



Recipient Project Manager	Ecology Project Manager	Ecology Financial Manager
Jamie Burrell jburrell@northbendwa.gov (425) 888-7642	Carolyn Chase cach461@ecy.wa.gov (360) 706-4981	Michele Boderck mbod461@ecy.wa.gov (360) 764-6807

**Agreement Negotiation Document for**

**Agreement No. SEASMP CZM-2224-NorBen-00008**

**SHORELANDS SMP COASTAL ZONE MANAGEMENT AGREEMENT**

**BETWEEN**

**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

**AND**

**CITY OF NORTH BEND**

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

**GENERAL INFORMATION**

<b>Project Title:</b>	SMP User Guide and Program Enhancements
<b>Total Cost:</b>	\$30,000.00
<b>Total Eligible Cost:</b>	\$30,000.00
<b>Ecology Share:</b>	\$30,000.00
<b>Recipient Share:</b>	\$0.00
<b>The Effective Date of this Agreement is:</b>	05/01/2022
<b>The Expiration Date of this Agreement is no later than:</b>	06/30/2024
<b>Project Type:</b>	SMP Coastal Zone Management Planning Grant

### **Project Short Description (500 character limit)**

The City of North Bend (RECIPIENT) will complete a series of shoreline planning efforts to improve shoreline master program (SMP) implementation. This will include updating its SMP website, developing an SMP user guide, and revising permit application forms. The RECIPIENT will notify shoreline property owners of the new tools available and will also consider how to update their internal permit tracking system to collect SMP metrics.

### **Project Long Description (3,000 character limit)**

The purpose of the project is to increase the public's understanding of shoreline development regulations with the goal of increasing voluntary compliance with SMP provisions. Issues of non-compliance with the SMP are often attributed to a lack of understanding about shoreline regulations. This project is necessary because the current SMP is long and challenging to navigate. It is also hard for staff to administer and interpret SMP provisions and to address unique issues as they arise.

The RECIPIENT will create an SMP user guide that translates common provisions and key concepts of the 2019 SMP into a concise, easy to understand document with illustrations, diagrams, and clear direction for what is required on shoreline permit applications. The audience will be shoreline property owners and developers that do work within the shoreline. The SMP user guide will be available on the City's website. The user guide may be incorporated into a future SMP update.

Some of the common provisions and key concepts to be addressed in the SMP user guide include:

- Purpose of the SMP
- Shoreline jurisdiction
- Environmental designations
- No net loss of ecological functions
- Shoreline buffers
- Vegetation management
- Fences, gardens, and lawns within the shoreline
- Compliance necessary regardless of whether a permit is needed
- Expansion or replacement of non-conforming structures
- Native plant guidance
- Permit process
- Shoreline map
- Exemptions from the substantial development permit process

In addition to the SMP user guide, the RECIPIENT will revise shoreline permit forms. The RECIPIENT uses Permit Trax and My Building Permit programs for paperless permitting. The new application forms will be concise, electronic, and compatible with existing systems. Additionally, the project will result in recommendations for what permit information the RECIPIENT should track for future

permit monitoring efforts. These recommendations may result in specific information being collected on permit forms.

The City's website will be reviewed and improved by adding the SMP user guide and new permit forms.

The RECIPIENT will send a letter to shoreline property owners that will share a link to the updated website, which will include the new SMP user guide and updated forms. The RECIPIENT will also issue a press release and use social media and the City's website to announce new tools.

**Overall Goal:**

To improve the shoreline environment in North Bend by improving voluntary compliance with the SMP.

## RECIPIENT INFORMATION

Organization Name: City of North Bend

Federal Tax ID: #91-6001473

UEI Number: #KWT9DLU8MB55

Mailing Address: 920 SE Cedar Falls Way  
North Bend, WA 98045

Physical Address: 920 SE Cedar Falls Way  
North Bend, WA 98045

Organization Email: csmith@northbendwa.gov

### Contacts

Project Manager	Jamie Burrell Senior Planner 920 SE Cedar Falls Way North Bend, Washington 98045 (425) 888-7642 jburrell@northbendwa.gov
Billing Contact	Jamie Burrell Senior Planner 920 SE Cedar Falls Way North Bend, Washington 98045 (425) 888-7642 jburrell@northbendwa.gov
Authorized Signatory	Tom Mohr Project Manager 920 SE Cedar Falls Way North Bend, Washington 98045 (425) 888-7653 (425) 888-3502 tmohr@northbendwa.gov

## ECOLOGY INFORMATION

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

Physical Address:  
300 Desmond Drive SE  
Lacey, WA 98503

### Contacts

Project Manager	Carolyn Chase PO Box 47600 Olympia, Washington 98504-7600 Email: CACH461@ecy.wa.gov Phone: (360) 706-4981
Financial Manager	Michele Boderck PO Box 47600 Olympia, Washington 98504-7600 Email: mbod461@ecy.wa.gov Phone: (360) 764-6807

