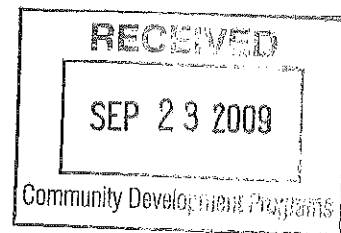




**CTED**

Community, Trade and  
Economic Development



**Grant Agreement with:**

City of Yelm

through

Washington State Community Development Block Grant Program  
Neighborhood Stabilization Program

**For:** The City of Yelm will use \$640,505 to recover approximately fourteen (14) foreclosed properties.

Contract Number: 08-F6401-028

**Start date:** 2/18/2009

## FACE SHEET

Washington State Department of Community, Trade, and Economic Development  
**Local Government Division**  
 Community Development Programs Unit - Community Development Block Grant Program  
 Program: Neighborhood Stabilization Program

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Community Development Programs

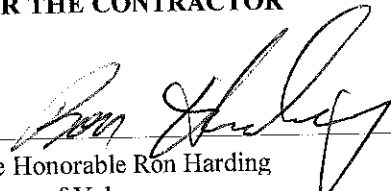
<b>Contractor</b> City of Yelm PO Box 479 Yelm, WA 98597	<b>Contract Number</b> 08-F6401-028	<b>Contract Amount</b> \$640,505
<b>Contractor Representative</b> Cindy Teixeira, Community and Government Relations (360) 458-8436	<b>CTED Representative</b> Bill Mandeville (360) 725-2725	
<b>Date Application Submitted</b> 4/1/2009	<b>Start Date</b> 02/18/2009	<b>End Date</b> 03/31/2013
<b>Federal Funding Authority</b> Washington State Department of Community, Trade and Economic Development (hereinafter known as CTED), and U. S. Department of Housing and Urban Development (HUD).		
<b>Federal Funds</b> 333.14.228	<b>CFDA Number</b> 14.228	
<b>Service Area</b> Legislative District 2 Congressional District 9	<b>County</b> Thurston	<b>Number of Pages</b> 36
<b>Tax ID Number</b> 91-6001534	<b>Subrecipient or Participating Entities</b> N/A	

**Contract Purpose**

City of Yelm will use its NSP funds to underwrite down-payment assistance loans to eligible buyers of foreclosed properties. These loans will have a zero interest rate and payments will be deferred until the sale or transfer of the property. Recaptured loan funds will be used to provide additional down-payment assistance loans to income-eligible households. The State of Washington designated Yelm as an area with a significantly higher than average rate of home foreclosures and, therefore, in need of this type of emergency financial assistance. The City of Yelm will use its NSP funds to recover approximately fourteen (14) foreclosed properties.

IN WITNESS WHEREOF, CTED and Contractor acknowledge and accept the terms of this agreement and attachments hereto and have executed this agreement as of the date and year written below. The rights and obligations of both parties to this agreement are governed by this Face Sheet, Special and General Terms and Conditions, Attachment A: Statement of Work and Budget, Attachment B: State and Federal Requirements and Assurances, Attachment C: Letter to Incur Costs (if applicable), Attachment D: Additional Conditions and Agreement for Interim Financing/CDBG Float-Funded Activity (if applicable), and Attachment E: Assignment of Rights, Title, and Interest (if applicable), and the following documents incorporated herein by reference: Contractor's application for funding and the Community Development Block Grant Policies and Procedures, prepared by CTED.

**FOR THE CONTRACTOR**

  
 The Honorable Ron Harding  
 Mayor of Yelm

Date

9/18/09

FOR CTED

  
 Karen J. Larkin, Assistant Director  
 Local Government Division

Date

10/7/09

**APPROVED AS TO FORM ONLY**

Alice Blado, Assistant Attorney General (Signature on file)

Date: May 29, 2009

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**Attachment A, Statement of Work**

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**Attachment C, Letter to Incur Costs (if applicable)**

## **SPECIAL TERMS AND CONDITIONS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

### **1. DEFINITIONS**

- A. "Subcontractor" in the General Conditions of this Agreement shall mean the same as the term "subrecipient" found in the federal Community Development Block Grant (CDBG) rules and regulations and the term "contractor" found in the procedures and policies in state's CDBG Management Handbook.
- B. "Low- and moderate-income" shall mean a household income equal to or less than 80 percent of area median income adjusted by family size.
- C. "Low-, moderate-, and middle-income" shall mean a household income equal to or less than 120 percent of the area median income, measured as 2.4 times the current Section 8 income limit for households below 50 percent of median income, adjusted by family size.
- D. For purposes of the Neighborhood Stabilization Program only, the term "low- and moderate-income person" as it appears throughout the CDBG regulations at 24 CFR part 570 shall be defined as a member of a low-, moderate-, and middle-income household.

