

Subgrant Agreement with

[CITY NAME]

through

AWC Energy Audit Grant Program

Subgrant Number: [GRANT NUMBER]

For

[PROJECT DESCRIPTION]



The Energy Retrofits and Solar Power for Public Buildings program is supported with funding from Washington's Climate Commitment Act. The CCA supports Washington's climate action efforts by putting cap-and-invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at www.climate.wa.gov.

Please enter start date of grant

Special terms and conditions

1. SUBGRANT 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 Subgrant.

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

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

2. ACKNOWLEDGEMENT OF CLIMATE COMMITMENT ACT FUNDING

This Subgrant is funded through grant funds provided to the AWC from the Washington State Department of Commerce ("Commerce") from Washington's Climate Commitment Act ("CCA") appropriated pursuant to Sec. 1002. 2023 c 474 s 1007, providing funding for 2023-25 Energy Retrofits and Solar Power for Public Buildings to the AWC to fund energy audits on city-owned tier 1 and tier 2 covered buildings and collect and manage data on the costs for cities to comply with the requirements of RCW 19.27A.210 and 19.27A.250. This Subgrant is funded in whole by funds provided to AWC under the CCA pursuant to Commerce Grant Number 24-92601-012, dated July 29, 2024 (the "Commerce Grant"), as a subgrant of the Commerce Grant,

Subgrantee agrees that any website, announcement, press release, and/or publication (written, visual, or sound) used for media-related activities, publicity, and public outreach issued by or on behalf of Subgrantee which reference programs or projects funded in whole or in part with Washington's Climate Commitment Act (CCA) funds under this Subgrant, shall contain the following statement:

"The Energy Retrofits and Solar Power for Public Buildings program is supported with funding from Washington's Climate Commitment Act. The CCA supports Washington's climate action efforts by putting cap-and-invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at www.climate.wa.gov."

The Subgrantee agrees to ensure coordinated CCA branding on work completed by or on behalf of the Subgrantee. The CCA logo must be used in the following circumstances, consistent with the branding guidelines posted at [CCA brand toolkit](#), including:

- A. Any project related website or webpage that includes logos from other funding partners;
- B. Any publication materials that include logos from other funding partners;
- C. Any on-site signage including pre- and during Construction signage and permanent signage at completed project sites; and
- D. Any equipment purchased with CCA funding through a generally visible decal.

3. COMPENSATION

Funds under this Subgrant may only be used to pay for eligible services described in the AWC-approved Scope of Work (Attachment A). AWC shall pay, solely from and to the extent of funds received from Commerce under the Commerce Grant, 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 (Attachment A), within the Budget (Attachment B). Subgrantee's compensation for services rendered shall be based on the terms of the Scope of Work and Budget (Attachment B). If Subgrantee is unable to meet the requirements of this Subgrant for any reason during the Term of the Subgrant, the Subgrantee shall immediately notify AWC to negotiate a revised Scope of Work and Budget subject to AWC's approval.

In the event state funds appropriated for the Scope of Work contemplated under this Subgrant are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of Commerce, and the parties hereto shall meet and renegotiate the Subgrant accordingly.

AWC makes no commitment of future support of Subgrantee and assumes no obligation for future support of the Scope of Work except as specifically provided for in this Subgrant.

4. BILLING PROCEDURES AND PAYMENT

AWC will pay Subgrantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for AWC. Final invoices for the state fiscal year ending June 30 may be due sooner; AWC will provide notification of the end of fiscal year due date.

The invoice, including any attachments to the invoice, shall describe and document, to AWC's satisfaction, a description of the work performed, the progress of the project, and fees. If Commerce requires any additional detail, including any additional documentation, regarding work performed, progress of the project and fees, Subgrantee shall provide such additional detail and documentation. Each invoice shall include a "Cost Certification" of an Authorized Representative of the Subgrantee that invoiced amounts include only eligible amounts under this Subgrant and that Subgrantee has satisfied all requirements in the Scope of Work due to date.

The invoice shall include the Grant Number [NUMBER]. 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 AWC within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Subgrantee.

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

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

Duplication of billed costs

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

Disallowed costs

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

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

5. SUBGRANTEE DATA COLLECTION

Subgrantee will submit reports, in a form and format to be provided by AWC, regarding work under this Subgrant performed by subgrantees and the portion of Subgrant funds expended for work performed by subgrantees, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subgrantees. "Subgrantees" shall mean subgrantees of any tier.

