



Agreement No. SEAFCAAC-2123-SnCoCN-00021

SHORELANDS FCAAP COMPETITIVE PLANNING GRANT AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

SNOHOMISH COUNTY

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and Snohomish County hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	Snohomish and Stillaguamish Vulnerability Assessment
Total Cost:	\$500,000.00
Total Eligible Cost:	\$207,336.00
Ecology Share:	\$155,502.00
Recipient Share:	\$51,834.00
The Effective Date of this Agreement is:	07/01/2021
The Expiration Date of this Agreement is no later than:	06/30/2023
Project Type:	Planning

Project Short Description:

The RECIPIENT will conduct a vulnerability assessment of flood hazard and climate change, such as sea level rise and salinity, for both the Snohomish and Stillaguamish Rivers and their respective Estuaries. The project will identify and engage overburdened communities in the flood management planning area. This is an essential component of creating a new Comprehensive Flood Hazard Management Plan (CFHMP) for a Snohomish County watershed, and updating the existing Stillaguamish Watershed CFHMP.

Project Long Description:

Snohomish County's Flood Hazard Mitigation Plan states that more information on flood risk is needed to support the concept of risk-based analysis of capital projects. To make informed decisions and advance integrated project development in rivers and estuaries, there is a need to understand the amount of risk, as well as, the vulnerability of communities located within the risk areas.

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This project will build upon the adopted Snohomish County Flood Hazard Mitigation Plan, the Sustainable Lands Strategy (SLS) Reach Scale Plans, the Stillaguamish Comprehensive Flood Hazard Management Plan (CFHMP), as well as the risk analysis for the Lower Skykomish River by filling remaining data and information gaps about flood and sea level rise hazards and the potential impact on the community. The Snohomish River currently does not have a CFHMP, and the CFHMP for the Stillaguamish River is 17 years old. The vulnerability assessment will provide up-to-date information to help Snohomish County and its residents understand and plan for their flood risk. The vulnerability assessment will inform ongoing planning efforts for flood hazard management at Snohomish County Surface Water Management, SLS, and the Snohomish and Stillaguamish Integration Teams. The resulting analysis may prompt the initiation of a new CFHMP for Snohomish County, or for one of the two nearby watersheds.

The project area is the 100-year floodplain of the Snohomish River and mainstem Stillaguamish River which include approximately 40 river miles, as well as both estuaries. The North Fork Stillaguamish River is over 40 miles long and the largest population of underserved communities are located within the mainstem and the Town of Darrington area of the North Fork Stillaguamish River.

The RECIPIENT will prioritize the vulnerability assessment near the mainstem Stillaguamish River, and the Town of Darrington area of the North Fork Stillaguamish River. If additional local funding becomes available and there is sufficient data (i.e. hydraulic and hydrologic data) to support the analysis, the RECIPIENT will complete a vulnerability assessment of the remainder of the North Fork Stillaguamish River as well as the North Fork of the Snoqualmie River (around 28 river miles).

The RECIPIENT will provide a GIS-based risk analysis of the flood and climate change related hazards to the communities in the Stillaguamish and Snohomish Rivers and their respective Estuaries. In addition to providing information for plan updates and/or new CFHMP's, the data and information from the assessments will be used to inform future development and designs of flood projects in the planning area.

A primary component of this assessment will also include a diversity, equity, and inclusion (DEI) outreach plan. This plan will include specific strategies and approaches for engaging with underserved, overburdened or marginalized communities throughout the development of the assessment.

The RECIPIENT will share information generated from the assessment. The strategies and approaches generated from the outreach plan will be coordinated with the Snohomish County Office of Social Justice.

Overall Goal:

This project will identify and engage overburdened communities located within the planning area as well as methods and approaches to meaningfully engage them, and is an essential component of developing a new CFHMP and updating the existing CFHMP.