### **2. ACCESS TO RECORDS**

CTED and duly authorized officials of the state and the federal government shall have full access and the right to examine, excerpt, or transcribe any pertinent documents, papers, records, and books of the Contractor and of persons or organizations with which the Contractor may contract, involving transactions related to the project and this contract.

### **3. ACQUISITION AND DISPOSITION OF ASSETS**

The Contractor will account for any tangible personal property acquired with grant funds.

The use and disposition of real property and equipment under this Agreement will be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, 570.504, as applicable, which include but are not limited to the following:

Real property that was acquired or improved, in whole or in part, with Community Development Block Grant (CDBG) funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG national objectives for ten (10) years after the Agreement is closed. Any exception must be made with CTED's approval and the Contractor will be responsible to pay CTED an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment from the disposition of real property acquired with grant funds within 10-years of closeout of this Agreement shall be treated as program income under Section 12 of these Special Terms and Conditions.

In cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds will be program income.

Real property acquired, improved or sold, in whole or part, with Neighborhood Stabilization Program (NSP) funds shall comply with the requirements of Public Law 110-289, Housing and Recovery Act of 2008 (HERA), section 2301, which includes but is not limited to:

Section 2301(d)(1) current market appraisal requirements to determine the statutory purchase discount and to ensure purchasers are paying below-market value for the home or property;

Section 2302(d)(3) sale amount restrictions for any abandoned or foreclosed upon home or residential property purchased, redeveloped, or otherwise sold to an individual as a primary residence to an amount equal to or less than the cost to acquire and redevelop or rehabilitate such home or property up to a decent, safe, and habitable condition; and

Section 2301(f)(3) affordability requirements as stipulated in 24 CFR 92.252 for rental housing units or 24 CFR 92.254 for owner-occupied housing units or for a longer period of time if practicable;

## SPECIAL TERMS AND CONDITIONS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

#### 4. AGREEMENT MANAGEMENT

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

#### 5. ANTI-LOBBYING CERTIFICATION AND DISCLOSURE FORM

**Contractor, defined as the primary participant and its principals, certifies by signing these Special Terms and Conditions that:**

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. The above provisions will be met if the grant award from CTED exceeds \$100,000 and will further ensure that their provisions are included in any sub grant, contract, and subcontracts exceeding \$100,000 of grant funds.

#### 6. BILLING PROCEDURES AND PAYMENT

CTED will pay the Contractor for allowable expenses tied to approved project activities according to Attachment A, Statement of Work and Budget.

Invoices must be submitted on a Washington State Invoice Voucher form. The voucher form must report all federal funds on hand as of the date of submittal. Any cash on hand must be subtracted from the amount of funds requested. Program income earned during the reporting period must also be deducted from the amount requested.

Invoices shall be mailed to:

The Department of Community, Trade and Economic Development  
Local Government Division  
128 - 10th Avenue SW  
P.O. Box 42525  
Olympia, Washington 98504-2525  
Attention: **Contracts Administration Unit (CAU) Project Manager.**

Invoices shall describe and document, to CTED's satisfaction, the work performed, the progress of the project, and fees. The invoice shall include the Agreement 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 CTED within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor. CTED may, in its sole discretion, terminate the Agreement or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Agreement, including completion of the Environmental Review and the release of funds (if applicable). No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by CTED.

#### 7. CLOSEOUT

The CTED will advise the Contractor to initiate closeout procedures when there are no impediments to closing and the following criteria have been met or soon will be met:

- A. All costs have been incurred with the exception of closeout costs and any unsettled third-party claims against the Contractor. Costs are incurred when goods and services are received or contract work is performed.

## **SPECIAL TERMS AND CONDITIONS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

- B. The Contractor has held a public hearing to review program performance.
- C. The Contractor has submitted the final Closeout Performance Report. Failure to submit a report will not preclude the CTED from effecting closeout if it is deemed to be in the state's interest. Any excess grant amount in the Contractor's possession shall be returned in the event of failure to finish or update the report.
- D. Other responsibilities of the Contractor under this Agreement and any closeout Agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further state interest in keeping the grant open for the purpose of securing performance.

