

INTERLOCAL AGREEMENT

Contract #20928

between
WASHINGTON STATE UNIVERSITY
and the
CITY OF RICHLAND

for the
Design and Construction of the Wine Science Center at
Washington State University Tri-Cities

This **INTERLOCAL COOPERATIVE AGREEMENT** (AGREEMENT) is entered into as of the date it is executed by the Parties, which consist of Washington State University, an institution of higher education and agency of the state of Washington (WSU), and the City of Richland, a municipal corporation and city of the first class in the state of Washington (CITY), collectively referred to in this AGREEMENT as the PARTIES. This Agreement is issued under the Interlocal Cooperation Act, chapter 39.34 RCW.

WHEREAS, WSU and the CITY have cooperated on the conception, planning, and construction of the Wine Science Center, a facility dedicated to WSU's Viticulture and Enology Program and utilized exclusively for research and education related to viticulture and enology and associated classes.

WHEREAS, pursuant to RCW 35.21.730 through 35.21.755, the City Council of the City of Richland, Washington, adopted Ordinance No. 16-11 on July 19, 2011, creating the Wine Science Center Development Authority (WSCDA); and

WHEREAS, the CITY entered into a Grant Agreement with the Washington State Department of Commerce on October 19, 2012, whereby the CITY was granted four million, nine hundred fifty thousand dollars (\$4,950,000) towards the development of the Wine Science Center; and

WHEREAS, on August 19, 2011, the Washington Wine Commission formally committed seven million, four hundred thousand dollars (\$7,400,000) to support development of the Wine Science Center at the Washington State University Tri-Cities campus in Richland, Washington; and

WHEREAS, the Washington State University Foundation is raising private donations for the completion of the Wine Science Center; and

WHEREAS, the WSCDA completed an intensive programming effort that provided the Basis of Design for pursuing a Design/Build alternative public works procurement method; and

WHEREAS, the WSCDA selected a Design/Build firm that will be utilized by WSU in the construction of the Wine Science Center; and

WHEREAS, WSU has agreed to manage and finance the construction of the Wine Science Center and will maintain the WSCDA in an oversight role; and

WHEREAS, the Washington Department of Commerce has consented per a Memorandum of Consent (Exhibit A) that the remaining funds from the grant will be disbursed or transferred to WSU under the terms of this AGREEMENT; and

WHEREAS, Commerce has reviewed WSU's self-insurance coverage and has consented and agreed per a Memorandum of Consent (Exhibit A) that WSU's self-insurance coverage is sufficient to meet the requirements of the Grant Agreement.

WHEREAS, the CITY and WSU seek an agreement on how remaining proceeds from the Washington State Department of Commerce grant will be transferred from the CITY to WSU.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the PARTIES agree as follows:

1. **Purpose.** The purpose of this AGREEMENT is to formalize how proceeds from the Department of Commerce grant will be transferred from the CITY to WSU during the construction of the Wine Science Center.
2. **Administration.** This AGREEMENT and the transfer of funds from the Department of Commerce grant will be administered by the CITY. WSU will manage the construction process and will provide an end of project report at a City Council meeting at the termination of this AGREEMENT.
3. **Funding.** The CITY agrees to reimburse WSU an amount not to exceed four million, nine-hundred fifty thousand dollars (\$4,950,000) less any reimbursements of the Washington State Department of Commerce Grant received for work conducted during the Design/Build procurement process. Said reimbursements will be for authorized expenditures per the CITY's agreement with the Washington State Department of Commerce and any subsequent amendments to that agreement, incorporated herein as Exhibit B. WSU shall provide documentation as per Exhibit B to support the reimbursement, said documentation to include review and approval by the WSCDA, to the CITY and the CITY shall invoice the Department of Commerce within thirty (30) days of submittal of documentation per Exhibit B by WSU to the CITY. Reimbursements received by the CITY will be sent to WSU within thirty (30) days of receipt of reimbursement. The CITY shall collect no administrative fee.
4. **Agreements.** During the term of this AGREEMENT, WSU will meet the requirements for insurance and reporting per the CITY's agreement with the Washington State Department of Commerce as provided in Exhibit B. Unless specifically stated in this AGREEMENT, WSU will have no other obligations


under the CITY's agreement with the Washington State Department of Commerce. Further, the CITY disclaims any right, title or interest in any funds transferred to WSU under this AGREEMENT or in the Wine Science Center.

5. **Modification.** Except as set forth above, this AGREEMENT may be terminated or modified only by written consent of each PARTY signed hereto.
6. **Term of Agreement and Termination.** This AGREEMENT is effective upon the signature of both PARTIES and terminates May 31, 2015, or extended through a properly executed amendment.
7. **Records.**
 - a. The PARTIES to this AGREEMENT shall each maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either PARTY in the performance of the service(s) described herein. These records shall be subject to inspection, review, or audit by personnel of both PARTIES, other personnel duly authorized by either PARTY, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this AGREEMENT will be retained for six (6) years after expiration of this AGREEMENT. The Office of the State Auditor, federal auditors, and any persons duly authorized by the PARTIES shall have full access and the right to examine any of these materials during this period.
 - b. If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
 - c. Records and other documents, in any medium, furnished by one PARTY to this AGREEMENT to the other PARTY, will remain the property of the furnishing PARTY, unless otherwise agreed. Each PARTY will utilize reasonable security procedures and protections to assure that records and documents provided by the other PARTY are not erroneously disclosed to third parties. However, the parties acknowledge that State Agencies are subject to chapter 42.56 RCW, the Public Records Act.
8. **No Separate Legal Entity.** No new, separate administrative or legal entity is to be established in association with this AGREEMENT nor to conduct the cooperative undertaking described herein.
9. **Severability.** In the event that any term or condition of this AGREEMENT or application thereof to any person, entity, or circumstance is held invalid; such invalidity shall not effect any other terms, conditions, or applications of this AGREEMENT which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this AGREEMENT are declared severable.

10. **Public Relations.** WSU shall coordinate with the CITY on communications and public events related to the construction of the Wine Science Center.
11. **Amendment.** 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.
12. **Assignment.** The work to be provided under this AGREEMENT, and any claim arising under this AGREEMENT, is not assignable or delegable by either PARTY in whole or in part, without the express prior written consent of the other PARTY, which consent shall not be unreasonably withheld.
13. **Governing Laws.** The PARTIES agree that all activity pursuant to this AGREEMENT shall be in accordance with all applicable federal, state, and local laws, rules, and regulations as they currently exist or as amended. This AGREEMENT shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought under this AGREEMENT shall be in Superior Court for Thurston County.
14. **Responsibility of the Parties.** Each PARTY to this AGREEMENT shall be responsible for its own acts and/or omissions and those of its officers, employees, and agents in the performance of this AGREEMENT.
15. **Waiver.** A failure by either PARTY to exercise its rights under this AGREEMENT shall not preclude that PARTY from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this AGREEMENT. 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 personnel authorized to bind each of the PARTIES.
16. **All Writings Contained Herein.** This AGREEMENT contains all the terms and conditions agreed upon by the PARTIES. No other understanding, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any of the PARTIES hereto.
17. **Recording.** This AGREEMENT will be placed on the website of both public agencies in conformance with RCW 39.34.040.