Subgrantee shall provide reports to AWC as set forth in the Reporting Requirements (Attachment C)

6. SUBGRANTEE'S PROPRIETARY INFORMATION

The Subgrantee acknowledges that AWC is subject to chapter 42.56 RCW, the Public Records Act, and AWC acknowledges that the Subgrantee is subject to Chapter 42.56 RCW, the Public Records Act, and that this Subgrant will be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by the Subgrantee to be Proprietary Information must be clearly identified as such by the Subgrantee. To the extent consistent with chapter 42.56 RCW, AWC will maintain the confidentiality of the Subgrantee's information in its possession that is marked Proprietary. If a public disclosure request is made to view the Subgrantee's Proprietary Information, AWC will notify the Subgrantee of the request and of the date that such records will be released to the requester unless the Subgrantee obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the Subgrantee fails to obtain the court order enjoining disclosure, AWC will release the requested information on the date specified.

7. INSURANCE

The Subgrantee shall provide insurance coverage as set out in this section or shall provide self-insurance as set forth in Section 8. The intent of the required insurance is to protect AWC should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Subgrantee or agents of

either, while performing under the terms of this Subgrant. Failure to maintain the required insurance coverage may result in termination of this Subgrant.

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 AWC, 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 Subgrantee shall provide AWC thirty (30) calendar days' advance notice of any insurance cancellation, non-renewal or modification.

The Subgrantee shall submit to AWC within fifteen (15) calendar days of a written request by AWC, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Subgrant, if required or requested, the Subgrantee shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Subgrantee shall provide, at AWC'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 AWC will be provided thirty (30) days' advance written notice of cancellation.

The Subgrantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Subgrant, 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 Subgrant activity but no less than \$1,000,000 per occurrence. Additionally, the Subgrantee is responsible for ensuring that any Subgrantees provide adequate insurance coverage for the activities arising out of subgrants.

Cyber Liability Insurance: The Subgrantee shall maintain Cyber Liability Insurance. The Subgrantee shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Subgrantee and licensed staff employed or under contract to the Subgrant. AWC, its agents, officers, and employees need not be named as additional insureds under this policy.

Automobile Liability. In the event that performance pursuant to this Subgrant involves the use of vehicles, owned or operated by the Subgrantee, 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 Subgrantee shall maintain Professional Liability or Errors and Omissions Insurance. The Subgrantee shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Subgrantee and licensed staff employed or under Subgrant to the Subgrantee. AWC, 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 Subgrantee 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 Subgrant shall be \$100,000 or the highest of planned reimbursement for the Subgrant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name AWC Commerce as beneficiary.
- B. Subgrantees that receive \$10,000 or more per year in funding through this Subgrant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees pursuant to this paragraph shall name AWC and Commerce as beneficiary.

8. SELF-INSURANCE PROGRAMS

Subgrantees may maintain a program of self-insurance or participate in a property/liability pool with adequate limits to comply with the Subgrant insurance requirements or as is customary to the contractor or Subgrantee's business, operations/industry, and the performance of its respective obligations under this Subgrant.

AWC may waive the requirement to be specially named as an additional insured on policies, including Public Liability and Business Automobile, provided that the Subgrantee provides: (1) a description of its self-insurance program, and

(2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pools must comply with RCW 48.62, the requirements of the Office of Risk Management and Local Government Self Insurance Program, the Washington State Auditor's reporting requirements and all related federal and state regulations. Subgrantees participating in a joint risk pool shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. AWC, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

9. FRAUD AND OTHER LOSS REPORTING

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

10. ORDER OF PRECEDENCE

In the event of an inconsistency in this Subgrant, 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
- Attachment C – Reporting Requirements

General terms and conditions

1. DEFINITIONS

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

- A. "Authorized Representative" shall mean the Subgrantee's duly authorized representative and/or the designee duly authorized in writing to act on such representative's behalf.
- B. "AWC" shall mean the Association of Washington Cities.
- C. "Subgrant" means the entire written agreement between AWC and the Subgrantee, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this Subgrant shall be the same as delivery of an original.
- D. "Subgrantee" shall mean the entity identified on the face sheet performing service(s) under this Subgrant, and shall include all employees and agents of the Subgrantee.
- 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, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- F. "State" shall mean the state of Washington.
- G. "Agent" shall mean one not in the employment of the Subgrantee, who is performing all or part of those services under this Subgrant under a separate Contract with the Subgrantee. The terms "agent" mean subgrantee/subcontractor(s) in any tier.

2. ACCESS TO DATA

The Subgrantee shall provide access to data generated under this Subgrant to AWC, 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 Subgrantee'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 Subgrant shall be made by AWC.