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RECIPIENT INFORMATION

Organization Name: Snohomish County

Federal Tax ID: 91-6001368
DUNS Number: 079247979

Mailing Address: 3000 Rockefeller Ave, M/S 303
Everett, WA 98201

Physical Address: 3000 Rockefeller Ave, M/S 303
Everett, Washington 98201

Organization Email: surfacewater@snoco.org
Organization Fax: (425) 388-6455

Contacts

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<p>Project Manager</p>	<p>Jessica Hamill Project Specialist IV</p> <p>3000 Rockefeller Ave. Everett, Washington 98201 Email: jessica.hamill@snoco.org Phone: (425) 388-3253</p>
<p>Billing Contact</p>	<p>Darcey Hughes Funding Coordinator</p> <p>3000 Rockefeller Ave. Everett, Washington 98201 Email: darcey.hughes@snoco.org Phone: (425) 262-2859</p>
<p>Authorized Signatory</p>	<p>Gregg Farris Surface Water Utility Director</p> <p>3000 Rockefeller Ave, M/S 303 Everett, Washington 98201 Email: gfarris@snoco.org Phone: (425) 388-3464</p>

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ECOLOGY INFORMATION

Mailing Address: Department of Ecology
 Shorelands
 PO BOX 47600
 Olympia, WA 98504-7600

Physical Address: Shorelands
 300 Desmond Drive SE
 Lacey, WA 98503

Contacts

<p>Project Manager</p>	<p>Lisa Nelson</p> <p>PO Box 330316 Shoreline, Washington 98133-9716 Email: LNEL461@ecy.wa.gov Phone: (425) 466-8732</p>
<p>Financial Manager</p>	<p>Cindy James</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: cjam461@ecy.wa.gov Phone: (360) 280-8645</p>

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AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology’s authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

Washington State
Department of Ecology

Snohomish County

By: Joenne McGerr 3.4.2022

By: Lacey Harper Digitally signed by Lacey Harper
Date: 2022.03.02 09:43:50 -08'00'

Joenne McGerr Date
Shorelands
Program Manager

Dave Somers Date
County Executive

Template Approved to Form by
Attorney General's Office

COUNCIL USE ONLY	
Approved	<u>3/2/2022</u>
ECAF #	<u>2022-0113</u>
MOT/ORD	<u>Motion 22-060</u>

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SCOPE OF WORK

Task Number: 1 **Task Cost: \$10,000.00**

Task Title: 1. Project Administration / Management

Task Description:

A. The RECIPIENT will provide Project Coordination to ensure effective communication on this project with all interested parties including ECOLOGY, all affected local, state, federal agencies, tribal nations, local land owners, and other applicable stateholders. In addition, the RECIPIENT should consult with all other appropriate entities that may have useful scientific, technical, or cultural information that will augment this project. Coordination issues include, but are not limited to, flood plain management, habitat and fish protection and restoration, public access and recreation, cultural and archaeological resources, etc.

B. The RECIPIENT is responsible for conducting Project Management activities to include project scheduling, assuring quality control, adherence to the scope of work, time lines, and due dates; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and has applicable compliance with deed restrictions on acquisitions as well as conducting the competitive procurement process including preparation of grant bidding documents, advertisement; award of grants and grant monitoring.

C. The RECIPIENT will provide Project Administration including submittal of quarterly progress reports and reimbursement requests with corresponding supporting documentation; maintenance of project records, submittal and compliance of deliverables on established due dates.

Task Goal Statement:

A properly managed project that meets ECOLOGY administrative requirements and provides open communication to all stakeholders.

Task Expected Outcome:

Timely and complete submittal of quarterly Payment Requests/Progress Reports (PRPRs); a project that is on schedule and within budget, and objectives of this funding opportunity are met; and a Recipient Close Out Report (RCOR).