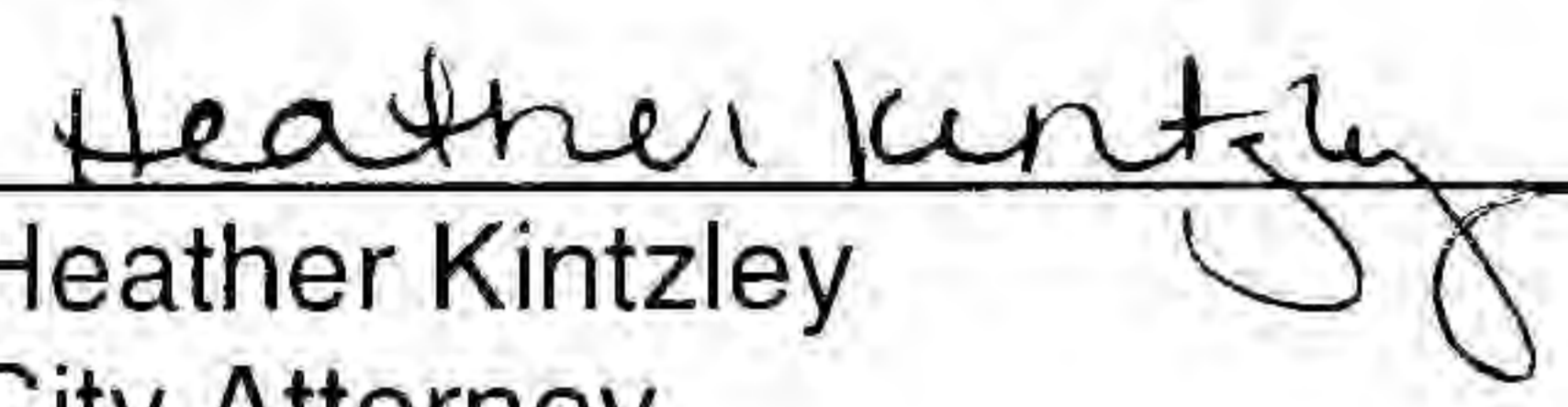
In Witness Whereof, the PARTIES have signed this AGREEMENT as of the day and year written below.

CITY OF RICHLAND



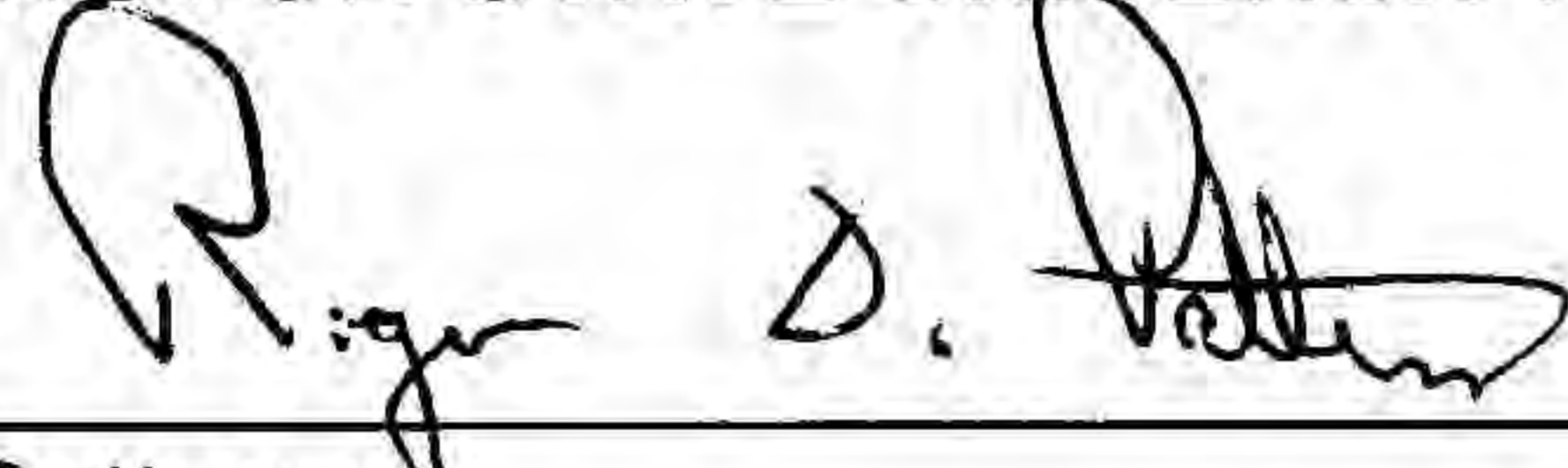
Cynthia D. Johnson
City Manager
Date: _____

Approved as to Form:




Heather Kintzley
City Attorney

WASHINGTON STATE UNIVERSITY



Roger Patterson
Vice President for Finance and Admin.
Date: 8/5/13

Approved as to Form:



~~Adam Juscel~~
Assistant Attorney General

EXHIBIT A: Memo of Consent from Washington State Department of Commerce

Memorandum of Consent

Of

Washington State Department of Commerce

On or about October 29, 2012 the Washington State Department of Commerce ("Commerce") executed a capital grant (as set forth in Washington State Department of Commerce Contract S13-97205-017, as amended) (the "Grant Contract") to the City of Richland through the Business Services Division for the Wine Sciences Center Building Construction.

Section 2.7 of the Grant Contract prohibits assignments of rights under the Grant Contract without prior written consent of Commerce. Section 1.18 of the Grant Contract sets forth the insurance requirements pertinent to the construction of the Wine Science Center Building.

The City of Richland has requested, and Commerce has agreed, to permit any and all remaining grant funds that are unspent or undispersed to be transferred and or dispersed, as applicable, to Washington State University ("WSU"), which will assume the duty to manage the construction of the Wine Science Center, as shall be set forth in an Interlocal Agreement between WSU and the City of Richland.

This Memorandum of Consent will memorialize that Commerce consents to the remaining funds from the grant being dispersed and/or transferred to WSU. It will also memorialize that Commerce has reviewed WSU's self-insurance coverage and confirms it is sufficient to meet the requirements of the Grant Contract.

Accordingly, the representative of Commerce signing below represents and warrants that Commerce gives such consent and confirmation, and that he or she possesses the requisite authority to represent and legally bind Commerce.

It is so agreed.

Washington State Department of Commerce

By:

[Signature]
Signature

Mary Trimaco
Printed Name

Title:

Assistant Director, BSD

Date:

6/24/13

**EXHIBIT B: Grant Agreement Between Washington State Department of
Commerce and City of Richland**

CONTRACT NO. 125-12



Department of Commerce
Innovation is in our nature.

Capital Grant to:

City of Richland

through the

Business Services Division

For: Wine Science Center Building Construction

Start Date: Upon Final Signature

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DECLARATIONS

CLIENT INFORMATION

Legal Name: City of Richland
Contract Number: S13-97205-017
Federal Tax Identification Number: 91-6015119
State Wide Vendor Number: SWV0000350-00

PROJECT INFORMATION

Project Title: Wine Science Center Building Construction
Project City: Richland
Project State: Washington
Project Zip Code: 99352

CONTRACT INFORMATION

Grant Amount: \$4,950,000
Total Estimated Cost: **\$12,570,000**
Total Estimated Funding: **\$12,570,000**
Appropriation: Ch. 1, Laws of 2012 (Sec 309)
Biennium: 2011-2013
Biennium Close Date: June 30, 2013
Earliest Date for Project Reimbursement: April 23, 2012