4. ALL WRITINGS CONTAINED HEREIN

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

5. AMENDMENTS

This Subgrant 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 Subgrantee 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 Subgrant, nor any claim arising under this Subgrant, shall be transferred or assigned by the Subgrantee without prior written consent of AWC.

8. ATTORNEYS' FEES

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

9. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
 - i. All material provided to the Subgrantee by AWC that is designated as "confidential" by AWC;
 - ii. All material produced by the Subgrantee that is designated as "confidential" by AWC; and
 - iii. All Personal Information in the possession of the Subgrantee that may not be disclosed under state or federal law.

- B. The Subgrantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Subgrantee shall use Confidential Information solely for the purposes of this Subgrant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of AWC or as may be required by law. The Subgrantee 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 Subgrantee shall provide AWC with its policies and procedures on confidentiality. AWC may require changes to such policies and procedures as they apply to this Subgrant whenever AWC reasonably determines that changes are necessary to prevent unauthorized disclosures. The Subgrantee shall make the changes within the time period specified by AWC. Upon request, the Subgrantee shall immediately return to AWC any Confidential Information that AWC reasonably determines has not been adequately protected by the Subgrantee against unauthorized disclosure.
- C. **Unauthorized Use or Disclosure.** The Subgrantee shall notify AWC within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

10. CONFLICT OF INTEREST

Subgrantee must maintain and comply with written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. Subgrantee must comply with the following minimum requirements:

- D. No employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Subgrantee may neither solicit nor accept gratuities, favors, or anything of monetary value from Subgrantees or parties to subcontracts and must comply with Chap. 42,23 RCW. However, Subgrantee may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Subgrantee.
- E. If the Subgrantee has a parent, affiliate, or subsidiary organization that is not a state, local government, or federally recognized tribe, the Subgrantee must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the Subgrantee is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

11. COPYRIGHT

Unless otherwise provided, all Materials produced under this Subgrant 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 Subgrantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to Commerce effective from the moment of creation of such Materials.

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

For Materials that are delivered under the Subgrant, but that incorporate pre-existing materials not produced under the Subgrant, the Subgrantee hereby grants to AWC and 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 Subgrantee warrants and represents that the Subgrantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to Commerce.

The Subgrantee shall exert all reasonable effort to advise AWC, at the time of delivery of Materials furnished under this Subgrant, 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 Subgrant. The Subgrantee shall provide AWC with prompt written notice of each notice or claim of infringement received by the Subgrantee with respect to any Materials delivered under this Subgrant. AWC and Commerce shall have the right to modify or remove any restrictive markings placed upon the Materials by the Subgrantee.

12. DISPUTES

In the event that a dispute arises under this Subgrant, the parties will use their best efforts to amicably resolve any dispute, including use of alternative dispute resolution options. In the event that a dispute arises under the Commerce Grant, Subgrant shall cooperate with AWC in resolving the dispute thereunder, providing documentation and other information as requested by AWC. In the event that Commerce seeks to enforce Subgrant's obligations hereunder, Subgrantee shall use its best efforts to amicably resolve such dispute, including use of alternative dispute resolution options.

13. DUPLICATE PAYMENT

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

14. GOVERNING LAW AND VENUE

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

15. INDEMNIFICATION

To the fullest extent permitted by law, the Subgrantee shall indemnify, defend, and hold harmless the state of Washington, Commerce, AWC, agencies of the state and all officials, agents and employees of the state and AWC, from and against all claims for injuries or death arising out of or resulting from the performance of the Subgrant. "Claim" as used in this Subgrant, 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 Subgrantee's obligation to indemnify, defend, and hold harmless includes any claim by Subgrantee's agents, employees, representatives, or any subgrantee or its employees.

The Subgrantee's obligation shall not include such claims that may be caused by the sole negligence of the State or AWC or their agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, AWC or their agents or employees and (b) the Subgrantee, its subcontractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Subgrantee or its subgrantees, agents, or employees.

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

16. INDEPENDENT CAPACITY OF THE SUBGRANTEE

The parties intend that an independent Subgrantee relationship will be created by this Subgrant. The Subgrantee and its employees or agents performing under this Subgrant are not employees or agents of the state of Washington, Commerce, or AWC. The Subgrantee will not hold itself out as or claim to be an officer or employee of Commerce, AWC, or of the state of Washington by reason hereof, nor will the Subgrantee 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 Subgrantee.

17. INDUSTRIAL INSURANCE COVERAGE

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

18. LAWS

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

19. LICENSING, ACCREDITATION AND REGISTRATION

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

20. LIMITATION OF AUTHORITY

Only the Chief Executive Officer of AWC or the CEO'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 Subgrant. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Subgrant is not effective or binding unless made in writing and signed by the Authorized Representative and the Chief Executive Officer of AWC or the CEO's delegate.