### **8. ENVIRONMENTAL REVIEW**

#### **General Purpose, Housing Enhancement, Neighborhood Stabilization, and Recovery Grants**

Funding in excess of the amount stipulated in **Attachment C, Letter to Incur Costs**, shall not be released to a Contractor by CTED until the following conditions are met:

- A. The Contractor must prepare an environmental assessment of the project and make a finding of environmental impact. A notice of this finding must be published along with a notice of the Contractor's intent to request release of funds for the project unless the project is exempt from the publication requirements as described. The Contractor must allow a seven (7) or fifteen (15) day period for public review and comment following publication of the notices unless exempt under the National Environmental Policy Act (NEPA) and the Washington State Environmental Policy Act (SEPA). When this review and comment period expires, the Contractor may, after considering any comments received, submit a request for release of funds to CTED. Upon receipt of the request, CTED must allow a fifteen (15) day period for public review and comment. When CTED's public review and comment period expires, CTED may, after considering any comments received, formally notify the Contractor in writing of the release of federal funds for the project.
- B. This special condition is satisfied when the Contractor completes the environmental review and request for release of funds from CTED. The special condition is effectively removed on the date CTED provides the Contractor with written notice of release of funds.

#### **Imminent Threat Grants**

Funding shall not be released to an Imminent Threat grant recipient until the following conditions are met: The Contractor assures that assisted activities are for temporary or permanent improvements limited to the protection, repair or arrest of imminent threats to public health and safety or physical deterioration. The Contractor further assures that assisted activities will result in either no change or minimal change in the environmental conditions that existed prior to the emergency. In addition, the Contractor assures it will document, in writing, its determination that each activity or project is exempt and meets the conditions specified for such exemption under Section 58.34 of 24 CFR, Environmental Review Procedures for Title I CDBG Programs. In cases where Contractors must take action immediately, or within a time too short to allow full SEPA compliance, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an immediate threat of serious environmental degradation, such actions are exempt from SEPA pursuant to WAC 197-11-880.

#### **Planning-Only and Public Services Grants**

Funding shall not be released to a Planning-Only or Public Services grant recipient until the following conditions are met: The Contractor assures that assisted activities are exempt under NEPA (24 CFR 58.32) and categorically exempt under SEPA (RCW 43.21C.110). The Contractor further assures that the activities do not come under the purview of any other federal, state, and known local environmental laws, statutes, regulations or executive orders. In addition, the Contractor assures it will document, in writing, its determination that each activity or project is exempt and meets the conditions specified for such exemption under (NEPA) 24 CFR 58.34(3) (for POG) or 58.34(4) (for PS) and (SEPA) WAC 197-11-800 (for POG) or WAC 197-11-305 (for PS).

#### **Float-Funded Activity Grants**

## SPECIAL TERMS AND CONDITIONS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Funding shall not be released to a Float-Funded Activity grant recipient until the following conditions are met:

- A. If the Contractor completed a CDBG environmental review for the project under a previous CDBG, and has written notification from CTED of the release of federal funds under that grant, the Contractor must provide a Letter of Continuation notifying CTED that the environmental review requirements have been met. The Letter of Continuation must reference the grant under which CDBG environmental review requirements were met. It must also confirm that the project scope has not changed and no additional environmental review activities are required.
- B. If the Contractor has not completed a CDBG environmental review for the project under a previous grant, it must meet the same conditions required for that grant as described in this Environmental Review clause.

### 9. EQUAL OPPORTUNITY TREATMENT FOR FAITH BASED ORGANIZATIONS

The Contractor agrees to comply with the applicable requirements of 24 CFR 570.200(j) Housing and Urban Development Department (HUD).

### 10. INSURANCE

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect CTED should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Agreement.

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

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

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

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

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

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

**Fidelity Insurance.** Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or



## **SPECIAL TERMS AND CONDITIONS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

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

### **Additional Provisions:**

Above insurance policy shall include the following provisions:

1. Additional Insured. The state of Washington, CTED, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.
2. Identification. The policy must reference CTED's Agreement number and the State agency name.
3. Insurance Carrier Rating. All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by CTED's Risk Manager, or the Risk Manager for the state of Washington, before the Agreement is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
4. Excess Coverage. By requiring insurance herein, CTED does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to CTED in this Agreement.

### **Local Government Contractors that Participate in a Self-Insurance Program**

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

Contractor shall provide annually to CTED a summary of coverages and a letter of self insurance, evidencing continued coverage under Contractor's self-insured/liability pool or self-insured risk

## **SPECIAL TERMS AND CONDITIONS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

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.