SPECIAL CONDITIONS GOVERNING THIS AGREEMENT

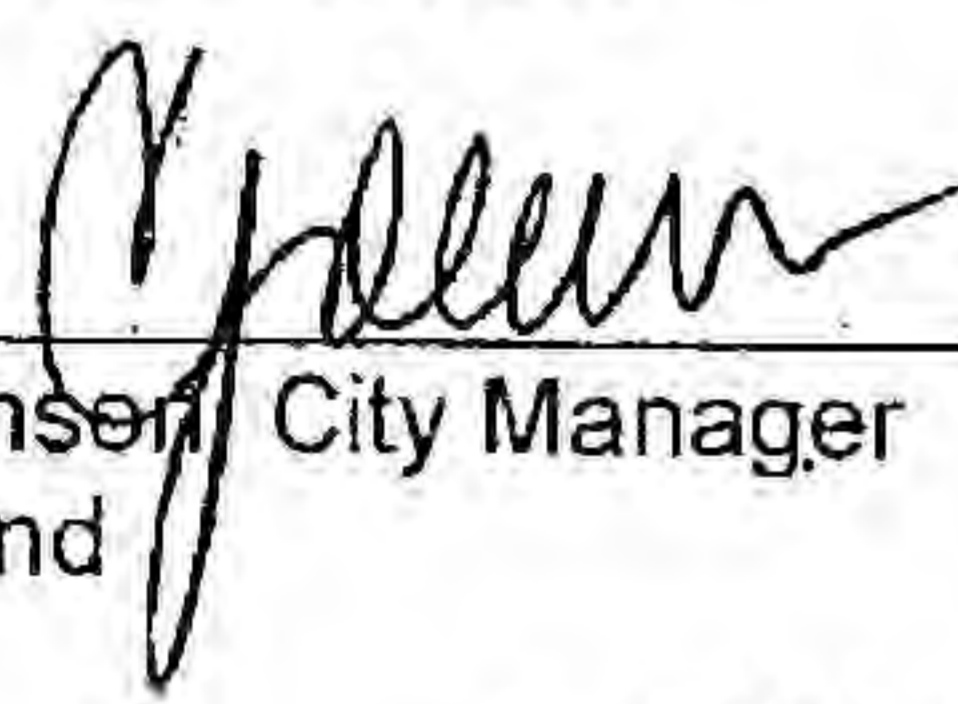
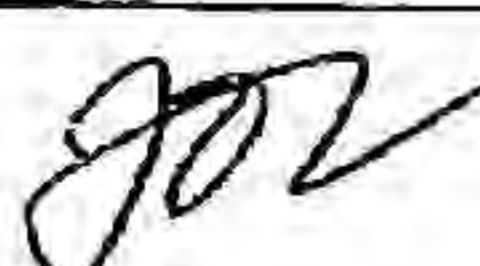
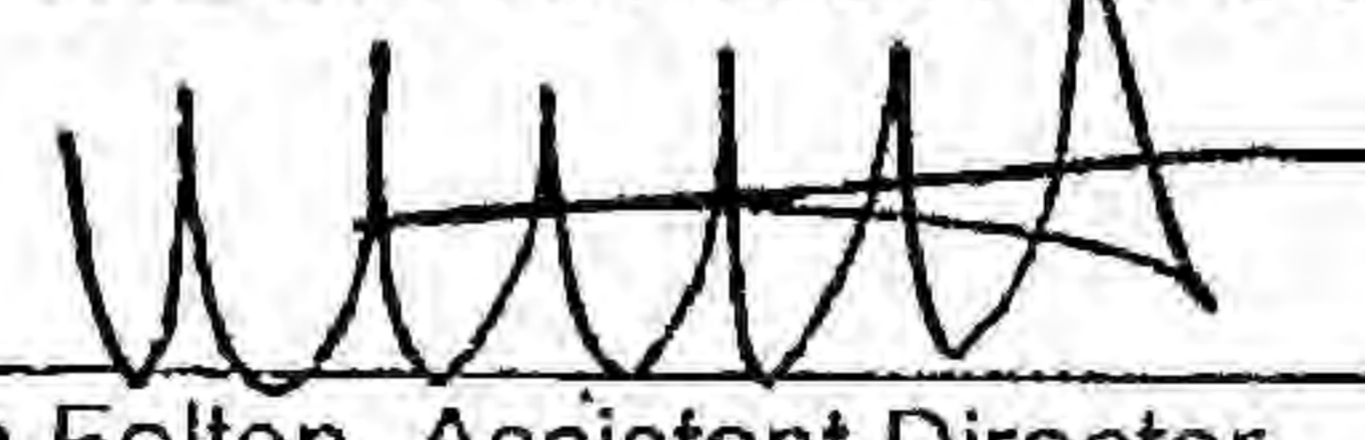
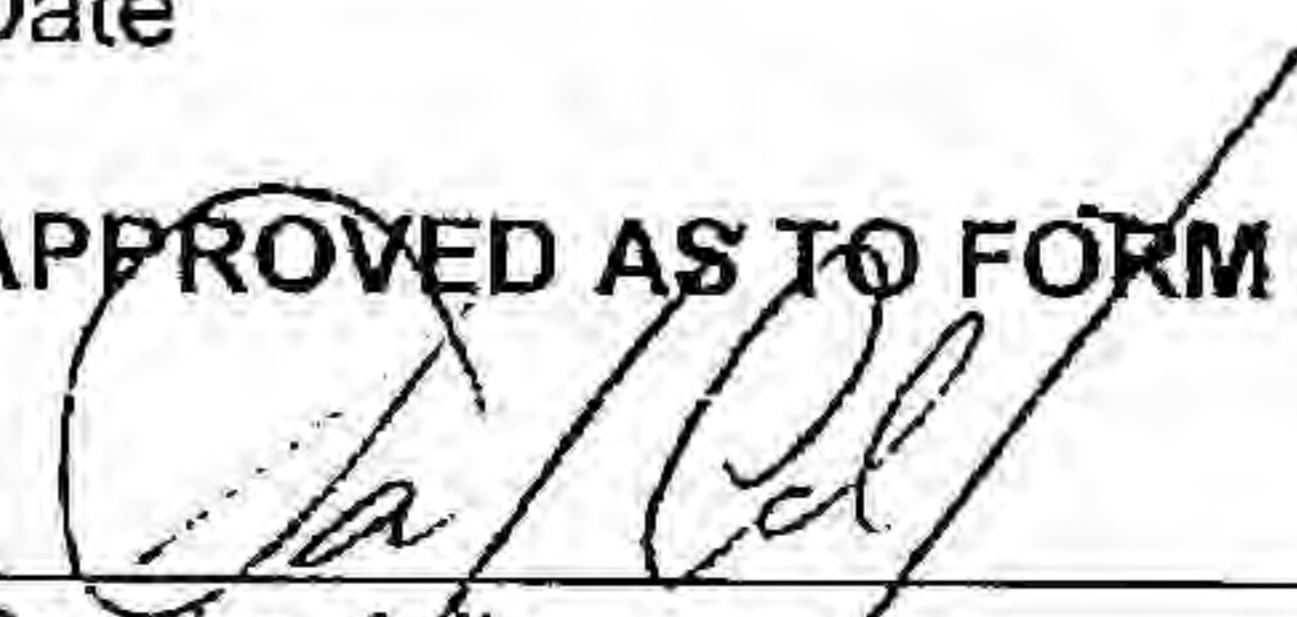
Grant funding is contingent on Contractor providing the following evidence to Commerce by February 15, 2013:

- the Washington State Wine Commission has approved the Wine Science Center preliminary design
- sufficient funding has been acquired to complete construction as provided in the approved preliminary design
- an agreement has been entered into between the Wine Science Center Development Authority and the Washington State University (WSU) that provides for the occupancy of the Center by the WSU Viticulture and Enology Program and provides guarantees that the primary purpose of the Center will be for research and education related to viticulture and enology.

