CITY

Department of Commerce

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Interagency Agreement with

City of Everett

through

2013-2015 Energy Efficiency and Solar Grants
for Local Governments

(Second Engrossed House Bill 1115, Laws of 2015,
3rd Special Session, Chapter 3, Section 1025)

Start date: July 1, 2013

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Attachment A, Scope of Work

Attachment B, Total Project Budget

Attachment C, Availability of Funds

Attachment D, Certification of Prevailing Wages

FACE SHEET

Grant Number: 14-93209-021

Washington State Department of Commerce
Community Services & Housing Division
Community Capital Facilities Unit

1. Grantee	**2. Grantee Doing Business As (optional)**
City of Everett 3200 Cedar Street Everett, Washington 98201	
3. Grantee Representative Tim Miller City Traffic Engineer 425-257-8987 tmiller@everettwa.gov	**4. COMMERCE Representative** Tom Stilz Program Manager 360-725-4025 tom.stilz@commerce.wa.gov P.O. Box 42525 1011 Plum Street SE Olympia, WA 98504-2525

5. Grant Amount	**6. Funding Source**	**7. Start Date**	**8. End Date**
$500,000.00	**Federal:** ☐ **State:** ☒ **Other:** ☐ **N/A:** ☐	July 1, 2013	June 30, 2017

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

10. Tax ID #	**11. SWV #**	**12. UBI #**	**13. DUNS #**
N/A	0000348-07	**N/A**	**N/A**

14. Grant Purpose

The purpose of this contract is to provide Washington's local governments with grant funds for operational cost savings improvements that result in energy and operational cost savings in accordance with ESSB 5035, Laws of 2013, 2nd Special Session, Section 1075 to support the 2013-2015 Energy Efficiency and Solar Grants for Local Governments Program, and a reappropriation in Second Engrossed House Bill 1115, Laws of 2015, 3rd Special Session, Chapter 3, Section 1025Second Engrossed House Bill 1115, Laws of 2015, 3rd Special Session, Chapter 3, Section 1025.

COMMERCE, defined as the Department of Commerce or its successor agency, and the Grantee, as defined above, acknowledge and accept the terms of this Agreement and attachments and have executed this Agreement on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Agreement Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Total Project Budget, Attachment "C" – Certification of Availability of Funds to Complete the Project, Attachment "D" – Certification of the Payment and Reporting of Prevailing Wages.

FOR GRANTEE	**FOR COMMERCE**
Ray Stephanson Ray Stephanson, Mayor 8/4/2015 Date ATTEST: City Clerk APPROVED AS TO FORM JAMES D. ILES, City Attorney	Diane Klontz, Assistant Director CSHD 8/12/15 Date **APPROVED AS TO FORM ONLY** Signature on file.

SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS

THIS CONTRACT, entered into by and between City of Everett (a unit of local government hereinafter referred to as the Grantee), and the Washington State Department of Commerce (hereinafter referred to as COMMERCE), WITNESSES THAT:

WHEREAS, COMMERCE has the statutory authority under RCW 43.330.050 (5) to cooperate with and provide assistance to local governments, businesses, and community-based organizations; and

WHEREAS, COMMERCE is also given the responsibility to administer state funds and programs which are assigned to COMMERCE by the Governor or the Washington State Legislature; and

WHEREAS, the Washington State Legislature has made an appropriation in ESSB 5035, Laws of 2013, 2nd Special Session, Section 1075 to support the 2013-2015 Energy Efficiency and Solar Grants for Local Governments Program, and a reappropriation in Second Engrossed House Bill 1115, Laws of 2015, 3rd Special Session, Chapter 3, Section 1025, and directed COMMERCE to administer those funds; and

WHEREAS, the enabling legislation also stipulates that the Grantee is eligible to receive funding for acquisition, construction, or rehabilitation (a venture hereinafter referred to as the "Project").

