

GMHB EXHIBIT 50



BUSINESS OF THE CITY COUNCIL CITY OF MERCER ISLAND

AB 6210
February 21, 2023
Regular Business

AGENDA BILL INFORMATION

TITLE:	AB 6210: Comprehensive Plan Status Report and Acceptance of GMA Update Grant	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution
RECOMMENDED ACTION:	Accept the GMA Periodic Update Grant of \$125,000 from the Department of Commerce, authorize the City Manager to execute the grant agreements, and appropriate these funds to the Comprehensive Plan periodic update in the 2023-2024 biennial budget.	

DEPARTMENT:	Community Planning and Development
STAFF:	Jeff Thomas, Director Alison Van Gorp, Deputy Director
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Department of Commerce Grant Award Letter dated July 22, 2022 2. GMA Periodic Update Grant Agreement
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ 125,000

EXECUTIVE SUMMARY

The purpose of this agenda item is to provide a status report on the periodic update to the Comprehensive Plan. In addition, the City Council is also asked to accept a grant for \$125,000 from the Washington State Department of Commerce (Commerce) and authorize the City Manager to sign the grant agreements. The funds from this grant will be appropriated for the periodic update of the Comprehensive Plan.

- In 2021, the WA State Legislature adopted [Engrossed Second Substitute House Bill 1220](#) (E2SHB 1220). This bill amended the GMA to establish new requirements for the City’s Comprehensive Plan Housing Element. The City will need to address these new requirements during the update of the Comprehensive Plan currently underway.
- City staff is developing an addendum to the Periodic Update Scope of Work adopted by the City Council in March 2022 ([AB 6040](#)). The addendum will include the additional steps required to comply with E2SHB 1220.
- In 2021, the State legislature also authorized funds for a GMA periodic update grant program to support local jurisdictions with the periodic update, including meeting the new requirements of E2SHB 1220. Mercer Island is eligible for a formula grant of \$125,000.

BACKGROUND

The City is in the process of conducting a periodic update of the Comprehensive Plan. The update is required by the Growth Management Act (GMA) and must be completed by December 31, 2024. In 2021, the Washington State Legislature passed by [E2SHB 1220](#). This legislation added new requirements for the Housing Element which must be incorporated into the Comprehensive Plan as a part of the periodic update (see [AB 6156](#) for more information).

On March 1, 2022, the City Council approved [Resolution No. 1620](#) ratifying the housing and employment growth targets, which establish the amount of growth the City must plan for as a part of the periodic update to the Comprehensive Plan. On March 15, 2022, the City Council approved the scope, schedule, and public participation plan for the periodic update of the comprehensive plan ([AB 6040](#)).

In 2022, the State Legislature authorized funding to support local jurisdictions with periodic updates to their comprehensive plans. On July 18, 2022, the City received an award letter from Commerce indicating that “\$125,000 has been reserved for the City of Mercer Island as a grant to assist in completing your update work” (Exhibit 1).

On September 20, 2022, the City Council authorized a letter of support for the City’s application to the GMA Periodic Update Grant ([AB 6157](#)). The City submitted the grant application prior to the September 30, 2022 deadline. The application was approved and grant funding of \$125,000 is reserved for the City of Mercer Island as a non-competitive formula grant, pending execution of a grant agreement (Exhibit 2).

EMERGING GUIDANCE

Commerce is developing guidance documents to clarify the steps required to comply with the new housing element established by E2SHB 1220. These will be compiled into final guidance “books” that are due to be complete in spring 2023. The draft guidance was released in three documents between November 2022 and January 2023 and is summarized below.

Part 1: Housing Needs

Counties and cities planning under the GMA must inventory and analyze housing needs for households of all income levels (moderate, low, very low, and extremely low-income households as well as emergency housing, emergency shelters, and permanent supportive housing). The City must also demonstrate that sufficient capacity of land for that housing is available, and that “adequate provisions” are made for the existing and projected needs of all economic segments of the community. Adequate provisions will include consideration of moderate density housing options. These requirements are established in [RCW 36.70A.070\(2\)\(a\)-\(d\)](#).

The draft housing needs guidance is divided into two documents. The first, [Guidance for Evaluating Land Capacity to Meet All Housing Needs](#), describes how jurisdictions are to demonstrate that sufficient capacity is available for each income level and housing type based on current zoning. The second, [Guidance for Making Adequate Provisions to Accommodate All Housing Needs](#), provides guidance on identifying barriers and limitations to the needed housing production as well as on documenting the programs and actions that are needed to address housing needs and achieve housing availability.