FACE SHEET

Contract Number: S13-97205-017

**Washington State Department of Commerce
INNOVATION PARTNERSHIP ZONES
GRANT PROGRAMS—DIRECT-APPROPRIATION PROJECTS**

1. Contractor City of Richland 505 Swift Boulevard, PO Box 190 (MS 18) Richland, Washington 99352		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative Gary Ballew Economic Development Manager 509-942-7763 gballew@ci.richland.wa.us		4. Commerce Representative Jerri Smith Grants Manager 360-725-4049 jerri.smith@commerce.wa.gov	
5. Contract Amount \$4,950,000	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Contract Start Date Upon Final Signature	8. Contract End Date June 30, 2016
9. Federal Funds (as applicable) N/A	Federal Agency N/A	CFDA Number N/A	
10. Tax ID # 91-6015119	11. SWV # SWV0000350-00	12. UBI #	13. DUNS #
14. Contract Purpose The Department of Commerce and the Contractor have entered into this Contract to undertake a legislatively-approved project that furthers the goals and objectives of the Washington State Direct Appropriations Program. COMMERCE, defined as the Department of Commerce or its successor agency, and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contract Terms and Conditions including ATTACHMENT I: PROJECT SCOPE OF WORK; ATTACHMENT II: CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT; ATTACHMENT III: BUDGET; ATTACHMENT IV: CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES; and ATTACHMENT V: CERTIFICATION OF INTENT TO ENTER THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) CERTIFICATION PROCESS (if applicable).			
FOR THE CONTRACTOR  _____ Cindy D. Johnson, City Manager City of Richland Date: <u>10/29/12</u> 		FOR THE DEPARTMENT OF COMMERCE  _____ Leigh Felton, Assistant Director Business Services Division Date: _____ APPROVED AS TO FORM ONLY  _____ Sandra Adix Assistant Attorney General Date: <u>10/09/2012</u>	

CONTRACT TERMS AND CONDITIONS

GRANT PROGRAMS—DIRECT APPROPRIATION PROJECTS

Part 1. SPECIAL TERMS AND CONDITIONS

1.1. DEFINITIONS

As used throughout this Washington State Capital Budget Direct-Appropriation Grant Contract the following terms shall have the meaning set forth below:

- A. "Contract" shall mean this Washington State Capital Budget Direct-Appropriation Grant Contract.
- B. "Contractor" shall mean the entity identified on the Contract Face Sheet performing service(s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.
- C. "Department" shall mean the Washington State Department of Commerce (hereinafter referred to as COMMERCE) who is statutorily authorized under RCW 43.330 to administer state funds and programs which are assigned to COMMERCE by the Governor or the Washington State Legislature, and is a Party to the Contract.
- D. "Declarations " and "Declared" shall refer to the project information as stated on the Declarations Page of this Contract, displayed within the Contract in **THIS STYLE** for easier identification.

1.2. AUTHORITY

The Washington State Legislature, in Chapter 1, Laws of 2012, (Section 309), has awarded the Contractor a Washington State Capital Budget Direct-Appropriation Contract for a legislatively-approved project, in the **BIENNIUM** as shown on the Declarations page.

1.3. PURPOSE

COMMERCE and the Contractor have entered into this Contract agreement to undertake a legislatively-approved project that furthers the goals and objectives of Washington State. The project will be undertaken by the Contractor and will include the activities described in **Attachment I: SCOPE OF WORK**. The project must be undertaken in accordance with the terms and conditions, and all applicable federal, state and local laws and ordinances, which by this reference are incorporated into this Contract as though set forth fully herein.

1.4. ORDER OF PRECEDENCE

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

- A. Applicable federal and state of Washington statutes and regulations.
- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.

1.5. GRANT AMOUNT

COMMERCE shall pay an amount not to exceed the awarded **GRANT AMOUNT** as shown on the Declarations Page for the eligible costs necessary for or incidental to the performance of work as set forth in the described in **Attachment I: SCOPE OF WORK**.

1.6. CERTIFICATION OF FUNDS

- A. The release of state funds under this Contract is contingent upon the Contractor certifying that it has expended or has access to funds from other sources as set forth in **Attachment II – CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT**, incorporated into the Contract by reference. Such sources may consist of a combination of any of the following:
- Eligible Project expenditures prior to the execution of this Contract.
 - Cash dedicated to the Project.
 - Funds available through a letter of credit or other binding loan commitment(s).
 - Pledges from foundations or corporations.
 - Pledges from individual donors.
 - The value of real property when acquired solely for the purposes of this Project, as established and evidenced by a current market value appraisal performed by a licensed, professional real estate appraiser, or current property tax statement. COMMERCE will not consider appraisals for prospective values of such property for the purposes of calculating the amount of non-state matching fund credit.
 - In-kind contributions subject to COMMERCE's approval.
- B. The Contractor shall maintain records sufficient to evidence that it has access to or has expended funds from such non-state sources, and shall make such records available for COMMERCE's review upon reasonable request.

1.7. PROJECT EXPENDITURES ELIGIBLE FOR REIMBURSEMENT

Payments to the Contractor shall be made on a reimbursement basis only. For the purposes of this Contract, eligible costs shall be construed to mean costs incurred and paid, or costs incurred and payable within thirty (30) days. Only costs incurred on or after **April 23, 2012**, as shown in the Declarations, are eligible for reimbursement under this Contract.

The Contractor may be reimbursed for eligible costs related to the activities identified in **Attachment I: SCOPE OF WORK**.

Real property and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the project;

- A. Design, engineering, architectural, and planning;
- B. Archaeological/historical review;
- C. Construction management and construction observation (from external sources only);
- D. Construction costs including, but not limited to, the following:
 - i. Site preparation and improvements;
 - ii. Permits and fees;
 - iii. Labor and materials;
 - iv. Taxes on project goods and services;
 - v. Capitalized equipment;
 - vi. Information technology infrastructure; and
 - vii. Landscaping.
- E. Other costs authorized through the legislation.

1.8. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the Contractor for eligible project expenditures up to the maximum payable under this Contract. When requesting reimbursement for costs incurred or expenditures made, the Contractor shall submit a signed and completed Invoice Voucher (Form A-19), referencing the **Attachment I: SCOPE OF WORK** project activity performed, and any appropriate documentation. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Each Invoice Voucher 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 Contractor.

The final Invoice Voucher payment shall not occur prior to the completion of all project activities as identified in **Attachment I: SCOPE OF WORK**. A sum not to exceed ten percent (10%) of the Contract amount will be retained until all project activities are complete and a Certified Project Completion Report is completed and submitted by the Contractor, per Section 1.9.

The Contractor shall submit all Invoice Vouchers and any required documentation to:

Business Services Division
Department of Commerce
PO Box 42525
Olympia, WA 98504-2525

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

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

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

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

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

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

1.9. CERTIFIED PROJECT COMPLETION REPORT AND FINAL PAYMENT

The Contractor shall complete a Certified Project Completion Report when activities identified in **Attachment I: SCOPE OF WORK** are complete.

The Contractor shall provide the following information to COMMERCE:

- A. A certified statement that the project, as described in **Attachment I: SCOPE OF WORK**, is complete and, if applicable, meets required standards.
- B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in **Attachment I: SCOPE OF WORK**.
- C. Certification that all costs associated with the project have been incurred and accounted for. Costs are incurred when goods and services are received and/or Contract work is performed.
- D. A final voucher for the remaining eligible funds.

The Contractor will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the Contract amount including the ten percent (10%) retainage, as described in Section 1.8, Billing Procedures and Payment. The final Invoice Voucher payment shall not occur prior to the completion of all project activities identified in **Attachment I: SCOPE OF WORK** and COMMERCE's receipt and acceptance of the Certified Project Completion Report.

1.10. REPORTS

The Contractor shall furnish COMMERCE with Project Status Reports when submitting Invoice Vouchers (as described in Section 1.8, Billing Procedures and Payment), a Certified Project

Completion Report at project completion (as described in Section 1.9, Certified Project Completion Report and Final Payment), and other reports as COMMERCE may require. Failure to file reports as requested may result in termination of this Contract.

1.11. EVALUATION AND MONITORING

The Contractor shall cooperate with and freely participate in any monitoring or evaluation activities conducted by COMMERCE, including site inspections, if necessary.

