Client, as applicable, which shall have all and exclusive rights to same.

**11. Independent contractor.** Contractor's relationship with the Client is that of an independent contractor. It is not the parties' intent to form an employee/employer relationship, a partnership, or a joint venture with each other. The Contractor shall not have authority to create or assume obligations on behalf of the Client. The Client shall not control or direct the details and means by which Contractor performs its work. No agent or employee of Contractor shall be deemed to be an employee or agent of Client. Contractor shall be responsible for payment of all taxes including Federal, State, and local taxes arising out of Contractor's activities in accordance with this Agreement. No benefits or compensation other than that summarized in this Agreement shall be conferred by Client to Contractor. The work performed under this Agreement will be performed entirely at Contractor's risk. Both Contractor and Client shall maintain all required business licenses and registrations during the term of this Agreement.

**12. Indemnification.** Contractor will save, defend, indemnify, and hold harmless the Client and its officers, agents, employees and members from all claims, suits, actions of whatsoever nature resulting from or arising out of the activities of its subcontractors, agents or employees acting under this Agreement. The Washington State Department of Commerce (hereafter referred to as "Commerce") and the state of Washington (hereafter referred to as "State") are not liable for claims or damages arising from performance under this Agreement. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the State, 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 Agreement. "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. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees. Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's performance or failure to perform the Agreement. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials. Contractor waives its immunity under Title 51 Revised Code of Washington to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officers, agents, or employees.

**13. Records Maintenance.** Contractor will maintain auditable books, records, documents, data, and other evidence relating to this Agreement 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

Agreement. Contractor will retain such records for a period of six (6) years after the end of this Agreement. At no additional cost, these records, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review, or audit by Client or Commerce or their duly authorized personnel, the Office of the State Auditor, or any other 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. Contractor shall include the above requirements in any subcontracts it may enter for work under this Agreement.

**14. Insurance.** Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State and Client should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission by Contractor or Subcontractor under this Agreement. The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees and Client as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct the insurers to give Client thirty (30) calendar days advance notice of any insurance cancellation, non-renewal, or modification.

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

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

**Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Agreement activity. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

**Automobile Liability.** In the event that performance pursuant to this Agreement involves the use of vehicles, owned or operated by Contractor or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile

liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

**Professional Liability, Errors and Omissions Insurance.** Contractor shall maintain Professional Liability or Errors and Omissions Insurance. Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by Contractor and licensed staff employed or under contract to the Contractor. The state of Washington, its agents, officers, and employees and Client need not be named as additional insureds under this policy.

**Fidelity Insurance.** Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Agreement shall be \$100,000 or the highest of planned reimbursement for the Agreement period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name Client as beneficiary.
- B. Subcontractors that receive \$10,000 or more per year in funding through this Agreement shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Client as beneficiary.
- C. The Contractor shall provide, at Client's request, copies of insurance instrument or certification 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 Client will be provided thirty (30) days advance written notice of cancellation.

**15. Access to Data.** In compliance with Revised Code of Washington (RCW) 39.26.180, Contractor shall provide access to data generated under this Agreement to Client, 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 Client's reports, including computer models and the methodology for those models.

**16. Conflict of Interest.** Notwithstanding any determination by the Executive Ethics Board or other tribunal, Client may, in its sole discretion, by written notice to Contractor terminate this Agreement 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 Client in the procurement of, or performance under this Agreement.

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW. Contractor and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the Andy Hill Cancer Research Endowment 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 Agreement. 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, Contractor may be disqualified from further consideration under this Agreement. In the event this Agreement is terminated as provided above, Commerce shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of a breach of the Agreement by the Client. 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.

- 17. Assignment.** Contractor may not assign this Agreement.
- 18. Attorney fees.** If suit or action is commenced by either party against the other concerning this Agreement, the prevailing party shall be awarded its costs and reasonable attorneys' fees, including any cost or fees incurred on appeal.
- 19. Warranties.** The Client agrees that any liability of Contractor to the Client that may arise under this Agreement shall be limited in the aggregate to the invoiced amounts actually paid to Contractor by the Client for the Scope of Work described in this Agreement. Contractor provides no express warranty with respect to the Scope of Work and disclaims all implied warranties to the fullest extent permitted by law.
- 20. Applicable laws.** This Agreement shall be governed by the laws of the state of Washington without reference to any choice of law principles. Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.
- 21. Recapture.** In the event that the Contractor fails to perform this Agreement in accordance with local, state, or federal laws, or other provisions of this Agreement, the Client reserves the right to recapture funds in an amount to compensate the Client for noncompliance in addition to any other remedies available at law or in equity. Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the

Client. In the alternative, the Client may recapture such funds from payments due under this Agreement.

**22. Entire agreement; amendment.** This Agreement represents the entire understanding between Contractor and the Client, and it shall not be modified except by mutual written agreement or by an amendment duly executed by both parties. With the intent to be legally bound, Contractor and the Client have hereby caused this Agreement to be executed.