### **11. SUBCONTRACTS FOR ENGINEERING SERVICES**

Engineering firms must certify that they are authorized to do business in the state of Washington and are in full compliance with the requirements of the Board of Professional Registration. The Contractor shall require that professional services providers be covered by errors and omissions insurance in an amount not less than the amount of the firm's subcontract. If the firm is unable to obtain errors and omissions insurance, the firm shall post a bond with the Contractor for not less than the amount of the subcontract. Such insurance or bond shall remain in effect for the entire term of the subcontract. The subcontract shall provide that cancellation or lapse of the bond or insurance during the term of the subcontract shall constitute a material breach of the subcontract and cause for subcontract termination. The Contractor shall cause the subcontractor to provide 30-day notice of cancellation. If the engineering firm is also the project administrator, the Contractor shall require that the bond or insurance shall be for not less than the amount of the entire CDBG project.

### **12. PROGRAM INCOME**

Program income, as defined in 24 CFR 570.489(e), retains federal identity and will be used before drawing additional CDBG or NSP funds to complete activities included in the Statement of Work. The Contractor must maintain records of program income received and expended, and annually report program income received after closeout of this Agreement, if the total amount of program income received in a single year equals or exceeds \$25,000. Program Income shall be used to continue the same activities to benefit low- and moderate-income persons or, with CTED-approval, for other activities to benefit low- and moderate-income persons. Interest earned on CDBG or NSP funds in excess of \$100 must be remitted to CTED for return to the U.S. Treasury.

### **13. REPORTS**

The Contractor, at such times and in such forms as CTED may require, shall furnish periodic reports pertaining to the activities undertaken pursuant to this Agreement. These reports may include environmental review records, publication affidavits, procurement and contracting records, documentation of compliance with HUD civil rights requirements, job creation records, program income reports, reports of the costs and obligations incurred in connection therewith, the final closeout report, and any other matters covered by this Agreement.

### **14. 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
- Statement of Work and Budget

## **GENERAL TERMS AND CONDITIONS**

### **1. DEFINITIONS**

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- C. "CTED" shall mean the Department of Community, Trade and Economic Development or its successor agency.
- 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 in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

### **2. 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.

### **3. 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.

### **4. ASSIGNMENT**

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

### **5. ATTORNEYS' FEES**

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

### **6. 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 the audit requirement 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.

CTED reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

## GENERAL TERMS AND CONDITIONS

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

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

### **B. Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations**

Contractors expending \$500,000 or more in a fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations." Revised OMB A-133 requires the Contractor to provide the auditor with a schedule of Federal Expenditure for the fiscal year(s) being audited. The Schedule of State Financial Assistance must be included. Both schedules include:

- Grantor agency name
- Federal agency
- Federal program name
- Other identifying agreement numbers
- Catalog of Federal Domestic Assistance (CFDA) number
- Grantor agreement number
- Total award amount including amendments (total grant award)
- Beginning balance
- Current year revenues
- Current year expenditures
- Ending balance
- Program total

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 in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

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

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

### **C. Documentation Requirements**

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

Department of Community Trade and Economic Development  
ATTN: Audit Review and Resolution Office  
906 Columbia Street SW, Fifth Floor  
PO Box 48300  
Olympia WA 98504-8300

- Corrective action plan for audit findings within three (3) months of the audit being received by CTED.
- Copy of the Management Letter

## GENERAL TERMS AND CONDITIONS

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

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

#### **LOWER TIER COVERED TRANSACTIONS**

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

### 8. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
1. All material provided to the Contractor by CTED that is designated as "confidential" by CTED;
  2. All material produced by the Contractor that is designated as "confidential" by CTED; and

## GENERAL TERMS AND CONDITIONS

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

### 9. CONFORMANCE

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

### 10. 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 CTED. CTED shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to CTED 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 Contractor hereby grants to CTED a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to CTED.

The Contractor shall exert all reasonable effort to advise CTED, 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 Contractor shall provide CTED with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Agreement. CTED shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

## **GENERAL TERMS AND CONDITIONS**

### **11. DISALLOWED COSTS**

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

### **12. 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 the Director of CTED, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and 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.

### **13. DUPLICATE PAYMENT**

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

### **14. ETHICS/CONFLICTS OF INTEREST**

In performing under this Agreement, the Contractor 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.

### **15. 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.

### **16. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, CTED, 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 Contractor's performance or failure to perform the Agreement.

The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by

## GENERAL TERMS AND CONDITIONS

the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor'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 Contractor, CTED, the state of Washington, its officers, employees and authorized agents.

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

### 17. INDEPENDENT CAPACITY OF THE CONTRACTOR

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

### 18. INDUSTRIAL INSURANCE COVERAGE

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

### 19. LAWS

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

#### United States Laws, Regulations and Circulars (Federal)

##### A. Audits

Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

##### B. Labor and Safety Standards

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

##### C. Laws against Discrimination

Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90  
Nondiscrimination in Federally Assisted Programs.