The Contractor may be asked by COMMERCE to provide photographs, either hard copy or electronically, which visually depict the progress made on the project.

COMMERCE or the State Auditor and any of their representatives shall have full access to and the right to examine all of the Contractor's records with respect to all matters covered in this Contract. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this Contract. Such rights last for six (6) years from the date final payment is made hereunder.

1.12. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this Contract and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Contract. This provision does not extend to claims that COMMERCE may bring against the Contractor in recapturing funds expended in violation of this Contract.

1.13. CHANGE OF OWNERSHIP OR USE FOR CONTRACTOR-OWNED PROPERTY

The Contractor understands and agrees that any or all assets acquired, constructed, or otherwise improved by the Contractor using the funds under this Contract shall be held and used by the Contractor for the purposes stated in **Attachment I: SCOPE OF WORK** for a period of at least ten (10) years from the date the final payment is made.

For a period of at least ten (10) years from the date the final payment is made, in the event that the Contractor decides to change or transfer ownership of any or all assets acquired, constructed, or otherwise improved by the Contractor using the funds under this Contract, the Contractor agrees that any such decision or action must be submitted in writing and approved by COMMERCE in writing at least thirty (30) days prior to the execution of such decision or action.

In the event the Contractor is found to be out of compliance with this section, the Contractor shall repay the principal amount of the Contract as stated in Section 1.5, Grant Amount, plus interest calculated at the rate of interest on State of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject asset was authorized. Repayment shall be made pursuant to Section 1.19, Recapture Provision.

1.14. CHANGE OF USE FOR LEASED PROPERTY

The Contractor understands and agrees that any facility leased by the Contractor that is constructed, renovated, or otherwise improved using state funds under this Contract shall be used by the Contractor for the purposes stated in **Attachment I: SCOPE OF WORK** for a period of at least ten (10) years from the date the final payment is made.

In the event the Contractor is found to be out of compliance with this section, the Contractor shall repay the principal amount of the Contract as stated in Section 1.5, plus interest calculated at the rate of interest on State of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 1.19, Recapture Provision.

1.15. HISTORICAL AND CULTURAL ARTIFACTS

Prior to commencing construction, Contractor shall complete the requirements of Governor's Executive Order 05-05, or, as a substitute for completion of Governor's Executive Order 05-05, Contractor shall complete Section 106 of the National Historic Preservation Act. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts and agrees to hold harmless COMMERCE and the State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 05-05, coordinate with the Washington State Department of Archaeology and Historic Preservation (DAHP), including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed project funded by this Contract. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing pre-requisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all sub-contracts for work or services related to **Attachment I: SCOPE OF WORK**.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and, WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05.

In the event that the Contractor finds it necessary to amend **Attachment I: SCOPE OF WORK**, the Contractor may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

1.16. SIGNAGE, MARKERS, AND PUBLICATIONS

If, during the period covered by this Contract, the Contractor displays or circulates any communication, publication, or donor recognition identifying the financial participants in the project, any such communication or publication must identify "The Taxpayers of Washington State" as a participant.

1.17. PREVAILING WAGE LAW

The project funded under this Contract is subject to state prevailing wage law (Chapter 39.12 RCW). The Contractor is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine the prevailing wages that must be paid. COMMERCE is not responsible for determining the prevailing wages applying to this project or for any prevailing wage payments that may be required by law.

1.18. INSURANCE

A. Private Organizations

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State of Washington 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 its Subcontractors, or agents of either, while performing under the terms of this Contract.

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

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

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

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

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

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

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

- i. The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name the Contractor as beneficiary.
- ii. Subcontractors that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.

The Contractor shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of

coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

B. Self-Insured Contractors

With prior approval from COMMERCE, the Contractor may provide insurance coverage under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the Contractor shall provide:

- i. a description of its self-insurance program, and
- ii. 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:

- i. Governmental Accounting Standards Commerce (GASB),
- ii. Financial Accounting Standards Commerce (FASB), and
- iii. The Washington State Auditor's annual instructions for financial reporting.

Contractors 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 COMMERCE a summary of coverages and a letter of self-insurance, evidencing continued coverage under Contractor'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 Contract.

Employers Liability ("Stop Gap") Insurance. In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident of \$1,000,000 each employee for bodily injury or disease.

Excess Coverage. By requiring insurance herein, COMMERCE 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 Contracted to COMMERCE in this Contract.

Unemployment and Industrial Insurance. The Contractor shall be in full compliance with all state unemployment and industrial insurance laws while performing work under this Contract. COMMERCE will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Contractor, or any subContractor or employee of the Contractor, which might arise under the industrial insurance laws during performance of this Contract.

Protection of Project Property, Contractor's Assumption of Risk. The Contractor shall continuously maintain adequate protection of all the project work from damage and shall protect the property from injury or loss arising in connection with this Contract. The entire work of the Contractor shall be at the sole risk of the Contractor. The Contractor may elect to secure fire, extended coverage, and vandalism insurance or all-risk insurance to cover the project work during the course of construction. The Contractor shall take all necessary precautions for the safety of employees working on the project, and shall comply with all applicable provisions of federal, state, and local safety laws and building codes to prevent accidents or injuries to persons, on, about, or adjacent to the premises where the work is being performed.

1.19. RECAPTURE PROVISION

In the event that the Contractor fails to expend state funds in accordance with state law and/or the provisions of this Contract, COMMERCE reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance. Repayment by the Contractor of state funds under this

recapture provision shall occur within thirty (30) days of demand. In the event that COMMERCE is required to institute proceedings to enforce this recapture provision, COMMERCE shall be entitled to its cost thereof, including reasonable attorney's fees.

1.20. REDUCTION IN FUNDS

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

1.21. REAPPROPRIATION

The parties hereto understand and agree that any state funds, including the ten percent (10%) retainage as described in Section 1.8, Billing Procedures and Payments, not expended by the **BIENNIUM CLOSE DATE** listed on the Declarations Page will lapse on that date unless specifically reappropriated by the Washington State Legislature in a budget or budget amendment proposed by the Legislature or Governor and approved as law. COMMERCE will make all necessary efforts to seek reappropriation of funds into the next biennium following the declared **BIENNIUM**. If funds are so reappropriated, COMMERCE's obligation under the terms of this Contract shall be contingent upon the terms of such reappropriation.

1.22. SUBCONTRACTING

Notwithstanding the provisions of General Term and Condition, Section 2.37, Subcontracting, no prior written approval is required for subcontracting of the actual construction of the Project or of engineering related to the construction of the Project.

1.23. POST-CONTRACT REPORTING

After submission of the Project Completion Report, the Contractor shall continue, for up to five years, or as may be required by Commerce, to provide updates on the funded project. Report format shall be provided by Commerce.

Part 2. GENERAL TERMS AND CONDITIONS

2.1. DEFINITIONS

As used throughout this Grant 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.
- B. "COMMERCE" shall mean the Washington State Department of Commerce, and which is a Party to the Contract.
- C. "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.
- D. "State" shall mean the state of Washington.
- E. "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.

2.2. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

2.3. ALL WRITINGS CONTAINED HEREIN

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

2.4. AMENDMENTS

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

2.5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35

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

2.6. APPROVAL

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

2.7. ASSIGNMENT

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

2.8. ATTORNEY'S 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.

2.9. 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 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.

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

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 COMMERCE's requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds

Contractors expending \$100,000 or more in total state funds in a fiscal year must have a financial audit as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS). The Schedule of State Financial Assistance must be included. The schedule includes:

- Contractor agency name
- State program name
- BARS account number
- Contractor
- Agency Contract number
- Contract award amount including amendments (total Contract 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.

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 COMMERCE.