A multi-step process, requiring information from and coordination with Commerce and King County is required for identifying housing needs, as summarized below.

1. Analyze Countywide Housing Needs.

- E2SHB 1220 directed Commerce to supply two types of housing need projections that jurisdictions must plan for and accommodate in updated comprehensive plans. The two housing need projections Commerce will provide to counties are:
 - a. By income level: 0-30%, 31-50%, 51-80%, 81-120%, and >120% of area median income (AMI), and
 - b. Special needs housing: emergency housing, emergency shelters, and permanent supportive housing.
- Commerce is due to publish the final projections of countywide housing needs in February 2023.

2. Allocate Housing Needs to Cities.

- Once Commerce finalizes countywide affordable housing needs, each county must allocate affordable housing targets to the cities. In King County, the Growth Management Planning Council (GMPC) will determine the affordable housing target allocation for cities in the County.
- The GMPC is considering allocation options now and the final recommendation is anticipated in the March-May 2023 timeframe.
- The GMPC recommendation will then be adopted by King County Council and ratified by each City Council.

3. Identify Sufficient Capacity to Accommodate Housing Needs.

- E2SHB 1220 stipulates that the City must accommodate housing affordable to all income ranges. The City will need to demonstrate that the Comprehensive Plan and City zoning allow sufficient development capacity to accommodate the identified housing needs in each income band.
- This will require analysis of the City's zoning and development regulations to identify how much capacity is available for housing development and estimate the likely production of housing within each income band. Additional analysis will be needed to identify any gaps between existing capacity and the identified housing needs, as well as barriers and limitations to developing housing affordable for each affordability range. Finally, the City will need to document the programs and policy actions necessary to address housing needs and achieve housing availability.
- Work on the Land Capacity Analysis will begin once the Commerce guidance is finalized and the GMPC has made a final recommendation on the allocation of housing needs.

Part 2: Racially Disparate Impacts, Displacement, and Exclusion

Another change to the GMA from E2SHB 1220 is that the comprehensive plan must include policies that identify housing policies that have resulted in racially disparate impacts, displacement, and exclusion. It must also include policies and regulations that address and begin to undo racially disparate impacts, displacement, and exclusion in housing. These requirements are established in RCW [RCW 36.70A.070\(2\)\(e\)-\(h\)](#).

The draft [Racially Disparate Impacts Guidance](#) outlines four steps that are required to evaluate and work to undo racially disparate impacts, displacement and exclusion in housing:

1. **Understand your community** by looking for evidence of disparate impacts on segments of the community and consult with organizations that serve impacted populations.
2. **Analyze data to assess current housing patterns** and determine if there are racially disparate impacts, displacement, and exclusion in housing.
3. **Identify policies** that result in racially disparate impacts, displacement, and exclusion in housing.
4. **Adopt policies and regulations to begin to undo those impacts** during the Comprehensive Plan update.

ISSUE/DISCUSSION

COMPREHENSIVE PLAN PERIODIC UPDATE - STATUS REPORT

Housing Element

As outlined in the background section above, the requirements for the Housing Element have changed substantially for the 2024 periodic update. Guidance is still being finalized by Commerce; however, it is clear from the draft guidance that the new requirements will necessitate more extensive work on the Housing Element than initially planned.

Staff is preparing an addendum to the periodic update scope of work that will be finalized when the final guidance and affordable housing need allocations are available. Staff anticipates bringing the addendum to City Council for review in Q2 2023.

Staff is also beginning work that builds on the Housing Needs Assessment completed last fall. This expanded analysis of housing and demographic patterns aims to identify racially disparate impacts that may have resulted from housing policies. This analysis will be compiled into a report that details and quantifies disparate impacts. Based on the findings of the report, staff will identify communities that may have been impacted by policies with racially disparate impacts; targeted outreach to organizations serving these communities is planned in Q2 2023.

Economic Development Element

The Economic Development Work Group has completed initial review of draft goals and policies for the new Economic Development Element. The work group will be developing a draft of the element in the coming weeks and is expected to transmit a recommended draft Economic Development Element to the Planning Commission in Q2 2023.

Parks Zone

The Comprehensive Plan periodic update scope of work includes an amendment of the Land Use Element to add goals and policies related to the creation of a parks zone, as well as the development of consistent development regulations to implement a new parks zone. Staff is developing the draft development regulations now, with a two-step process planned for review. The Parks and Recreation Commission is scheduled to review and provide input on the draft in April. Then, the Planning Commission will review the draft from May-July.