Recipient Task Coordinator: Jessica Hamill

1. Project Administration / Management

Deliverables

Number	Description	Due Date
1.1	Quarterly Payment Request / Progress Report (PRPR)	
1.2	Recipient Close Out Report (RCOR)	06/30/2023

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SCOPE OF WORK

Task Number: 2 **Task Cost:** \$187,336.00

Task Title: 2. Risk Assessment

Task Description:

The RECIPIENT will synthesize and analyze existing data to develop the GIS based layers to estimate flood risk in the planning area. The information will be integrated into Snohomish County's Integrated Floodplain Management Guidance document.

The RECIPIENT will focus on a vulnerability assessment to understand the impacts climate change and flood hazards have on people, property, and natural functions in the planning area.

The RECIPIENT will define the impact that flood hazards have on:

- o Life safety and the need for warning and evacuating residents and visitors;
- o Public health, including health hazards to individuals from flood waters and mold;
- o Critical facilities and other public infrastructure (i.e. roadway crossings and segments);
- o The community's economy and major employers;
- o Agricultural area and value of crops exposed;
- o The number and types of affected buildings (e.g., residential, commercial, industrial, with or without basements, etc.); and
- o Underserved or overburdened communities.

The RECIPIENT will create the vulnerability assessment which will include a:

- o Review of historical damage to buildings, infrastructure, and critical facilities;
- o Description of areas within the planning area that provide natural functions, such as wetlands, riparian areas, sensitive areas, and habitat for rare or endangered species;
- o Description of development, redevelopment, and population trends including an examination of development in the density fringe between 1980 and 2005;
- o Assessment of the impact of future conditions on people, property, and natural floodplain functions.

This assessment will follow a standardized process for risk assessment using the HAZUS model (or equivalent) to evaluate exposure, vulnerability, and adaptive capacity of assets, as outlined by the categories mentioned above, to future conditions (i.e. climate change) and current flooding. To accomplish this, the RECIPIENT will look at modeling existing conditions as well

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as future mid-century (2050's) and late-century (2080's) conditions with the new hydrologic data inputs. The RECIPIENT will also complete a Quality Assurance Project Plan (QAPP) or QAPP Waiver for this analysis and to ensure the methodology is consistent with regulatory standards.

- A. The RECIPIENT will hire a contractor through a competitive procurement process, following Washington State-approved procurement procedures, or through Snohomish County's on-call process, to help with assessment. The RECIPIENT will process and upload a signed consultant contract in EAGL.
- B. The RECIPIENT will prepare a Quality Assurance Project Plan (QAPP) or QAPP Waiver for the collection & analysis of environmental data. The RECIPIENT will comply with QAPP requirements in Section 11. Environmental Data Standards of the Agreement General Terms & Conditions.
- C. The RECIPIENT will submit a draft Risk Analysis and Vulnerability Assessment. The RECIPIENT will upload a copy of the draft assessment in EAGL.
- D. The RECIPIENT will compile a draft Assessment Comment Response Matrix.
- E. The RECIPIENT will create a final Risk Analysis and Vulnerability Assessment. The RECIPIENT will upload a copy in EAGL.
- F. The RECIPIENT will create a final version of maps and GIS data. The RECIPIENT will upload a copy in EAGL.

Task Goal Statement:

The GIS data will illustrate exposure conditions to climate and flooding. It will also help prioritize projects to benefit underserved communities located within the floodplain. This assessment will inform CFHMP updates and/or development of a new CFHMP, Flood Hazard Mitigation Plan updates, Snohomish County Comprehensive Plan updates.

Task Expected Outcome:

This task will enhance the understanding of flood and climate-related hazards in the planning area, which will advance reach scale planning, hazard mitigation plan objectives, and integrated project development and implementation. The information will inform updates to County planning documents like the Stillaguamish Comprehensive Flood Hazard Management Plan and could be the precursor to a county-wide CFHMP. This work will also benefit ongoing planning efforts like the County's Comprehensive Plan updates and Hazard Mitigation Plan updates.