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

Accepted by:

For: **[Contractor]**

Name:

Title:

Signature:

Date:

For: Empire Health Foundation

Name:

Title:

Signature:

Date:

TEMPPLATE

**Attachment A: Scope of Work**

TEMPLATE

TEMPLATE



# Department of Commerce

Innovation is in our nature.

## Services Contract with

Empire Health Foundation

through

Department of Commerce  
Life Science and Global Health Sector  
CARE Fund

## For

Program Administrator for the Andy Hill Cancer Research  
Endowment

**Start date:** July 1, 2020

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**TABLE OF CONTENTS**

Special Terms and Conditions ..... 1

    Face Sheet ..... 1

        1. Contract Management ..... 2

        2. Compensation ..... 2

        3. Billing Procedures and Payment ..... 2

        4. Subcontractor Data Collection ..... 3

        5. Insurance ..... 3

        6. Order of Precedence ..... 4

General Terms and Conditions ..... 5

    1. Definitions ..... 5

    2. Access to Data ..... 5

    3. Advance Payments Prohibited ..... 5

    4. All Writings Contained Herein ..... 5

    5. Amendments ..... 5

    6. Americans With Disabilities Act (ADA) ..... 5

    7. Assignment ..... 5

    8. Attorney's Fees ..... 5

    9. Audit ..... 6

    10. Confidentiality/Safeguarding of Information ..... 6

    11. Conflict of Interest ..... 7

    12. Copyright Provision ..... 7

    13. Disputes ..... 8

    14. Duplicate Payment ..... 8

    15. Governing Law and Venue ..... 8

    16. Indemnification ..... 8

    17. Independent Capacity of the Contractor ..... 9

    18. Industrial Insurance Coverage ..... 9

    19. Laws ..... 9

    20. Licensing, Accreditation and Registration ..... 9

    21. Limitation of Authority ..... 9

    22. Noncompliance With Nondiscrimination Laws ..... 10

    23. Political Activities ..... 10

    24. Publicity ..... 10

    25. Recapture ..... 10

    26. Records Maintenance ..... 10

    27. Registration With Department of Revenue ..... 10

    28. Right of Inspection ..... 10

    29. Savings ..... 11

    30. Severability ..... 11

    31. Site Security ..... 11

    32. Subcontracting ..... 11

    33. Survival ..... 11

    34. Taxes ..... 11

    35. Termination for Cause ..... 11

    36. Termination for Convenience ..... 12

    37. Termination Procedures ..... 12

    38. Treatment of Assets ..... 13

    39. Waiver ..... 13

**FACE SHEET**

**Contract Number: 21-87101-100**

**Washington State Department of Commerce  
Office of Economic Development & Competitiveness  
Life Sciences & Global Health Sector  
CARE Fund Program Administrator**

<b>1. Contractor</b> Empire Health Foundation P O Box 244 1020 W Riverside Ave. Spokane, WA 99210		<b>2. Contractor Doing Business As (optional)</b>	
<b>3. Contractor Representative</b> Laura Flores Cantrell CARE Executive Director W/M: (206) 939-0435 <a href="mailto:laura@wacarefund.org">laura@wacarefund.org</a>		<b>4. COMMERCE Representative</b> Jaclyn Woodson Program Manager 360-725-4049 <a href="mailto:jaclyn.perez@commerce.wa.gov">jaclyn.perez@commerce.wa.gov</a> P O Box 42525 Olympia, WA 98501-2525	
<b>5. Contract Amount</b>	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> July 1, 2020	<b>8. End Date</b> June 30, 2021
<b>9. Federal Funds (as applicable)</b>		<b>Federal Agency:</b>	
		<b><u>CFDA Number</u></b>	
<b>10. Tax ID #</b> 26-3375286	<b>11. SWV #</b> SWV0115375-00	<b>12. UBI #</b> 602-858-247	<b>13. DUNS #</b> 036570571
<b>14. Contract Purpose</b> Cancer Research Endowment (CARE) Program Administrator will provide financial and accounting management, establish policies and procedures, and distribute CARE funds through grant agreements; administrative support to the CARE personnel, and administer COVID-19 rapid response grants and cancer-COVID intersection data collection project, as directed by the CARE board.			
COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Budget.			
<b>FOR CONTRACTOR</b>		<b>FOR COMMERCE</b>	
Laura Flores Cantrell, CARE Executive Director Empire Health Foundation		Chris Green, Assistant Director Office of Economic Development & Competitiveness	
_____ Date		_____ Date	
		<b>APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL May 18, 2020</b>	

**SPECIAL TERMS AND CONDITIONS  
SERVICES CONTRACT  
STATE FUNDS**

**1. CONTRACT MANAGEMENT**

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

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

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

**2. COMPENSATION**

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

1. *Program Administrator expenses will not exceed \$Amount over a 12-month period.*
2. *Contract period 12 months*
3. *Total monthly cost = \$Amount.*

**4. BILLING PROCEDURES AND PAYMENT**

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

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number 21-87101-100. 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 Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to comply in a reasonably satisfactory manner with any material term or condition of this Contract, so long as COMMERCE has first provided to Contractor (i) written notice of this failure to comply and (ii) thirty (30) days within which to cure this failure.