Americans with Disabilities Act of 1990, Public Law 101-336

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.



## GENERAL TERMS AND CONDITIONS

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Handicapped Employees of Government Contractors, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.

Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794.

Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq, 24 CFR Part 1.

Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 U.S.C. 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

### D. Office of Management and Budget Circulars

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A-122 (if the Contractor is a nonprofit organization).

Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-102 (if the Contractor is a local government or federally recognized Indian tribal government).

Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, OMB Circular A-110.

### E. Other

Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243\Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Internal Revenue Service Rules, August 31, 1990.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352 (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that contractors who apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

### F. Privacy

Privacy Act of 1974, 5 U.S.C. 552a.

## GENERAL TERMS AND CONDITIONS

### 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 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. Open public meetings act, Chapter 42.30 RCW.
- H. Public records act, Chapter 42.56 RCW.
- I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

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

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

### **21. LIMITATION OF AUTHORITY**

Only the Authorized Representative or 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 Contract.

### **22. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

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

### **23. POLITICAL ACTIVITIES**

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

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

### **24. PREVAILING WAGE LAWS**

All contractors and subcontractors performing work on a construction project funded through this agreement shall comply with prevailing wage laws by paying the higher of state or federal prevailing wages according to:

State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this agreement, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for CTED's review upon request; or

The Davis Bacon Act, 40 U.S.C. 276a-276a-5 and related federal acts provide that all laborers and mechanics employed by contractors or subcontractors in the performance shall be paid wages at

## GENERAL TERMS AND CONDITIONS

rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

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

A Contractor which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Agreement.

A Contractor which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Agreement.

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

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

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

### **26. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Contract 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

## **GENERAL TERMS AND CONDITIONS**

concurrence under this Contract 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.

### **27. PUBLICITY**

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

### **28. RECAPTURE**

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

### **29. RECORDS MAINTENANCE**

The Contractor 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. Contractor 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.

### **30. REGISTRATION WITH DEPARTMENT OF REVENUE**

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

### **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, CTED may terminate the Agreement under the "Termination for Convenience" clause, without the ten calendar 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 Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of CTED.

If CTED approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, CTED in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate

## GENERAL TERMS AND CONDITIONS

to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

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

Every subcontract shall include a term that CTED 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 Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

### **36. TERMINATION FOR CAUSE / SUSPENSION**

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

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

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

If the Agreement is terminated for cause, the Contractor 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, CTED 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, CTED 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 CTED, the Contractor 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;

## GENERAL TERMS AND CONDITIONS

- C. Assign to CTED all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case CTED 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 Contractor to settle such claims must have the prior written approval of CTED, and
- D. Preserve and transfer any materials, Agreement deliverables and/or CTED property in the Contractor's possession as directed by CTED.

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

The rights and remedies of CTED 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 CTED.

# ATTACHMENT A — STATEMENT OF WORK AND BUDGET

Contractor: City of Yelm

Contract No. 08-F6401-028

## Section A: Brief Description

City of Yelm will use its NSP funds to underwrite down-payment assistance loans to eligible buyers of foreclosed properties. These loans will have a zero interest rate and payments will be deferred until the sale or transfer of the property. Recaptured loan funds will be used to provide additional down-payment assistance loans to income-eligible households. The State of Washington designated Yelm as an area with a significantly higher than average rate of home foreclosures and, therefore, in need of this type of emergency financial assistance. The City of Yelm will use its NSP funds to recover approximately fourteen (14) foreclosed properties. Upon the sale of the property, the City of Yelm will assure the continued affordability of the property in accordance with the requirements of 24 CFR 92.252 for rental units and 24 CFR 92.254 for owner-occupied units. Redevelopment of existing housing and/or the provision of new housing will comply with the minimum housing quality standards for Section 8 housing as defined in 24 CFR 982.401.