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties hereto agree as follows:

1. GRANT MANAGEMENT

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

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

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

2. COMPENSATION

COMMERCE shall pay an amount not to exceed $500,000.00 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

3. EXPENDITURES ELIGIBLE FOR REIMBURSEMENT

The Grantee may be reimbursed, at the rate set forth elsewhere in this contract, for work completed beginning July 1, 2013. Eligible project expenditures are in the following cost categories:

A. Design, engineering, architectural, planning services and nongrantee overhead and profit;

B. Construction management and observation (from external sources only);

C. Construction costs including, but not limited to, the following:
Demolition;
Site preparation;
Permits and fees;
Labor and materials;
Taxes on Project goods and services;
Capitalized equipment;
Information technology infrastructure; and
Landscaping.

4. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the Grantee for 100% of eligible Project expenditures, up to the maximum payable under this contract. When requesting reimbursement for expenditures made, the Grantee shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed – by budget line item – for the billing period.

The Grantee shall evidence the costs claimed on each voucher by including copies of each invoice received from vendors providing Project goods or services covered by the contract. The Grantee shall also provide COMMERCE with a copy of the cancelled check or electronic funds transfer, as applicable, confirming that they have paid each expenditure being claimed. The cancelled checks or electronic funds transfers may be submitted to COMMERCE at the time the voucher is initially submitted, or within thirty (30) days thereafter.

The voucher must be certified (signed) by an official of the Grantee with authority to bind the Grantee. The final voucher shall be submitted to COMMERCE within sixty (60) days following the completion of work or other termination of this contract, or within fifteen (15) days following the end of the state biennium unless contract funds are reappropriated by the Legislature in accordance with Section 9, hereof.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices.

Project Status Report

Each request for payment must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the Grantee.

Advance Payments

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

Disallowed Costs

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

Termination

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

5. INSURANCE

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

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from COMMERCE, the Grantee may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the Grantee shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management

programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. Contractor's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Grantee shall provide annually to COMMERCE a summary of coverages and a letter of self insurance, evidencing continued coverage under Grantee's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self insurance will be provided on the anniversary of the start date of this Agreement.

6. ORDER OF PRECEDENCE

In the event of an inconsistency in this Agreement, 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 – Certification of the Availability of Funds to Complete the Project
- Attachment D – Certification of the Payment and Reporting of Prevailing Wages

7. REPORTING OF JOBS FUNDED

The Grantee shall provide to Commerce each quarter a completed "2013-15 Energy Efficiency and Solar Grants Quarterly Report" which will identify the number of hours worked and jobs funded by the Project. For the purposes of this agreement, "quarterly" shall be defined as follows:

- July through September, 2013
- October through December, 2013
- January through March, 2014
- April through June, 2014
- July through September, 2014
- October through December, 2014
- January through March, 2015
- April through June, 2015
- July through September, 2015
- October through December, 2015
- January through March, 2016
- April through June, 2016 including additional quarters if necessary (per below)

The Grantee shall submit the 2013–2015 Energy Efficiency and Solar Grants Quarterly Report to Commerce as applicable within ten (10) calendar days following the end of each quarter **until all work on the Project has been completed and no additional jobs are being funded.** Commerce will email a Report form to each Grantee when the contract has been executed.

8. ONGOING MEASUREMENT & VERIFICATION

Measurement and Verification of Energy Savings (ESPC – Energy Savings Performance Contracting Projects)

After the Project has been completed and the Notice of the Commencement of Energy Savings has been issued, ongoing measurement and verification (M&V) begins, in order to verify that the guaranteed energy savings occurs.

The recommended minimum length of M&V is three (3) years. However, Grantees are encouraged to have M&V performed for the length of the financing term to extend the energy savings guaranteed for the Project. The proposed length of the ongoing M&V period should be identified in the Energy Services Proposal (ESP).

The Grantee shall submit an annual Measurement and Verification Report to Commerce by February 15th of each year for the prior calendar year until all measurement and verification requirements have been satisfied.