21. NONDISCRIMINATION

A. Nondiscrimination Requirement. During the performance of this Subgrant, the SUBGRANTEE, including any subcontractor, shall comply with all federal, state, and local nondiscrimination laws, regulations and policies, this shall include but not be limited to the following: SUBGRANTEE, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, SUBGRANTEE, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which SUBGRANTEE, or subcontractor, has a collective bargaining or other agreement.

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

- B. Obligation to Cooperate.** SUBGRANTEE, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that SUBGRANTEE, including any subcontractor, has engaged in discrimination prohibited by this Agreement pursuant to RCW 49.60.530(3).
- C. Default.** Notwithstanding any provision to the contrary, AWC or COMMERCE may suspend SUBGRANTEE, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until AWC and COMMERCE receive notification that SUBGRANTEE, including any subcontractor, is cooperating with the investigating state agency. In the event SUBGRANTEE, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), AWC or COMMERCE may terminate this Subgrant in whole or in part, and SUBGRANTEE, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. SUBGRANTEE or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
- D. Remedies for Breach.** Notwithstanding any provision to the contrary, in the event of Subgrant termination or suspension for engaging in discrimination, SUBGRANTEE, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original Subgrant and the replacement or cover Subgrant and all administrative costs directly related to the replacement Subgrant, e.g., cost of the competitive bidding, mailing, advertising and staff time, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. SUBGRANTEE may also be required to repay subgrant funds pursuant to Section 25 (Recapture) of the General Terms & Conditions if the Agreement is terminated based on a violation of the nondiscrimination requirement. AWC shall have the right to deduct from any monies due to SUBGRANTEE or subcontractor, or that thereafter become due, an amount for damages SUBGRANTEE or subcontractor will owe AWC for default under this provision.

22. PAY EQUITY

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

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

This Subgrant may be terminated by the AWC, if AWC, Commerce, or the Department of Enterprise Services determines that the Subgrantee is not in compliance with this provision.

23. POLITICAL ACTIVITIES

Political activity of Subgrantee's employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW.

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

25. RECAPTURE

In the event that the Subgrantee fails to perform this Subgrant in accordance with state laws, federal laws, and/or the provisions of this Subgrant, AWC reserves the right to recapture funds in an amount to compensate AWC for the noncompliance (including recaptured amounts AWC is required to provide to Commerce under the Commerce Grant) in addition to any other remedies available at law or in equity.

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

26. RECORDS MAINTENANCE

The Subgrantee shall maintain books, records, documents, data and other evidence relating to this Subgrant 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 Subgrant.

The Subgrantee 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 Subgrant, shall be subject at all reasonable times to inspection, review or audit by AWC, personnel duly authorized by AWC, 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 Subgrantee shall complete registration with the Washington State Department of Revenue.

28. RIGHT OF INSPECTION

The Subgrantee shall provide right of access to its facilities to AWC, 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 Subgrant.

29. SAVINGS

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

30. SEVERABILITY

The provisions of this Subgrant 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 Subgrant.

31. SITE SECURITY

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

32. SUBGRANTING/SUBCONTRACTING

The Subgrantee may only subgrant/subcontract with an outside Agent contemplated under this Subgrant if it obtains the prior written approval of AWC.

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

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

Every subgrant/subcontract shall include a term that AWC, Commerce, and the State of Washington are not liable for claims or damages arising from a Subgrantee/Subcontractor's performance of the subgrant/subcontract.

33. SURVIVAL

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

34. TAXES

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

35. TERMINATION FOR CAUSE

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

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

AWC reserves the right to suspend all or part of the Subgrant, withhold further payments, or prohibit the Subgrantee from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Subgrantee or a decision by AWC or Commerce to terminate the Subgrant. A termination shall be deemed a "Termination for Convenience" if it is determined that the Subgrantee: (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 AWC and Commerce provided in this Subgrant are not exclusive and are, in addition to any other rights and remedies, provided by law or in equity, including terminating the Subgrant and/or instituting and prosecuting any proceeding at law or in equity to abate, prevent, or enjoin any such violation or to compel specific performance by Subgrantee of its obligations hereunder.