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Recipient Task Coordinator: Jessica Hamill

2. Risk Assessment

Deliverables

Number	Description	Due Date
2.1	Bid or on-call documents and signed consultant contract(s). Upload in EAGL and notify ECOLOGY Project Manager.	
2.2	QAPP or QAPP waiver. Submit to ECOLOGY per Section 11. Environmental Data Standards of the Agreement General Terms and Conditions.	
2.3	Draft Risk Analysis and Vulnerability Assessment. Upload to EAGL and notify ECOLOGY Project Manager.	
2.4	Draft Assessment Comment Response Matrix. Upload in EAGL and notify ECOLOGY Project Manager.	
2.5	Final Risk Analysis and Vulnerability Assessment. Upload in EAGL and notify ECOLOGY Project Manager.	
2.6	Final maps and GIS data. Upload in EAGL and notify ECOLOGY Project Manager.	

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SCOPE OF WORK

Task Number: 3 **Task Cost: \$10,000.00**

Task Title: 3. Diversity Equity & Inclusion Outreach Strategy

Task Description:

The Diversity, Equity, and Inclusion (DEI) Outreach Strategy and public participation process will identify which communities are located in the planning area, and develop specific strategies to engage those communities. Incorporating data from the Washington Environmental Health Disparities Map will be used to identify vulnerable communities. Overlaying climate change data will identify specific groups that will be impacted (DOH, 2019). Utilizing the statewide health disparities ranks dataset will help inform the overall assessment.

The RECIPIENT will develop a DEI Outreach Strategy that will include an implementation element complete with timing and approaches to engage underserved communities in the planning area. Equitable public engagement to overburdened, marginalized, or underrepresented communities needs to be proactive, meaningful, transparent, engaging, accessible, and accountable. Specific strategies that will be considered include:

- o Building trust and relationships with target populations through developing relationships with key community leaders, Establishing partnerships with organizations that work with low-income members of the public;
- o Creating a welcoming atmosphere where people can engage;
- o Increasing accessibility to the community by decreasing barriers;
- o Developing alternative methods for engagement;
- o Maintaining a presence in the community by attending community driven events and activities;
- o Providing outreach materials to community, service centers, educational institutions and libraries in different languages pertinent to the area;
- o Identifying cultural events and providing materials at those events;
- o Making sure outreach materials are easily readable;
- o Holding public meetings in locations that are transit and ADA accessible; and
- o Distributing materials at apartment complexes and mobile home parks.

The development of the DEI Outreach Strategy will be coordinated with the County Office of Social Justice.

This grant will also support collaboration with community based organizations on outreach efforts to raise awareness about the assessment within marginalized communities.

A. The RECIPIENT will develop DEI-focused outreach strategies and approaches. The RECIPIENT will submit a Preliminary Memo of these efforts. The RECIPIENT will upload in EAGL and notify the ECOLOGY Project Manager.

B. The RECIPIENT will create a draft DEI Outreach Strategy including DEI-focused strategies. The RECIPIENT will upload in EAGL and notify the ECOLOGY Project Manager.

C. The RECIPIENT will create a final outreach strategy including DEI-focused strategies. The RECIPIENT will upload in EAGL and notify the ECOLOGY Project Manager.

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Task Goal Statement:

DEI-focused outreach strategies will inform and engage underserved communities about the approach to, and results of, the vulnerability assessment. The DEI outreach strategy will also help fill potential gaps in understanding how policies impact marginalized communities; and will provide a transparent process to help prioritize projects, update policies and ongoing planning efforts, and inform future decisions of where additional funding is needed. The DEI outreach strategy will help Snohomish County integrate and implement responses to flood and climate-related hazards, which will lead to improved outcomes for all Snohomish County residents.

Task Expected Outcome:

The final DEI Outreach Strategy will systemically provide resource support towards environmental social justice within Snohomish County. It will incorporate ways to assess the scale, exposure, and vulnerability of flood and climate-related hazards to the planning area.