Each Measurement and Verification Report shall include:

1. An **executive summary** that gives a brief description of the energy efficiency measures (EEMS) identified and if the guaranteed energy savings were achieved;
2. The **report** shall include the following:
    a. Calculation of the energy savings verified for each measure.
    b. A brief description of any changes to the subject facilities. If these changes have an impact on the verified energy savings, this needs to be identified and the impact calculated.
    c. Any other deliverables that were proposed, such as greenhouse gas reduction calculations or building energy performance benchmarks.
    d. All physical measurements that were performed (i.e., boiler combustion test results, motor runtime logs). If necessary, these can be attached via appendix to the main report.
    e. A list of remedies the Energy Services Company (ESCO) will provide if the guaranteed savings are not being met. Specify whether and by when the physical aspects of the project that led to the loss of savings will be corrected. Specify how the ESCO will reimburse the Grantee for the identified differences between the verified savings and the guaranteed level of savings. Specify the timing of when the ESCO will make the reimbursement to the Grantee.

The guaranteed minimum energy savings identified in the ESP and the verified actual energy savings should be identified in tabular form for easy reference by the Grantee and Commerce. The energy savings should be:

1. Identified in the native unit of measure for each utility commodity, such as kWh or Therms for both guaranteed and verified energy savings;
2. Translated into utility bill dollar savings; and
3. Denoted in dollars, using the energy rates in effect at the time the ESP was prepared.

Measurement and Verification of Energy Savings (Non-ESPC Projects)

Projects that do not use Energy Savings Performance Contracting must verify energy and operational cost savings for ten (10) years or until the energy and operational cost savings pay for the Project, whichever is shorter. They must also follow the Department of Enterprise Services (DES) energy savings performance contracting project guidelines. Third-party verification must be performed by one of the following:

1. An energy savings performance contractor selected by DES through a request for qualifications;
2. A licensed engineer that is a certified energy manager;

3. A project resource conservation manager; or
4. An educational service district resource conservation manager.

The Grantee shall submit an annual Measurement and Verification Report to Commerce by February 15th of each year for the prior calendar year until all M&V requirements have been satisfied.

Each Measurement and Verification Report shall include:

1. An **executive summary** that gives a brief description of the energy efficiency measures (EEMS) identified and if the estimated energy savings were achieved;
2. The **report** shall include the following:
    a. Calculation of the energy savings verified for each measure.
    b. A brief description of any changes to the subject facilities. If these changes have an impact on the verified energy savings, this needs to be identified and the impact calculated.
    c. Any other deliverables that were proposed, such as greenhouse gas reduction calculations or building energy performance benchmarks.
    d. All physical measurements that were performed (i.e., boiler combustion test results, motor runtime logs). If necessary, these can be attached via appendix to the main report.

The estimated energy savings identified in the final Investment Grade Audit and the verified energy savings should be identified in tabular form for easy reference by the Grantee and Commerce. The energy savings should be:

1. Identified in the native unit of measure for each utility commodity, such as kWh or Therms for both estimated and verified energy savings;
2. Translated into utility bill dollar savings; and
3. Denoted in dollars, using the energy rates in effect at the time of the report was completed.

9. REAPPROPRIATION

A. The parties hereto understand and agree that any state funds not expended by June 30, 2017, will lapse on that date unless specifically reappropriated by the Washington State Legislature. If funds are so reappropriated, the state's obligation under the terms of this contract shall be contingent upon the terms of such reappropriation.

B. In the event any funds awarded under this contract are reappropriated for use in a future biennium, COMMERCE reserves the right to assign a reasonable share of any such reappropriation for administrative costs.

GENERAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS

1. DEFINITIONS

As used throughout this Agreement, 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 or its successor agency.

C. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Agreement, and shall include all employees and agents of the Grantee.

D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

E. "State" shall mean the state of Washington.

F. "Subcontractor" shall mean one not an employee of the Grantee, who is performing all or part of those services under this Agreement under a separate Agreement with the Grantee. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ADVANCE PAYMENTS PROHIBITED

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

3. ALL WRITINGS CONTAINED HEREIN

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

4. AMENDMENTS

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

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

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

6. APPROVAL

This Agreement shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The Agreement may be altered, amended, or waived only by a written amendment executed by both parties.