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

Duplication of Billed Costs

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

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

**5. SUBCONTRACTOR DATA COLLECTION**

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited

**SPECIAL TERMS AND CONDITIONS  
SERVICES CONTRACT  
STATE FUNDS**

to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

**6. INSURANCE**

The Contractor 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 Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract.

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

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

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

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

**Automobile Liability.** In the event that performance pursuant to this Contract involves the use of vehicles, owned or operated by the Contractor or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

**Professional Liability, Errors and Omissions Insurance.** The Contractor shall maintain Professional Liability or Errors and Omissions Insurance. The Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under contract to the Contractor. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

**Fidelity Insurance.** Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000 or the highest of planned reimbursement for the Contract 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 Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.
- C. The Contractor shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

**SPECIAL TERMS AND CONDITIONS  
SERVICES CONTRACT  
STATE FUNDS**

**5. ORDER OF PRECEDENCE**

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

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget

**GENERAL TERMS AND CONDITIONS  
SERVICES CONTRACT  
STATE FUNDS**

**1. DEFINITIONS**

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

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

**2. ACCESS TO DATA**

In compliance with RCW 39.26.180, the Contractor shall provide access to data generated under this Contract 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 Contractor'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 Contract shall be made by COMMERCE.

**4. ALL WRITINGS CONTAINED HEREIN**

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

**5. AMENDMENTS**

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

**6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990. PUBLIC LAW 101-336. also referred to as the "ADA" 28 CFR Part 35**

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

**7. ASSIGNMENT**

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

**8. ATTORNEYS' FEES**

**GENERAL TERMS AND CONDITIONS  
SERVICES CONTRACT  
STATE FUNDS**

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

**9. AUDIT**

**A. General Requirements**

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate audits and shall ensure that Subcontractors also maintain auditable records.

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

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

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

**B. State Funds Requirements**

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

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

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

**C. Documentation Requirements**

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

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

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

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

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

**10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

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

1. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
2. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and

**GENERAL TERMS AND CONDITIONS  
SERVICES CONTRACT  
STATE FUNDS**

3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

**11. 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 CONTRACTOR terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the CONTRACTOR 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 CONTRACTOR and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the (YOUR PROGRAM NAME) including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the CONTRACTOR 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 CONTRACTOR. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

**12. COPYRIGHT PROVISIONS**

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

**GENERAL TERMS AND CONDITIONS  
SERVICES CONTRACT  
STATE FUNDS**

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

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

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

**13. DISPUTES**

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

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

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

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

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

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

**14. DUPLICATE PAYMENT**

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

**15. GOVERNING LAW AND VENUE**

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

**GENERAL TERMS AND CONDITIONS  
SERVICES CONTRACT  
STATE FUNDS**

**16. INDEMNIFICATION**

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

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

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

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

**17. INDEPENDENT CAPACITY OF THE CONTRACTOR**

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

**18. INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

**19. LAWS**

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

**Washington State Laws and Regulations**

- A. Affirmative action, RCW 41.06.020 (1).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17A RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. Open public meetings act, Chapter 42.30 RCW.
- H. Public records act, Chapter 42.56 RCW.

**GENERAL TERMS AND CONDITIONS  
SERVICES CONTRACT  
STATE FUNDS**

I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

**20. LICENSING, ACCREDITATION AND REGISTRATION**

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

**21. LIMITATION OF AUTHORITY**

Only the Authorized Representative or the Authorized Representative's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Authorized Representative.

**22. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with COMMERCE. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

**23. POLITICAL ACTIVITIES**

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

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

**24. PUBLICITY**

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

**25. RECAPTURE**

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

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

**26. RECORDS MAINTENANCE**

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

The Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly

**GENERAL TERMS AND CONDITIONS  
SERVICES CONTRACT  
STATE FUNDS**

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.

**27. REGISTRATION WITH DEPARTMENT OF REVENUE**

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

**28. RIGHT OF INSPECTION**

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

**29. SAVINGS**

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

**30. 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.

**31. SITE SECURITY**

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

**32. SUBCONTRACTING**

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

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

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

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

**33. SURVIVAL**

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

**GENERAL TERMS AND CONDITIONS  
SERVICES CONTRACT  
STATE FUNDS**

**34. TAXES**

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

**35. TERMINATION FOR CAUSE**

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

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

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

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

**36. TERMINATION FOR CONVENIENCE**

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

**37. TERMINATION PROCEDURES**

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

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

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

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

1. Stop work under the contract on the date, and to the extent specified, in the notice;

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

### **38. TREATMENT OF ASSETS**

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

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

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

### **39. WAIVER**

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