## Section B: Goals / Expected Results / Products

### Goals / Expected Results / Products

#### Budget Category

13 - Direct Homeownership Assistance

21A - General Admin

- City of Yelm will use NSP funds to underwrite financial mechanisms, including but not limited to down-payment assistance loans, that approximately fourteen (14) eligible buyers may use to purchase foreclosed properties. (Type A NSP Eligible Use Activity) These loans will have a zero interest rate and payments will be deferred until the sale or transfer of the property. Recaptured loan funds will be used to provide additional down-payment assistance loans to income-eligible households.
- City of Yelm will satisfy all requirements for the proper handling and distribution of NSP funds targeted to this project including, but not limited to, the following:
  - When encountering blighted properties, it will need to comply with the definitions and requirements of requirements RCW 35.80A.010 - Condemnation of Blighted Property, and RCW 35.80 - Unfit Dwellings, Buildings and Structures.
  - City of Yelm will adopt the Home definitions of affordable rent stipulated in 24 CFR 92.252 (a), (c) and (f), adjusted for the neighborhood Stabilization Program's 50 percent (50%) and 120 percent (120%) target populations.
  - Continued affordability will be ensured through deed restrictions, covenants running with the land, or other mechanisms approved by HUD, in accordance with the requirements of 24 CFR 92.252 for rental units and 24 CFR 92.254 for owner-occupied units.
  - Redevelopment of existing housing and/or the provision of new housing will comply with the minimum housing quality standards for Section 8 housing as defined in 24 CFR 982.401.
- City of Yelm agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. City of Yelm further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available

# ATTACHMENT A — STATEMENT OF WORK AND BUDGET

Contractor: City of Yelm

Contract No. 08-F6401-028

## Section C: Work Activities, Expectations and Budget

Budget Category	Project Activities	Schedule	Budget Amount
13 – Direct Homeownership Assistance	<ul style="list-style-type: none"> <li>City of Yelm will use NSP funds to directly provide homeowner's down-payment assistance for the purchase of approximately fourteen (14) formerly foreclosed properties (Type B NSP Eligible Use Activity).</li> <li>Any purchase of a foreclosed upon home or residential property must be at a discount from the current, market appraised value of the home or property. Each foreclosed-upon home or residential property must be purchased at a discount of at least one percent (1%) from the current market-appraised value of the home or property.</li> <li>Within 60 days prior to an offer on the property, an appraisal must be conducted that conforms to the requirements of URA at 49 CFR 29.103, "Criteria for Appraisals".</li> <li>Unless otherwise adjusted by HUD, each NSP-assisted homebuyer must receive and complete at least eight (8) hours of homebuyer counseling, unless the City of Yelm obtains a waiver from HUD allows fewer hours of counseling, from a HUD-approved housing counseling agency before obtaining a mortgage and/or real estate loan.</li> <li>The City of Yelm must ensure that the homebuyer obtains a mortgage or loan from a lender who agrees to comply with the bank regulators' guidance for non-traditional mortgages.</li> <li>The City of Yelm must make sure that, if the abandoned or foreclosed home or residential property is sold to an individual as a primary residence, then such sale must be in an amount equal to or less than the cost to acquire, redevelop and/or rehabilitate such home or property as necessary to meet minimum housing quality standards.</li> <li>Redevelopment and/or rehabilitation activities of foreclosed, abandoned or vacant property must meet applicable laws, codes and other requirements relating to housing safety, quality and habitability.</li> <li>Redevelopment and/or rehabilitation activities may include improvements to increase the energy efficiency or conservation of such homes or property or provide a renewable energy source for such homes or property.</li> </ul>	2/18/2009 to 3/19/2013 or sooner	\$576,455



# ATTACHMENT A — STATEMENT OF WORK AND BUDGET

Contractor: City of Yelm

Contract No. 08-F6401-028

## Section C: Work Activities, Expectations and Budget (continued)

<p>13 – Direct Homeownership Assistance (continued)</p>	<ul style="list-style-type: none"> <li>Down-payment assistance may only be used to finance the acquisition by low, moderate or middle income households of housing that they will occupy.</li> <li>Down-payment assistance may be used to pay reasonable closing costs that may be associated with the purchase of the property. In no event should NSP funds be used to pay for closing costs that exceed more than three percent (3%) of the property's gross purchase price.</li> <li>Down-payment assistance may not exceed twenty (20%) of the total purchase price. The calculation of the total purchase price may include subsidizing interest rates (points), subsidizing mortgage principal amounts (balloon payments), mortgage insurance, closing costs, and financing the cost of acquiring property already occupied by the household at terms needed to make the new purchase affordable.</li> </ul>		
<p>21A – General Admin</p>	<ul style="list-style-type: none"> <li>City of Yelm will establish and maintain an administrative point of contact and perform the necessary program administration, record keeping and financial management procedures necessary to comply with federal and state CDBG and NSP requirements.</li> <li>City of Yelm will compile, complete, and submit quarterly NSP progress reports along with other necessary CDBG reports, as requested.</li> <li>City of Yelm will execute a contract with CTED, submit payment vouchers and, at the end of the project, a Grantee Closeout Performance Report. City of Yelm will complete applicable civil rights requirements, including an affirmative marketing plan to procure necessary goods and services from minority and women business enterprises (MWBE). It will verify that consultants are not on the federal "Excluded Parties List System" (EPLS).</li> <li>City of Yelm will conduct an environmental review and prepare environmental review record; and monitor program progress and compliance with applicable federal and state regulations.</li> <li>City of Yelm will enter into a contract with the subrecipients of NSP funds. The contract will stipulate their respective roles and responsibilities. Subrecipient agreements must comply with applicable federal and state regulations. Contract provisions regarding residential construction and rehabilitation must include, but are not limited to, requirements for preparing bid documents, requesting federal and state prevailing wage rates, completing final design and construction plans, conducting a bid opening and selecting a qualified contractor.</li> </ul>	<p>2/18/2009 to 3/19/2013 or sooner</p>	<p>\$64,050</p>