7. ASSIGNMENT

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

8. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Agreement, in the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorneys 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 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 Grantee by COMMERCE that is designated as "confidential" by COMMERCE;

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

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Agreement and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Agreement whenever the Grantor reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

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

11. CONFORMANCE

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

12. COPYRIGHT PROVISIONS

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

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

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

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Agreement, 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 Agreement. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this

Agreement. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

13. DISPUTES

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

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Grantee's name, address, and Agreement number; and
- be mailed to the Director and the other party's (respondent's) Agreement 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 Agreement 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

The Grantee certifies that work to be performed under this Agreement does not duplicate any work to be charged against any other Agreement, subcontract, or other source.

15. ETHICS/CONFLICTS OF INTEREST

In performing under this Agreement, the Grantee shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

16. GOVERNING LAW AND VENUE

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

17. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Grantee's performance or failure to perform the Agreement. The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by the Grantee's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Grantee's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subcontracts shall include a comprehensive indemnification clause holding harmless the Grantee, COMMERCE, the state of Washington, its officers, employees and authorized agents.

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

18. INDEPENDENT CAPACITY OF THE GRANTEE

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

19. INDUSTRIAL INSURANCE COVERAGE

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

20. LAWS

The Grantee 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 (11).

B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.

C. Disclosure-campaign finances-lobbying, Chapter RCW 42.17A.

D. Discrimination-human rights commission, Chapter 49.60 RCW.

E. Ethics in public service, Chapter 42.52 RCW.

F. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.

G. Open public meetings act, Chapter 42.30 RCW.

H. Public records act, Chapter 42.56 RCW.

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

21. LICENSING, ACCREDITATION AND REGISTRATION

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

22. LIMITATION OF AUTHORITY

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

23. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

24. POLITICAL ACTIVITIES

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

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

25. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Agreement provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

26. PUBLICITY

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

27. RECAPTURE DISINCENTIVE

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

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

28. RECORDS MAINTENANCE OUTPUT

The Grantee shall maintain all 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 which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Grantee shall retain such records for a period of six years following the date of final payment.

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 finally resolved.

29. REGISTRATION WITH DEPARTMENT OF REVENUE

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

30. RIGHT OF INSPECTION

At no additional cost all records relating to the Grantee's performance under this Agreement shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Agreement. The Grantee shall provide access to its facilities for this purpose.

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

32. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Agreement and to this end the provisions of this Agreement are declared to be severable.

33. SUBCONTRACTING

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

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

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

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

34. 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.

35. TAXES

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

36. TERMINATION FOR CAUSE / SUSPENSION DISINCENTIVE

In event COMMERCE determines that the Grantee failed to comply with any term or condition of this Agreement, COMMERCE may terminate the Agreement in whole or in part upon written notice to the Grantee. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, COMMERCE upon written notice may allow the Grantee a specific period of time in which to correct the non-compliance. During the corrective-action time period, COMMERCE may suspend further payment to the Grantee in whole or in part, or may restrict the Grantee's right to perform duties under this Agreement. Failure by the Grantee to take timely corrective action shall allow COMMERCE to terminate the Grant upon written notice to the Grantee.

"Termination for Cause" shall be deemed a "Termination for Convenience" when COMMERCE determines that the Grantee did not fail to comply with the terms of the Agreement or when COMMERCE determines the failure was not caused by the Grantee's actions or negligence.

If the Agreement is terminated for cause, the Grantee shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the replacement Agreement, as well as all costs associated with entering into the replacement Agreement (i.e., competitive bidding, mailing, advertising, and staff time).

37. TERMINATION FOR CONVENIENCE

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

38. TERMINATION PROCEDURES

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

A. Stop work under the Agreement on the date, and to the extent specified, in the notice;

B. Place no further orders or subcontracts for materials, services, or facilities related to the Agreement;

C. Assign to COMMERCE all of the rights, title, and interest of the Grantee under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Grantee to settle such claims must have the prior written approval of COMMERCE; and

D. Preserve and transfer any materials, Agreement deliverables and/or COMMERCE property in the Grantee's possession as directed by COMMERCE.

Upon termination of the Agreement, COMMERCE shall pay the Grantee for any service provided by the Grantee under the Agreement prior to the date of termination. COMMERCE may withhold any amount due as COMMERCE reasonably determines is necessary to protect COMMERCE against potential loss or liability resulting from the termination. COMMERCE shall pay any withheld amount to the Grantee if COMMERCE later determines that loss or liability will not occur.