Recipient Task Coordinator: Jessica Hamill

3. Diversity Equity & Inclusion Outreach Strategy

Deliverables

Number	Description	Due Date
3.1	The RECIPIENT will create a Preliminary Memo on the DEI-focused outreach strategies. The RECIPIENT will upload in EAGL and notify the ECOLOGY Project Manager.	
3.2	The RECIPIENT will create a draft outreach strategy including DEI-focused strategies. The RECIPIENT will upload in EAGL and notify the ECOLOGY Project Manager.	
3.3	The RECIPIENT will create a final outreach strategy including DEI-focused strategies. The RECIPIENT will upload in EAGL and notify the ECOLOGY Project Manager.	

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BUDGET

Funding Distribution EG220434

NOTE: *The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: FCAAP 21-23 Funding Type: Grant
 Funding Effective Date: 07/01/2021 Funding Expiration Date: 06/30/2023

Funding Source:

Title: Flood Control Assistance Account Program (FCAAP)
 Fund: 02P
 Type: State
 Funding Source %: 100%
 Description: FCAAP

Approved Indirect Costs Rate: Approved State Indirect Rate: 0%
 Recipient Match %: 25%
 InKind Interlocal Allowed: Yes
 InKind Other Allowed: Yes
 Is this Funding Distribution used to match a federal grant? No

FCAAP 21-23	Task Total
1. Project Administration / Management	\$ 10,000.00
2. Risk Assessment	\$ 187,336.00
3. Diversity Equity & Inclusion Outreach Strategy	\$ 10,000.00

Total: \$ 207,336.00

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Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
FCAAP 21-23	25.00 %	\$ 51,834.00	\$ 155,502.00	\$ 207,336.00
Total		\$ 51,834.00	\$ 155,502.00	\$ 207,336.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

Floodplains by Design and Flood Control Assistance Account Program - Special Terms and Conditions

1. Local Decision: This grant is made in response to a request for financial assistance from the RECIPIENT to undertake flood damage prevention projects. The choice of floodplain management activities addressed by this grant is a local decision made solely by the RECIPIENT. The RECIPIENT is not acting as an agent of the State of Washington.
2. Lawsuits: Ecology shall not be responsible for any non-contractual damage or inverse condemnation claims resulting from the structures or works constructed, repaired, restored, maintained, or improved pursuant to this grant.
3. Indemnification, Hold Harmless and Duty to Defend
 - a. Ecology shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the scope of work.
 - b. This paragraph applies to negligence based claims only. All other claims are governed by paragraph 4 of this section (item 3.d). To the extent the constitution and laws of the State of Washington permit, RECIPIENT shall indemnify, defend and hold harmless the State, its agencies, officers and employees, from all claims, suits or actions brought for any or all injuries to persons or property arising from, or as a consequence of, negligent acts or omissions related to the construction, restoration, repair, maintenance, improvement or operation of the structures or works for which this grant is provided. If the structures or works for which this grant is received are a portion of an integrated flood protection system, RECIPIENT agrees to indemnify, defend and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the operation, maintenance, or repair of that integrated flood protection system; PROVIDED, however, that this provision is not intended to and shall not be construed as a waiver by RECIPIENT of any immunities conferred upon the RECIPIENT by RCW 86.12.037 nor is it intended to, and it shall not be construed to, confer any rights upon third parties.
 - c. The RECIPIENT will not be required to indemnify, defend, or save harmless the State, its agencies, officers or employees as provided in the preceding paragraph of this section if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the State. Where such claims, suits, or actions result from the concurrent negligence of (a) the State, or the State's agents or employees and (b) the RECIPIENT or the RECIPIENT's agents or employees, the indemnity provisions

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provided in the preceding paragraphs of this section shall be valid and enforceable only to the extent of the RECIPIENT's negligence or the negligence of its agents and employees.