# ATTACHMENT A — STATEMENT OF WORK AND BUDGET

Contractor: City of Yelm

Contract No. 08-F6401-028

## Section C: Work Activities, Expectations and Budget (continued)

21A - General Admin (continued)	<ul style="list-style-type: none"> <li>▪ After the award of any subrecipient agreement, the City of Yelm will routinely and regularly monitor the contractor's progress, collect necessary construction and/or project documents, and resolve any monitoring issues. City of Yelm will provide documentation to CTED demonstrating that it is administering the project in accordance with federal and state requirements. They must document and keep a record for each property acquired using NSP funds, and they must retain these records for at least ten years.</li> <li>▪ The City of Yelm must treat the collection of receipts from deferred loans and/or the net proceeds from the sale of foreclosed properties as program income for the Neighborhood Stabilization Program. If it does not already have a program designed to distribute program income in accordance to CDBG / NSP guidelines, then it will need to create one.</li> <li>▪ Each property acquired with NSP funds must have a written file or record that includes, but not limited to, the following information:               <ul style="list-style-type: none"> <li>- A copy of the "NSP Voluntary Acquisition of Foreclosed Property" notice to Owner that includes a statement that the property will not be acquired through the jurisdiction's powers of eminent domain and statement acknowledging the Owner's rights to choose not to sell the property.</li> <li>- A copy of the appraisal. A copy of the written purchase offer, along with a statement regarding just compensation of the property.</li> <li>- A copy of the purchase contract and a financial statement detailing the settlement costs.</li> <li>- A copy of the recorded deed. A copy of the recorded instruments used to assure the continued affordability of the property.</li> <li>▪ A copy of any appeal or complaint concerning a payment, together with a copy of all pertinent determinations.</li> </ul> </li> </ul>	
TOTAL: \$640,505		

# ATTACHMENT A -- STATEMENT OF WORK AND BUDGET

Contractor: City of Yelm

Contract No. 08-F6401-028

Section D: Project Schedule		
MILESTONE #	MILESTONES	DUE DATE
Milestone #1	CTED and City of Yelm execute a grant contract and funds become available for disbursement If the City of Yelm solicits proposals and executes grant contracts with participating non-profit organizations, then it will forward copies of the executed contracts to CTED. Acquire the foreclosed properties that City of Yelm intends to rehabilitate and sell/rent to eligible buyers/tenants. Provide CTED an inventory of the acquired properties with information regarding the street addresses and purchase prices for each property. City of Yelm will create a fully operational program to underwrite down-payment assistance to eligible buyers. They will provide CTED a complete description of the operation of the program along with a pro-forma analysis of loan activities. City of Yelm will provide CTED a financial report that itemizes the disbursement of NSP funds, an inventory of properties assisted which includes street addresses, purchase amounts and the financial assistance provided, along with the final steps necessary to close NSP. City of Yelm will prepare and submit final reports, invoices, and financial statements to CTED.	September 1, 2009 or sooner
Milestone #2		October 19, 2009 or sooner
Milestone #3		September 18, 2010 or sooner
Milestone #4		September 18, 2010 or sooner
Milestone #5		December 31, 2012 or sooner
Milestone #6		March 19, 2013 or sooner

## **ATTACHMENT B**

### **STATE AND FEDERAL REQUIREMENTS AND ASSURANCES**

In addition to laws listed in the general terms and conditions of this Agreement, the Grantee assures compliance with the following regulations as they pertain to the local project. Contact the State if you want assistance in obtaining a copy of these regulations.