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) by sending a scanned copy to auditreview@commerce.wa.gov or by sending a hard copy to:

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

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

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

2.10. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990, 28 C.F.R. Part 35 will be required, as specified by the local building Department.

2.11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

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

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

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

the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

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

2.12. 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.

2.13. COPYRIGHT PROVISIONS

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

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

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

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

2.14. DISALLOWED COSTS

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

2.15. DISPUTES

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

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;

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

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

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

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

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

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

2.16. 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.

2.17. ETHICS/CONFLICTS OF INTEREST

In performing under this Contract, 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.

2.18. GOVERNING LAW AND VENUE

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

2.19. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor 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 Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by 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, COMMERCE, 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.

2.20. INDEPENDENT CAPACITY OF THE CONTRACTOR

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

2.21. INDUSTRIAL INSURANCE COVERAGE

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

2.22. 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:

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. Housing assistance program, Chapter 43.185 RCW.
- G. Interlocal cooperation act, Chapter 39.34 RCW.
- H. Noise control, Chapter 70.107 RCW.
- I. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open public meetings act, Chapter 42.30 RCW.
- K. Prevailing wages on public works, Chapter 39.12 RCW.
- L. Public records act, Chapter 42.56 RCW.
- M. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.
- N. Shoreline management act of 1971, Chapter 90.58 RCW.
- O. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- P. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State environmental policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05 Archeological and Cultural Resources.

2.23. 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.

2.24. 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.

2.25. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

2.26. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

2.27. 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.

2.28. PREVAILING WAGE LAWS

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this Contract, 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 COMMERCE's review upon request.

2.29. 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 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.

2.30. PUBLICITY

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

2.31. RECAPTURE

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

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

2.32. RECORDS MAINTENANCE

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six (6) 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.

2.33. REGISTRATION WITH DEPARTMENT OF REVENUE

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

2.34. RIGHT OF INSPECTION

At no additional cost all records relating to the Contractor's performance under this Contract 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 Contract. The Contractor shall provide access to its facilities for this purpose.

2.35. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may terminate the Contract under the "Termination for Convenience" clause, without the ten (10) business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

2.36. SEVERABILITY

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

2.37. SUBCONTRACTING

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

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

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

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

2.38. SURVIVAL

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

2.39. 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.

2.40. TERMINATION FOR CAUSE / SUSPENSION

In event COMMERCE determines that the Contractor failed to comply with any term or condition of this Contract, COMMERCE may terminate the Contract 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, COMMERCE 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, COMMERCE may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow COMMERCE to terminate the Contract upon written notice to the Contractor.

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

If the Contract 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 Contract and the replacement Contract, as well as all costs associated with entering into the replacement Contract (i.e., competitive bidding, mailing, advertising, and staff time).

2.41. TERMINATION FOR CONVENIENCE

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

2.42. TERMINATION PROCEDURES

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

- A. Stop work under the Contract 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 Contract;
- C. Assign to COMMERCE all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of COMMERCE; and
- D. Preserve and transfer any materials, Contract deliverables and/or COMMERCE property in the Contractor's possession as directed by COMMERCE.

Upon termination of the Contract, COMMERCE shall pay the Contractor for any service provided by the Contractor under the Contract 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 Contractor 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 Contract or otherwise provided under law.

2.43. WAIVER

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

ATTACHMENT I:
PROJECT SCOPE OF WORK

Project Summary: Funding will assist with the construction of the new Wine Science Center building, to include, but not be limited to the following:

Pre-Construction Activities

- Engineering/Design
- Cultural and Historical Resources Review
- Permitting
- Geotechnical

Construction

Construction of a building to provide physical space for the research and instructional elements of the center as determined by the approved design.

Deliverables:

- Digital photographs of the sites of each of the activities before, during and after completion of construction.
- Project Completion Report. Report format to be provided by COMMERCE.
- Certificate of Occupancy or other similar documentation.
- Progress Reports.

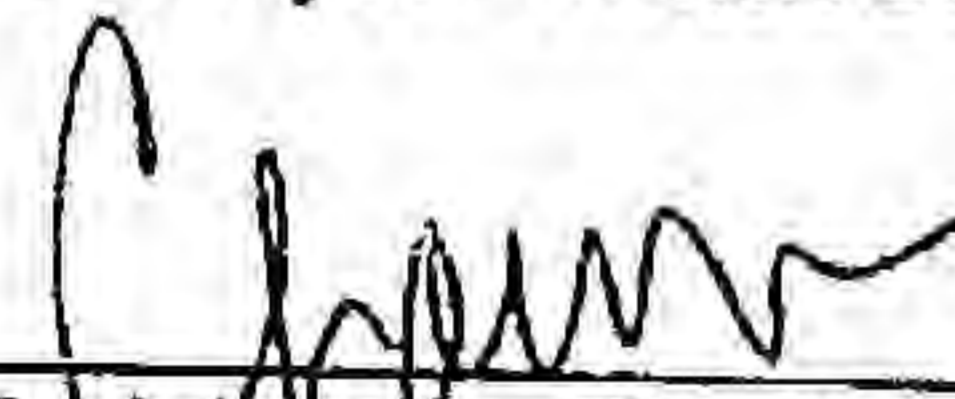
All deliverables must be received by COMMERCE no later than July 15, 2016.

Project status reports are required through the term of this Contract on a quarterly schedule to COMMERCE:

- January 15
- April 15
- July 15
- October 15

The Contractor shall make all plans and documents related to this Contract available for COMMERCE's review upon reasonable request.

The Contractor, by its signature below, certifies that the project's scope of work and performance measures set forth above have been reviewed and approved by the Contractor's governing body as of the date and year written below.



Cindy D. Johnson, City Manager
City of Richland

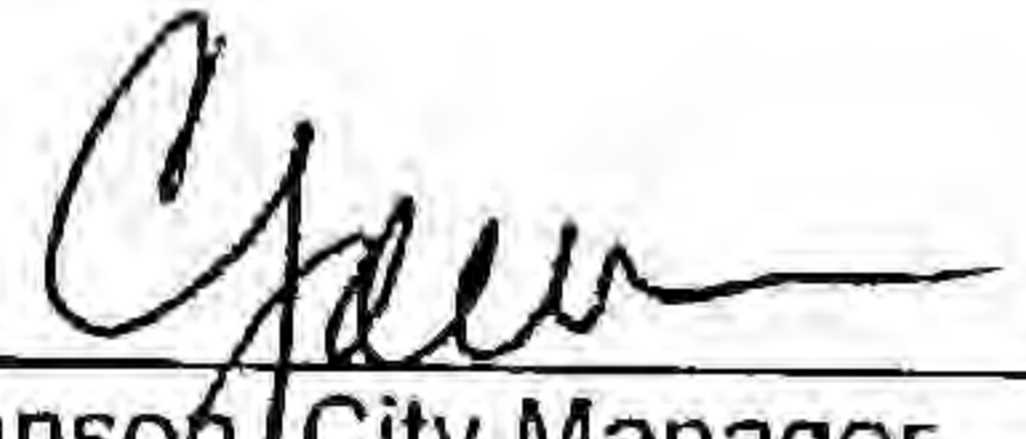
10/29/12
DATE _____
302

**ATTACHMENT II:
CERTIFICATION OF THE AVAILABILITY OF
FUNDS TO COMPLETE THE PROJECT**

Non-2012 Direct Appropriation Funds	Amount	Status
Washington State Wine Commission Assessments	\$7,400,000	Secured
Private Donations (WSU Foundation)	\$115,000	Secured
Hanford Area Economic Investment Fund Advisory Committee Grant	\$50,000	Secured
City of Richland	\$45,000	Secured
Port of Benton	\$10,000	Secured
State 2012 Direct Appropriation Funds	\$4,950,000	Secured
Total Funding Sources	\$12,570,000	


CERTIFICATION

The Contractor, by its signature, certifies that Project funding from sources other than those provided by this Contract and identified above, 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 elsewhere in this Contract, as of the date and year written below. The Contractor 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.