The rights and remedies of COMMERCE under this section are in addition to any other rights and remedies provided under this Agreement or otherwise provided under law.

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

Attachment A

Scope of Work

The Grantee will use these grant funds to implement operational cost savings improvements at their local government facilities and related projects that result in energy and operational cost savings in accordance with ESSB 5035, Chapter 19, Laws of 2013, 2nd Special Session, Section 1075. The work will be performed in accordance with the more detailed scope of work found in the Energy Services Proposal prepared by Ameresco, Inc. for the City of Everett LED Street Lighting Conversion, Ameresco Project Number 151-2013-01, dated March 21, 2014, incorporated herein by reference as if specifically set forth.

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

Ray Stephanson
GRANTEE

Mayor
TITLE

8/4/2015
DATE

Total Project Budget

Line Item	Amount
Audit, Design, Const Mgmt, Bonding, 1st Year M&V	$213,940.00
Labor And Materials	$1,447,524.00
ESCO Overhead and Profit	$260,554.00
Contingency	$72,376.00
WA State Sales Tax	$101,326.00
DES Projerct Mgmt Fee	$60,000.00
Total Contracted Amount:	**$2,155,720.00**

The Grantee, by its signature, certifies that the Total Project Budget set forth above has been reviewed and approved by the Grantee's governing body or board of directors, as applicable, as of the date and year written below.

Ray Stephanson
GRANTEE

Mayor
TITLE

8/4/2015
DATE

Certification of the Availability of Funds to Complete the Project

Non-State Funds	Amount	Total
Client Cost	$1,347,903.00	
Utility Incentive	$307,817.00	
Total Non-State Funds	$1,655,720.00	$1,655,720.00
State Funds		
State Capital Budget	$500,000.00	$500,000.00
Total Non-State and State Sources		**$2,155,720.00**

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

Ray Stephanson

GRANTEE

Mayor

TITLE

8/4/2015

DATE

Certification of the Payment and Reporting of Prevailing Wages

The Grantee, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as June 15, 2011, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Grantee shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE'S review upon request.

If any state funds are used by the Grantee for the purpose of construction, applicable State Prevailing Wages must be paid.

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

Ray Alexander
GRANTEE

Mayor
TITLE

6-4-2015
DATE

Agreement

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

#11

PROJECT TITLE:
Interagency Grant Agreement with the Washington State Department of Commerce.

_____	Briefing	COUNCIL BILL #	
_____	Proposed Action	Originating Department	Public Works
_____	Consent	Contact Person	Ryan Sass
_____	Action	Phone Number	(425) 257-8942
_____	First Reading	FOR AGENDA OF	July 22, 2015
_____	Second Reading		
_____	Third Reading		
_____	Public Hearing		
_____	Budget Advisory	Initialed by:	
		Department Head	
		CAA	db
		Council President	DO

Location	Preceding Action	Attachments	Department(s) Approval
Citywide	Interagency Agreements with DES dated 5/20/15	Proposed Interagency Agreement with Commerce	Engineering/Public Services, Legal

Amount Budgeted	$2,155,720	
Expenditure Required	$2,155,720	Account Number(s): Fund 009
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

On May 20, 2015, the City Council authorized the Mayor to sign Interagency Agreements with the Washington State Department of Enterprise Services to enroll in a program to convert approximately 2,300 of the City's streetlights to high-efficiency light emitting diode (LED) lighting. This represents about 100% of the City-owned streetlights which is about one third of the total in Everett; those remaining are PUD owned.

The total cost of this project is $2,155,720 and will be funded by this Department of Commerce Grant in the amount of $500,000, PUD energy incentives in the amount of $307,817, and $1,347,903 in local funds.

This agreement is to accept the $500,000 2013-2015 Energy Efficiency and Solar Grant from the Washington State Department of Commerce for conversion of the City's streetlights to high-efficiency LED lighting.

Council approved 7/22/15 JM

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the Interagency Grant Agreement with the Washington State Department of Commerce grant funding in the amount of $500,000.