#### **A. HOUSING AND COMMUNITY DEVELOPMENT**

1. Public Law 90-284, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), commonly referred to as the Federal Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988 (P.L. 100-430)
2. Executive Order 11063, as amended by Executive Order 12259 (24 CFR Part 107)
3. The Housing and Community Development Act of 1974, as amended through 1992: Sections 109; 104 (b) 4; 104 (d); and 104 (l), which prohibit discrimination and require identification of housing and community development needs; a "residential anti-displacement and relocation assistance plan"; and adoption and enforcement of policies prohibiting the use of excessive force.
4. Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) as amended in 1989)
5. Title IV of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831b)
6. Public Law 110-289, section 3, "Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes" (also referred to as the Neighborhood Stabilization Program), of the Housing and Economic Recovery Act, 2008 (Docket No. FR-5255-1-01)
7. The American Recovery and Reinvestment Act of 2009

#### **B. LABOR**

1. Davis-Bacon Act, as amended (40 U.S.C. 3141 et seq.)
2. Prohibition of Use of CDBG for Job-Pirating Activities, 24 CFR Part 570.482(f), revised June 2006

#### **C. ENVIRONMENTAL AND CULTURAL**

1. The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. Section 4321 et seq., and 24 CFR Part 58)
2. The Clean Air Act, as amended (42 U.S.C. 7401 et seq.)
3. HUD Environmental Criteria and Standards (24 CFR Part 51)

4. Executive Order 11990, May 24, 1977, as amended by Executive Order 11990: Protection of Wetlands (42 FR 26961 et seq.)
5. The Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271 et seq.)
6. Executive Order 11988, May 24, 1977: Floodplain Management and Wetland Protection (42 FR 26951 et seq.)
7. Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.)
8. The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.)
9. The Reservoir Salvage Act of 1960, as amended by the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.)
10. The Safe Drinking Water Act of 1974, as amended (42 U.S.C. 300f et seq., 21 U.S.C. 349, as amended, and 40 CFR Part 149 (Environmental Protection Agency));
11. The Federal Water Pollution Control Act of 1972, as amended, including the Clean Water Act of 1977, Public Law 92-212 (33 U.S.C. Section 1251 et seq.)
12. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.)
13. The Fish and Wildlife Coordination Act of 1958, as amended (16 U.S.C. Section 661 et seq.)
14. The National Historic Preservation Act of 1966 (16 U.S.C. 470)
15. The Archaeological and Historical Data Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.)
16. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971
17. Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq. and 7 CFR Part 658)
18. Environmental Justice (Executive Order 12898), as amended by Executive Order 12948
19. Explosive and Flammable Operations (Section 2 of the Housing Act of 1949, as amended (42 U.S.C. 1441), Section 7(d) of the Dept HUD Act of 1965 (42 U.S.C. 3535(d)), Section 2 of the Housing and Urban Development Act of 1969 (42 U.S.C. 1441(a)), and 24 CFR Part 51 Subpart C)
20. Airport Clear Zones and Accident Potential Zones (Section 2 of the Housing Act of 1949 as amended (42 U.S.C. 1441), affirmed by Section 2 of the Housing and Urban Development Act of 1969, P.L. No 90-448, Section 7(d) of the Dept HUD Act of 1965 (42 U.S.C. 3535(d)), and 24 CFR Part 51 Subpart D)
21. Toxic Chemicals and Radioactive Materials (Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by Superfund Amendments and Reauthorization Act and 24 CFR 58.5(i))



STATE OF WASHINGTON

DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

128 - 10<sup>th</sup> Avenue SW • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000

February 23, 2009

The Honorable Bob Isom  
Mayor Pro-Tem  
105 Yelm Avenue West  
Yelm, WA 98597

Dear Mayor Isom:

I am pleased to inform you that the Department of Community, Trade and Economic Development (CTED) is awarding up to \$640,505 to fund Neighborhood Stabilization Program (NSP) activities in the City of Yelm. This award is contingent upon CTED's receipt of the Neighborhood Stabilization Program agreement from the U. S. Department of Housing and Urban Development (HUD).

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This letter allows the City of Yelm to begin incurring costs as of February 18, 2009, in an amount not to exceed ten percent of the award for the following activities needed to begin your project and not requiring an environmental review:

- Administration: including staffing, travel and other administrative expenses;
- Preliminary environmental studies and review of 24 CFR 58.5 laws and authorities including Section 106 of the National Historic Preservation Act of 1996;
- Preliminary engineering feasibility studies to the extent needed for environmental assessment; and
- Subrecipient agreements or professional service contracts for any of the above activities.

All eligible costs will be reimbursed by CTED after an interlocal agreement between the CTED and the City of Yelm has been formally executed and an environmental review is complete. All costs to be reimbursed must comply with applicable state and federal requirements.

Costs for activities that require an environmental review cannot be incurred, nor can HUD or Non-HUD funds be committed (Refer to 24 CFR 58.22), until specific procedures required by the State Environmental Policy Act (SEPA) and the National Environmental Policy Act (NEPA) have been completed and the time period for public review, if applicable, has expired.