Planning Commission Review

The Planning Commission continues its initial review of draft updates to each element of the Comprehensive Plan. The Commission has now completed review of the Land Use, Transportation, Utilities and Capital Facilities Elements. The draft elements are available for review on the [Periodic Review website](#). As mentioned above, review of the Economic Development Element is planned in the spring, with review of the Housing Element to follow later in the year. Additional revisions to the Land Use Element are expected when the Climate Action Plan is finalized, and the Housing Element is updated to ensure consistency between these components of the Comprehensive Plan. These revisions will also be reviewed by the Planning Commission.

GMA PERIODIC UPDATE GRANT

In 2022, the State Legislature approved funding in the FY 2022-2023 budget to assist local jurisdictions with the periodic update of comprehensive plans required under [RCW 36.70A.130\(5\)](#). Commerce is overseeing the

disbursement of these funds via a formula grant called the GMA Periodic Update Grant.

Mercer Island is eligible for a grant award totaling \$125,000 to support the periodic update of the City's comprehensive plan (Exhibit 1). The funding is split with half in FY 2022 (covering expenditures from July 1, 2022 through June 30 2023), and half in FY 2023 (covering expenditures from July 1, 2023 through June 30 2024). Eligible costs incurred during the grant period can be reimbursed once the grant agreement is executed.

Exhibit 2 is the grant agreement covering FY 2022 and the first half of the grant award (\$62,500). This portion of the funding must be spent by June 30, 2023. The City has met the deliverable deadlines in the scope of work for these items scheduled to be completed between July 2022 and February 2023. Staff is on track to complete the remaining deliverables on time and in advance of the June 30, 2023, deadline. A second grant agreement will be executed with Commerce later this year for the second half of the grant award (\$62,500), which must be spent by June 30, 2024.

The GMA Periodic Update Grant can be used to cover most activities related to the review and update of the comprehensive plan and development regulations per the requirements of RCW 36.70A.130. Examples of eligible expenditures include, but are not limited to, staff time, consultant contracts, costs of providing public notice, printing, and copying. This grant will help the City add capacity in terms of staffing and consultant resources to complete the periodic update, including the new requirements for the Housing Element from E2SHB 1220.

NEXT STEPS

Staff is currently reviewing draft guidance documents from Commerce related to the new requirements of HB 1220 for the Housing Element. Staff is also awaiting the King County GMPC's recommendation on affordable housing need allocations, which will establish Mercer Island's affordable housing need allocations. When the guidance and affordable housing need allocations are finalized, an addendum to the Periodic Update Scope of Work will be brought to the City Council for review and approval.

Once the GMA Periodic Update grant funding is accepted and appropriated by the City Council, the grant agreement will be executed with Commerce, and the City will begin the reimbursement process for expenses incurred since July 1, 2022. Later this year, the City will execute a new grant agreement for the second half of the grant award, which will cover expenses incurred between July 1, 2023 and June 30, 2024.

RECOMMENDED ACTION

Accept the GMA Periodic Update Grant of \$125,000 from the Department of Commerce, authorize the City Manager to execute the grant agreements, and appropriate these funds to the Comprehensive Plan periodic update in the 2023-2024 biennial budget.



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

July 18, 2022

The Honorable Salim Nice
Mayor of Mercer Island
9611 SE 36th Street
Mercer Island, Washington 98040-3732

RE: 2024 Growth Management Act Periodic Update Grants

Dear Mayor Nice:

The City of Mercer Island is required by RCW 36.70A.130(5)(a) to review and, if needed, revise its comprehensive plan and development regulations by June 30, 2024, to ensure they comply with the Growth Management Act (GMA).

We are pleased to inform you that, based on your population size, that \$125,000 has been reserved for the City of Mercer Island as a grant to assist in completing your update work. This funding is reserved for the city as a non-competitive formula grant. Due to the state biennial split, one-half of this funding, or \$62,500 is available to reimburse related periodic update project costs from July 1, 2022 to June 30, 2023. Commerce will sign a grant agreement with you by this fall. All related GMA update project costs incurred by your jurisdiction, beginning July 1, 2022, will be eligible for reimbursement. Therefore, you will not need to delay work on the update grant until the contract is signed.

In addition to this financial assistance, Growth Management Services will continue to provide technical assistance for you during this periodic update process, until your scheduled update deadline, and our professional senior planners are ready to assist you with any questions. Please feel free to contact your assigned senior planner with any questions.