d. To the extent that the constitution and laws of the State of Washington permit, RECIPIENT shall indemnify and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the continued operation, maintenance, or repair of the structures or works constructed, restored, repaired, maintained or improved as a result of this grant. If the structures or works for which this grant is received are portions of an integrated flood protection system, RECIPIENT agrees to indemnify, defend and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the operation, maintenance, or repair of that integrated flood protection system; PROVIDED, however, that the indemnity provisions of this paragraph are not intended to and shall not be construed as a waiver by Recipient of any immunities conferred upon the Recipient by RCW 86.12.037 nor are they intended to, and they shall not be construed to, confer any rights upon third parties. This agreement applies to all non-negligent, non-contractually based claims including, but not limited to, inverse condemnation, contribution, indemnification, trespass and/or nuisance.

4. Any development activity funded by this grant which occurs in the Federal Emergency Management Agency (FEMA)-mapped regulatory floodplain, also known as the Special Flood Hazard Area (SFHA), may trigger the need for a floodplain development permit from the local agency with floodplain management jurisdiction. "Development" is defined at 44 CFR 59.1 as " ... any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials." Further, any activity funded by this grant may change the base flood elevations from physical changes affecting the floodplain. Communities are required by 44 CFR 65.3 to submit new data to FEMA in the event their actions affect the base flood elevation and the regulatory map (the SFHA).

5. ECOLOGY waives property acquisition report appraisal requirements for properties valued at \$25,000 or less. When the estimated property value does not exceed \$25,000, and the acquisition is not complex, the RECIPIENT may be exempt from meeting appraisal and review appraisal standards. Such exemptions must be requested in writing and approved by the ECOLOGY Project Manager before the closing on the property. The RECIPIENT must follow the appraisal waiver standards in 44 C.F.R. § 24.102.

6. Some RECIPIENTS are required to provide grant match. Match is made up of three different types of contributions: cash expenditures, in kind other, and in kind interlocal. Cash match expenditures are eligible costs paid by the RECIPIENT and are not reimbursed by ECOLOGY. In kind contributions are property or services that benefit a project and are contributed to the RECIPIENT by a third party without direct monetary compensation. In kind other is a type of contribution where the third party making the contribution is not a government entity. In kind interlocal is a type of contribution where both the grant RECIPIENT and the third party making the contribution are both government entities and have a signed Inter-local agreement between them.

7. RECIPIENTS are required to submit a copy of the original invoice in the Payment Request backup documentation if an invoice number is referenced on a primary or subcontractor invoice.

8. To be eligible for reimbursement, RECIPIENTS must provide documentation of how an expenditure is directly related to the project. Ecology will not reimburse any expenditure that is already included in the indirect rate. At Ecology's sole discretion, ECOLOGY may approve reimbursement for the percentage of an expenditure that is directly related to the project.

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FLOODPLAINS BY DESIGN FUNDING PROGRAM AND FCAAP GRANTS SPECIAL TERMS AND CONDITIONS LAST UPDATED MAY 2021.

GENERAL FEDERAL CONDITIONS

If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING

REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

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- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at www.fsrs.gov <<http://www.fsrs.gov>> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <<http://www.usaspending.gov>>.

For more details on FFATA requirements, see www.fsrs.gov <<http://www.fsrs.gov>>.

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf) <<https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](https://sam.gov/SAM) <<https://sam.gov/SAM>> exclusion list.

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GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

06/24/2021 Version

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.

* For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

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- For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
 - Make the IDP readily available to anyone working at the project site.
 - Discuss the IDP with staff, volunteers, and contractors working at the project site.
 - Implement the IDP when Cultural Resources or human remains are found at the project site.
- c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

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j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

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

9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

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The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

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

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

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16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

20. PROGRESS REPORTING

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- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
 1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

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22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
 - b) Be kept in a common file to facilitate audits and inspections.
 - c) Clearly indicate total receipts and expenditures related to this Agreement.
 - d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.
- RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement. RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

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27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no

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event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

End of General Terms and Conditions