36. TERMINATION FOR CONVENIENCE

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

37. TERMINATION PROCEDURES

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

AWC shall pay to the Subgrantee (solely from and to the extent of funds provided by Commerce for this purpose) the agreed upon price, if separately stated, for completed work and services accepted by Commerce, and the amount agreed upon by the Subgrantee 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 Director of Commerce shall determine the extent of the liability of Commerce. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Subgrant. AWC may withhold from any amounts due the Subgrantee such sum as AWC determines to be necessary to protect AWC and 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 Subgrant.

After receipt of a notice of termination, and except as otherwise directed by Commerce or the AWC, the Subgrantee shall:

- A. Stop work under the Subgrant on the date, and to the extent specified, in the notice;
- B. Place no further orders or subgrants/subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Subgrant that is not terminated;
- C. Assign to Commerce, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Subgrantee under the orders and subgrants/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 subgrants/subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subgrants/subcontracts, with the approval or ratification of Commerce to the extent Commerce may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to Commerce and deliver in the manner, at the times, and to the extent directed by Commerce any property which, if the Subgrant had been completed, would have been required to be furnished to Commerce;
- F. Complete performance of such part of the work as shall not have been terminated by Commerce; and
- G. Take such action as may be necessary, or as Commerce may direct, for the protection and preservation of the property related to this Subgrant, which is in the possession of the Subgrantee 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 Subgrantee, for the cost of which the Subgrantee is entitled to be reimbursed as a direct item of cost under this Subgrant, shall pass to and vest in Commerce upon delivery of such property by the Subgrantee. Title to other property, the cost of which is reimbursable to the Subgrantee under this Subgrant, shall pass to and vest in Commerce upon (i) issuance for use of such property in the performance of this Subgrant, or (ii) commencement of use of such property in the performance of this Subgrant, or (iii) reimbursement of the cost thereof by AWC or Commerce in whole or in part, whichever first occurs.

- A. Any property of AWC or Commerce furnished to the Subgrantee shall, unless otherwise provided herein or approved by AWC or Commerce, as applicable, be used only for the performance of this Subgrant.
- B. The Subgrantee shall be responsible for any loss or damage to property of AWC or Commerce that results from the negligence of the Subgrantee or which results from the failure on the part of the Subgrantee to maintain and administer that property in accordance with sound management practices.
- C. If any AWC or Commerce property is lost, destroyed or damaged, the Subgrantee shall immediately notify AWC or Commerce, as applicable, and shall take all reasonable steps to protect the property from further damage.
- D. The Subgrantee shall surrender to AWC all property of AWC and shall surrender to Commerce all property of Commerce prior to settlement upon completion, termination or cancellation of this Subgrant.
- E. All reference to the Subgrantee under this clause shall also include Subgrantee's employees, agents or Subgrantees/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 Subgrant unless stated to be such in writing and signed by AWC.

40. THIRD PARTY BENEFICIARY

Commerce is a third-party beneficiary of this Subgrant and shall have the right to enforce this Subgrant directly against the Subgrantee.

Attachment A: Scope of Work

Background

The purpose of the grant is to assist cities who own Tier 1 and Tier 2 covered buildings in completing energy audits and collect data on the costs for cities to comply with the state's Clean Buildings Performance Standard (CBPS).

AWC will fully or partially fund eligible Tier 1 and Tier 2 buildings, based on availability of funding. Funding will be awarded only for the cost of the audit, on a reimbursement basis.

Subgrantee responsibilities

The subgrantee will carry out an energy audit of their qualifying buildings and submit reporting materials as outlined in Attachment C.

The city will:

Attachment B: Budget

Budget

Grant amount:

Budget narrative

Grant funds will be used as follows:

Attachment C: Reporting Requirements

By **xx date**, the city must submit the following to AWC:

Audits of Tier 1 buildings:

- Invoice demonstrating payment for the audit
- A completed building improvement plan for each building included in the audit, including:
 - Compliance pathway, if applicable
 - Performance metric for each building
 - Estimated cost of meeting the Energy Performance Metric
 - Estimated cost of developing and implementing an energy management plan, as required by the CBPS
 - Estimated cost of developing and implementing an operations and maintenance program, as required by the CBPS
- A completed Form D Audit Report

Audits of Tier 2 buildings:

- Invoice demonstrating payment for the audit
- A completed building improvement plan for each building included in the audit, including:
 - The identified Energy Efficiency Measures (EEMs)
 - Range of estimated costs to implement the EEMs
 - Estimated cost of developing and implementing an energy management plan, as required by the CBPS
 - Estimated cost of developing and implementing an operations and maintenance program, as required by the CBPS

If the grant recipient finds that more than three months is needed to complete the audit and submit the required reporting, an extension may be requested. However, all work must be completed, and reports and reimbursement requests submitted, no later than May 16, 2025.