Your first grant deliverable will be the completion and submittal of the periodic update checklist, which we provide for review for your comprehensive plan and development regulation. You may find a copy of the checklist and instructions on our webpage here:

<https://www.commerce.wa.gov/serving-communities/growth-management/periodic-update/>

In order to receive this funding, please complete the GMA Update Grant Application materials. These materials are located on the Growth Management Services grants webpage located at

<https://www.commerce.wa.gov/serving-communities/growth-management/growth-management-grants/>

We request application materials please be returned by **September 30, 2022**. As soon we receive your submitted application, we will begin preparing your contract and negotiate your final scopes of work.

If you have questions regarding this grant program or receiving technical assistance regarding your update, please contact Catherine McCoy, at (360) 725-2910, or catherine.mccoy@commerce.wa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Andersen". The signature is fluid and cursive, with a large initial "D" and "A".

Dave Andersen, AICP
Managing Director, Growth Management Services

cc: Evan Maxim



Interagency Agreement with

City of Mercer Island

through

Growth Management Services

**Contract Number:
23-63210-019**

For

GMA Periodic Update Grant – FY2023

Dated: Date of Execution

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Face Sheet

Contract Number: 23-63210-019

Local Government Division Growth Management Services

1. Contractor City of Mercer Island Community Planning and Development 9611 SE 36th Street Mercer Island, WA 98040		2. Contractor Doing Business As (as applicable) N/A	
3. Contractor Representative Adam Zack Senior Planner (206) 275-7719 Adam.zack@mercerisland.gov		4. COMMERCE Representative Catherine McCoy Senior Planner (360) 725-2910 catherine.mccoy@commerce.wa.gov	
5. Contract Amount \$62,500	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>		7. Start Date Date of Execution
8. End Date June 30, 2023			
9. Federal Funds (as applicable) N/A		Federal Agency: N/A	
ALN N/A			
10. Tax ID # N/A	11. SWV # SWV0032386-00	12. UBI # 179-019-640	13. UEI # N/A
14. Contract Purpose Grant funding to assist the City of Mercer Island with planning work for the completion the Growth Management Act (GMA) requirement to review, and if needed, revise the comprehensive plan and development regulations under RCW 36.70A.130(5).			
COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work and Attachment B - Budget			
FOR CONTRACTOR _____ Jessi Bon, City Manager City of Mercer Island _____ Date		FOR COMMERCE _____ Mark K. Barkley, Assistant Director Local Government Division _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	

Special Terms and Conditions

1. AUTHORITY

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

2. CONTRACT MANAGEMENT

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

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

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

3. COMPENSATION

COMMERCE shall pay an amount not to exceed sixty-two thousand, five hundred dollars (\$62,500), for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

4. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor upon acceptance of services and deliverables provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly nor less than quarterly.

The parties agree this is a performance-based contract intended to produce the deliverables identified in Scope of Work (Attachment A). Payment of any invoice shall be dependent upon COMMERCE'S acceptance of Contractor's performance and/or deliverable. The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number 23-63210-019. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

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

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to 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 Agreement shall be made by COMMERCE.

Grant Start Date

COMMERCE will pay the Contractor for costs incurred beginning July 1, 2022, for services and deliverables described under this Agreement.

Duplication of Billed Costs

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

Disallowed Costs

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

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

Line Item Transfers

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

Ineligible Costs

Only eligible project-related costs will be reimbursed. Ineligible costs include, but are not necessarily limited to: capital expenses, such as land acquisition or construction costs; purchase of machinery; hosting expenses, such as meals, lodging, or transportation incurred by persons other than staff and volunteers working directly on the project; lobbying or political influencing; and other costs which are not directly related to the project.

5. SUBCONTRACTOR DATA COLLECTION

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Contract performed by subcontractors and the portion of Contract funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

6. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

7. FRAUD AND OTHER LOSS REPORTING

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

8. ORDER OF PRECEDENCE

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

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

General Terms and Conditions

1. DEFINITIONS

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Washington Department of Commerce.
- C. "Contract" or "Agreement" or "Grant" means the entire written agreement between COMMERCE and the Contractor, including any Attachments, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" or "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- F. "State" shall mean the state of Washington.
- G. "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 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.

3. 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.

4. ASSIGNMENT

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

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

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

iii. All Personal Information in the possession of the Contractor that may not be disclosed under state or federal law.

- 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.

6. COPYRIGHT

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.