Cindy D. Johnson, City Manager
City of Richland

102912

DATE 

ATTACHMENT III: BUDGET

The budget shall consist of the following elements. Contractor shall be reimbursed for actual expenditures.

	COMMERCE Grant	Other Funds	Total
Pre-Construction (as described in Scope of Work)	\$500,000	\$680,000	\$1,180,000
Construction	\$4,450,000	\$5,940,000	\$10,390,000
Capital Equipment	\$0	\$0	\$0
Other: Financing Costs	\$0	\$1,000,000	\$1,000,000
Other: (Name)	\$0	\$0	\$0
TOTAL	\$4,950,000	\$7,620,000	\$12,570,000

Special Budget Provisions:

A total amount of transfers of funds between line item budget categories in this Contract shall not exceed ten (10) percent of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed ten (10) percent, the total budget shall be subject to justification and negotiation of a Contract amendment by the Contractor and COMMERCE.


A sum of ten (10) percent of COMMERCE funds shall be withheld until all activities and final products defined in Attachment I: Scope of Work have been successfully completed by the Contractor and accepted fully by COMMERCE.

**ATTACHMENT IV:
CERTIFICATION OF THE PAYMENT AND REPORTING OF
PREVAILING WAGES**

The Contractor, by its signature below, certifies that all Contractors and Subcontractors performing work on the project as described in ATTACHMENT I: PROJECT SCOPE OF WORK shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the project funded by this Contract, 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 COMMERCE's review upon request.

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

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



Cindy D. Johnson, City Manager
City of Richland

10/29/12
DATE



**ATTACHMENT V:
CERTIFICATION OF THE INTENT TO ENTER THE LEADERSHIP IN
ENERGY AND ENVIRONMENTAL DESIGN (LEED)
CERTIFICATION PROCESS**

EXEMPT – NOT APPLICABLE

The Contractor, by its signature below, certifies that it will enter into the Leadership in Energy and Environmental Design (LEED) certification process, as stipulated in RCW 39.35D, as applicable to the project described in ATTACHMENT I: PROJECT SCOPE OF WORK funded by this Contract. The Contractor shall, upon receipt of LEED certification by the United States Green Building Council, provide documentation of such certification to COMMERCE.