7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority

prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. 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.

9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents

10. 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.

11. 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.

12. RECORDS MAINTENANCE

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

The Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

13. 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 suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

14. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

15. 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.

16. 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.

17. TERMINATION FOR CAUSE

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

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

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

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

18. 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.

19. TERMINATION PROCEDURES

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

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

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

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

- 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 except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the 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;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

20. TREATMENT OF ASSETS

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

- A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management

practices.

- C.** If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D.** The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract.
- E.** All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

21. 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 A: Scope of Work

Tasks / Actions / Deliverables	Description	End Date
Task 1	Review relevant plans and regulations to determine if there are any sections that need revision.	
Action 1.1	Review the Comprehensive Plan using Commerce 2022 Periodic Update Checklist	October 31, 2022
Deliverable 1	A completed Commerce 2022 Periodic Update Checklist	October 31, 2022
Task 2	Develop a Housing Needs Assessment	
Action	The City has contracted with a consultant to prepare a Housing Needs Assessment.	October 31, 2022
Deliverable 2	A final draft of the Housing Needs Assessment.	October 31, 2022
Task 3	Perform an Economic Analysis of the Mercer Island economy	
Action	The City has contracted with a consultant to prepare an Economic Analysis of the Mercer Island economy as part of drafting a new Economic Development Element of the Comprehensive Plan	
Deliverable 3	A final draft of the Economic Analysis.	October 31, 2022
Task 4	Prepare a public hearing draft of the Transportation Element	
Action	The City has contracted with a consultant to prepare a public hearing draft of the Transportation Element	
Deliverable 4	A public hearing draft of the Transportation Element	December 31, 2022

Task 5	Prepare a public hearing draft of the Land Use Element	
Action	Staff will prepare a draft of the Land Use Element and usher it through the Planning Commission review process in advance of the Planning Commission public hearing on the Comprehensive Plan update	
Deliverable 5	A public hearing draft of the Land Use Element	December 31, 2022
Task 6	Prepare a public hearing draft of the Capital Facilities Element	
Action	Staff will prepare a draft of the Capital Facilities Element and usher it through the Planning Commission review process in advance of the Planning Commission public hearing on the Comprehensive Plan update	
Deliverable 6	A public hearing draft of the Capital Facilities Element	February 28, 2023
Task 7	Prepare a public hearing draft of the Utilities Element	
Action	Staff will prepare a draft of the Utilities Element and usher it through the Planning Commission review process in advance of the Planning Commission public hearing on the Comprehensive Plan update	
Deliverable 7	A public hearing draft of the Utilities Element	February 28, 2023
Task 8	Prepare a public hearing draft of the Housing Element	
Action	Staff will prepare a draft of the Housing Element and usher it through the Planning Commission review process in advance of the Planning Commission public hearing on the Comprehensive Plan update	
Deliverable 8	A public hearing draft of the Housing Element	March 30, 2023

Task 9	Economic Development Public Participation	
Actions	<p>The City has contracted with a consultant to conduct public participation for the drafting of a new Economic Development Element. Public Participation for the Economic Development Element will include:</p> <ul style="list-style-type: none"> • A community survey, and • A community workshop. 	
Deliverable 9.1	Economic development community survey summary report	October 31, 2022
Deliverable 9.2	Hold an economic development community workshop, including agenda and copies of prepared materials for the workshop.	May 31, 2023
Deliverable 9.3	Final draft of a report summarizing the input received at the community workshop	May 31, 2023

Attachment B: Budget

SFY 2023 Task/Deliverable	SFY 2023 Amount
Deliverable 1 A completed Commerce 2022 Periodic Update Checklist	\$0
Deliverable 2 A final draft of the Housing Needs Assessment	\$12,756
Deliverable 3 A final draft of an Economic Analysis of the Mercer Island economy	\$11,210
Deliverable 4 A public hearing draft of the Transportation Element	\$8,569
Deliverable 5 A public hearing draft of the Capital Facilities Element	\$0
Deliverable 6 A public hearing draft of the Capital Facilities Element	\$0
Deliverable 7 A public hearing draft of the Utilities Element	\$0
Deliverable 8 A public hearing draft of the Housing Element	\$0
Deliverable 9.1 Economic development community survey summary report	\$9,989
Deliverable 9.2 Hold an economic development community workshop	\$9,988
Deliverable 9.3 Final draft of a report summarizing the input received at the community workshop	\$9,988
Total Grant (SFY 2023 only)	\$62,500