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

Cindy D. Johnson, City Manager
City of Richland

DATE

Amendment

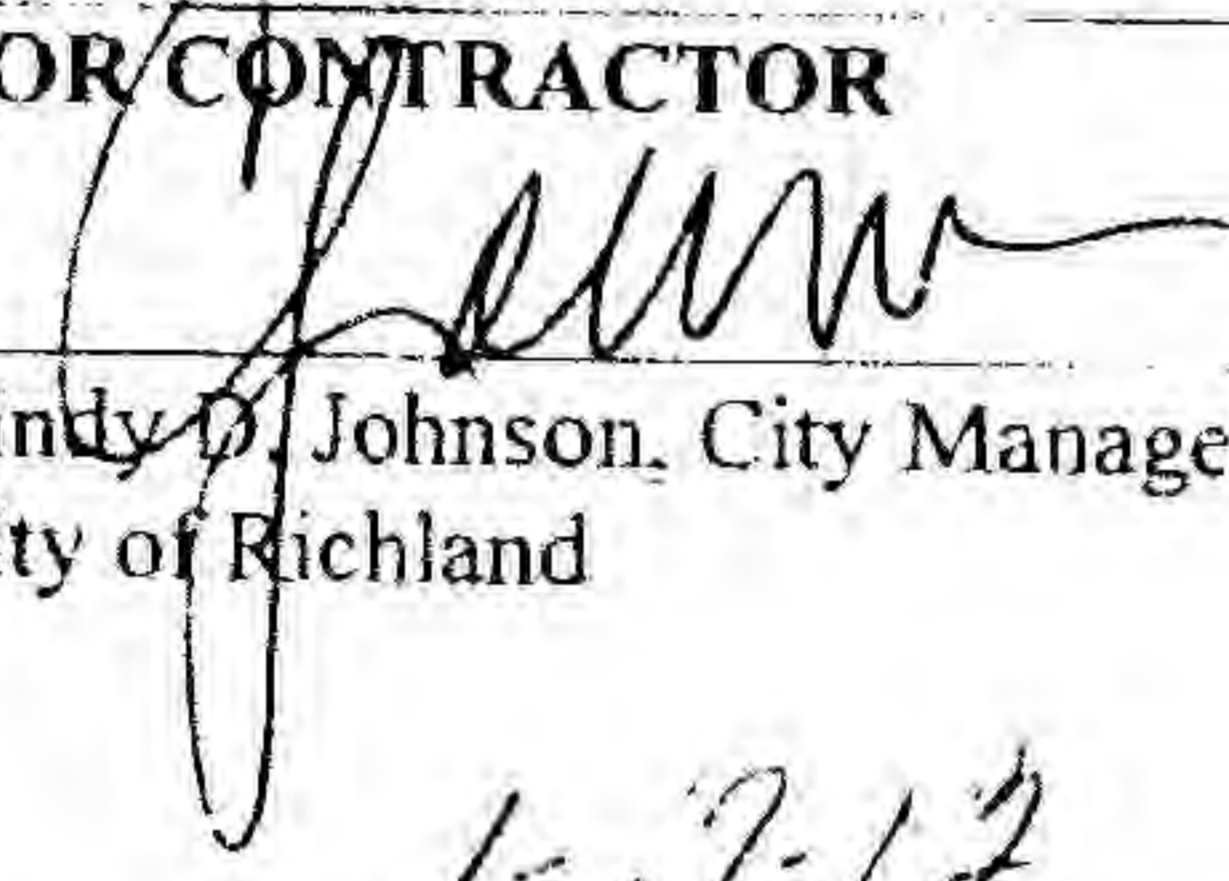

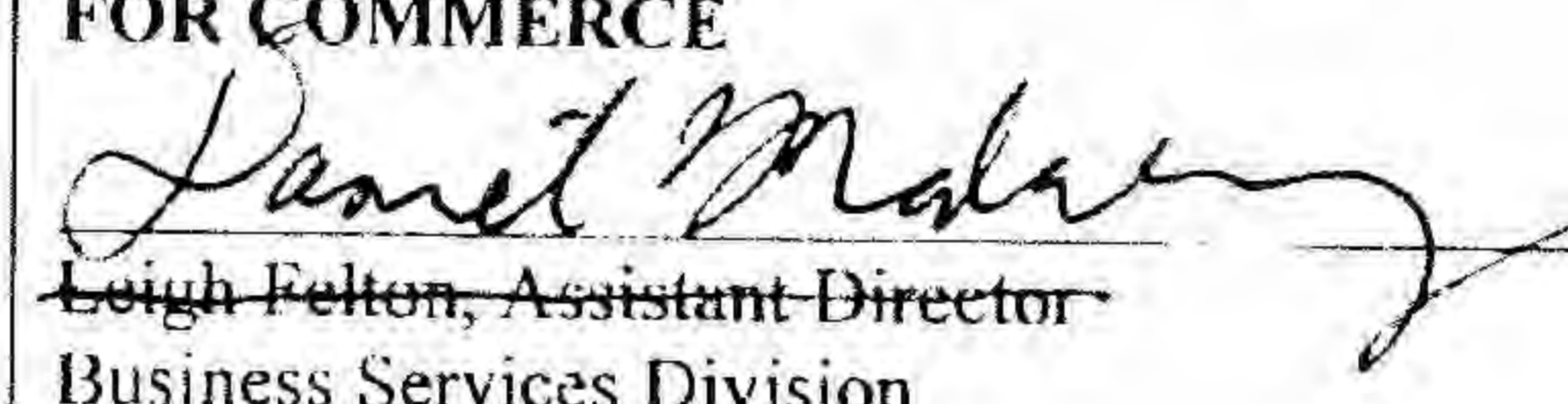
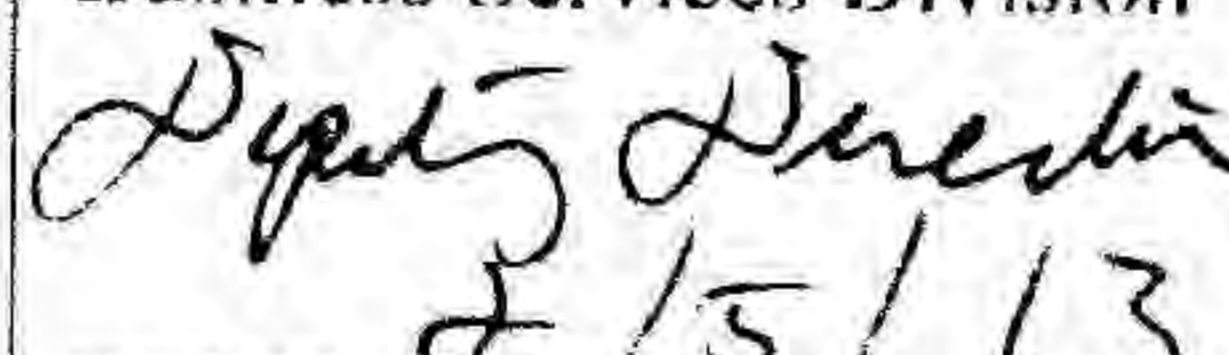
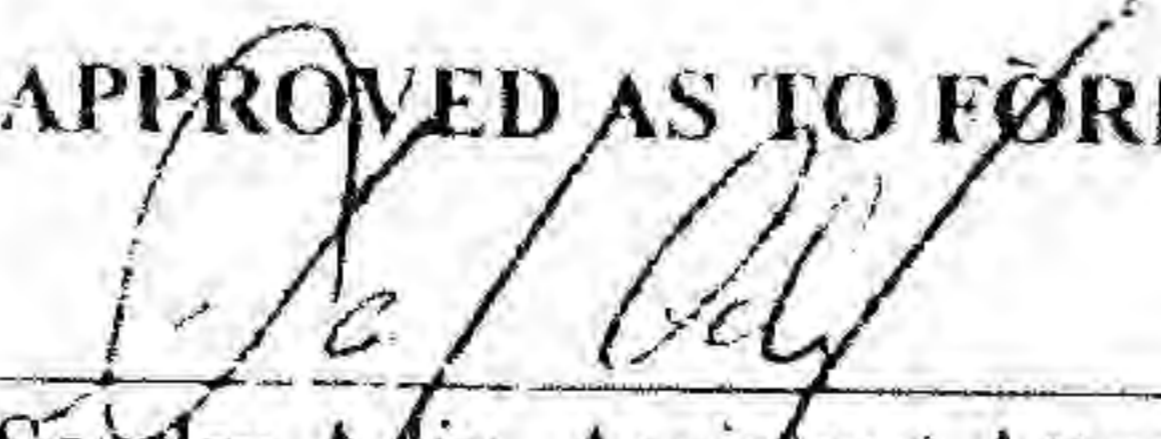
Contract Number: S13-97205-017
Amendment Number: A

Washington State Department of Commerce
Innovation Partnership Zone Grants Program **CONTRACT NO. 125-12**

Direct Appropriation

1. Contractor City of Richland 505 Swift Boulevard Post Office Box 190 (MS 18) Richland, Washington 99352		2. Contractor Doing Business As (optional) 	
3. Contractor Representative (only if updated) 		4. COMMERCE Representative (only if updated) 	
5. Original Contract Amount (and any previous amendments) \$4,950,000	6. Amendment Amount N/A	7. New Contract Amount \$4,950,000	
8. Amendment Funding Source Federal: State: X Other: N/A:		9. Amendment Start Date Upon Final Signature	10. Amendment End Date June 30, 2016
11. Federal Funds (as applicable): N/A	Federal Agency: N/A		CFDA Number: N/A
12. Amendment Purpose: Special Conditions: The amendment revises the Special Conditions.			

COMMERCE, defined as the Department of Commerce, and the Contractor acknowledge and accept the terms of this Contract As Amended and attachments and have executed this Contract Amendment on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract As Amended are governed by this Contract Amendment and the following other documents incorporated by reference: Contract Terms and Conditions including Attachment I: Project Scope of Work; Attachment II: Certification of the Availability of Funds to Complete the Project; Attachment III: Budget; Attachment IV: Certification of the Payment and Reporting of Prevailing Wages; and Attachment V: Certification of Intent to Enter the Leadership in Energy and Environmental Design (LEED) Certification Process. A copy of this Contract Amendment shall be attached to and made a part of the original Contract between COMMERCE and the Contractor. Any reference in the original Contract to the "Contract" shall mean the "Contract As Amended".

<p>FOR CONTRACTOR</p>  Cindy O. Johnson, City Manager City of Richland Date <u>1-17-12</u> 	<p>FOR COMMERCE</p>  Leigh Felton, Assistant Director Business Services Division  Deputy Director Date <u>2/15/13</u> <p align="center">APPROVED AS TO FORM ONLY</p>  Sandra Adix, Assistant Attorney General Date <u>01/03/2013</u>
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Amendment

The **Special Conditions**, page i, are hereby revised to release funds for schematic design and to extend the date when the city must provide specific evidence from February 15, 2013 to May 31, 2013. The Special Conditions are amended to read as follows:

Grant funding in the amount of \$250,000 may be released to the Contractor for costs associated with development of the project schematic design. Release of any remaining grant funding is contingent on Contractor providing the following evidence to Commerce by May 31, 2013.

- the Washington State Wine Commission has approved the Wine Science Center preliminary design
- sufficient funding has been acquired to complete construction as provided in the approved preliminary design
- an agreement has been entered into between the Wine Science Center Development Authority and the Washington State University (WSU) that provides for the occupancy of the Center by the WSU Viticulture and Enology Program and provides guarantees that the primary purpose of the Center will be for research and education related to viticulture and enology.

ALL OTHER TERMS AND CONDITIONS OF THIS CONTRACT REMAIN IN FULL FORCE AND EFFECT.



August 7, 2013

OGRD Number: 119023

City of Richland
Attn Gary Ballew, Economic Development Manager
505 Swift Boulevard MS 18
PO Box 190
Richland WA 99352

Email: gballew@ci.richland.wa.us

Re: **Interlocal Agreement 75-13 between WSU and City of Richland for the Design and Construction of the Wine Science Center at Washington State University Tri-Cities**
(Reference: City of Richland/WA DOC Contract Number S13-97205-017)

Dear Sir/Madam,

Enclosed for your review please find one copy of the above referenced agreement. If the agreement meets your approval please complete the following item(s) and return to the Office of Grant and Research Development as indicated. This agreement may not be considered binding by either party until fully executed.

- Sign the indicated page(s) of the agreement and return two originals for processing.
- The attached fully executed document is for your records.
- The attached agreement is signed on the behalf of Washington State University.** Please review the documents and return one fully executed version of the agreement to the address listed in the letterhead or via e-mail at ogrd@wsu.edu.
- Additional comments:**

Should you have any questions regarding the agreement, please contact OGRD at 509-335-9661, or email ogrd@wsu.edu

Regards,

Tom Busch
Grant and Contract Coordinator

Enclosures

RECEIVED
AUG 08 2013
ECONOMIC
DEVELOPMENT OFFICE