## 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.

IN WITNESS WHEREOF: the parties hereto, having read this Agreement in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Washington State  
Department of Ecology

By: \_\_\_\_\_  
Joenne McGerr Date  
Shorelands  
Program Manager

Template Approved to Form by  
Attorney General's Office

City of North Bend

By: \_\_\_\_\_  
Jamie Burrell Date  
Project Manager

By: \_\_\_\_\_  
Rob McFarland Date  
Mayor

Agreement No. SEASMP CZM-2224-NorBen-00008

Project Title: North Bend SMP User and City Enhancements

Recipient Name: City of North Bend

By: \_\_\_\_\_

Richard Gould

Date

Finance Director

DRAFT

## SCOPE OF WORK

**Task Number:** 1 **Task Cost:** \$0

**Task Title:** 1. Project Administration / Management

**Task Description:**

The RECIPIENT shall provide necessary project oversight to complete the scope of work in compliance with this ECOLOGY agreement, which includes project coordination, administration and management.

- A. The RECIPIENT shall coordinate with ECOLOGY throughout the project. The RECIPIENT will provide ECOLOGY opportunities to review draft deliverables at appropriate intervals. ECOLOGY will provide ongoing technical assistance, and will evaluate consistency of deliverables with the Shoreline Management Act and applicable guidelines throughout the review process.
- B. The RECIPIENT shall conduct project management activities including compliance with state statutes and rules, project scheduling, adherence to the scope of work, timelines, and due dates; request for, and if applicable, conducting the competitive procurement process including preparation of contractor bidding documents, advertisements, and grant monitoring.
- C. The RECIPIENT shall submit quarterly progress reports and payment requests (PRPRs) with supporting documentation; maintain project records; and submit ECOLOGY-approved deliverables by the due dates established between ECOLOGY and the RECIPIENT.

**Task Goal Statement:**

Properly manage and fully document the project in accordance with ECOLOGY's grant administration requirements.

**Task Expected Outcome:**

Timely and complete submittal of requests for reimbursement, quarterly progress reports, and recipient closeout report. Properly maintained project documentation.

**Recipient Task Coordinator:** Jamie Burrell

**Project Oversight: Coordination, Management, and Administration**

**Deliverables**

Number	Description	Due Date
1.1	Quarterly Payment Request / Progress Report (PRPR)	
1.2	Recipient Close Out Report	06/30/2024

## SCOPE OF WORK

**Task Number:** 2

**Task Cost:** \$30,000.00

**Task Title:** 2. SMP user guide and program enhancements

**Task Description** (3,500 character limit):

The RECIPIENT will:

- A. Secure qualified consultant services: In accordance with the RECIPIENT or State of Washington procurement procedures, the RECIPIENT will enter into a contract with the selected consultant(s) and prepare a sub agreement in accordance with the scope of work in this agreement.
- B. Send a written communication to the Snoqualmie Tribe about the SMP user guide and program enhancement project. The communication will ask for input on priority SMP user guide content areas.
- C. Prepare an SMP user guide that describes terms, concepts, policies, rules, and permitting process. Work will include developing content, document design and layout, convening opportunities for City staff to review and provide feedback on draft products, and developing new graphics. City staff comments on preliminary drafts will be incorporated into the final user guide. The RECIPIENT will follow ECOLOGY's requirements in the following sections of the Agreement General Terms and Conditions: 3. ACCESIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY; and 19. PRESENTATION AND PROMOTIONAL MATERIALS. For more information, see the Agreement General Terms and Conditions. The SMP user guide will include the following acknowledgement: "This document was prepared by the City of North Bend using Federal funds under Washington State Coastal Zone Management Award NA20NOS4190065 from the NOAA Office for Coastal Management, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce."
- D. Update the shoreline management website. Revisions will improve the user experience and link to the new user guide.
- E. Revise shoreline permit forms. Updates will make forms more concise and easy to use. Forms will be compatible with paperless, electronic submittal and the RECIPIENT's existing paperless permitting systems. The process may include changes to forms that will improve the RECIPIENT's ability to track key information about issued permits for future permit monitoring purposes.
- F. Recommendations for what shoreline permit information the RECIPIENT should track for future permit monitoring purposes.

G. Complete community outreach and stakeholder involvement by mailing a notice to shoreline residents of the new user guide and forms and sharing the updated website link.

**Task Goal Statement (1,500 character limit):**

To ensure the RECIPIENT has qualified personnel to conduct the scope of this project.

To increase voluntary compliance with the SMP by providing new and improving existing applicant tools.

**Task Expected Outcome (1,500 character limit):**

A signed contract with a consultant.

An SMP user guide, revised permit forms, and an updated SMP webpage.

**Recipient Task Coordinator:** Jamie Burrell

**2. Review existing documents**

**Deliverables**

Number	Description	Due Date
2.1	Final signed consulting contract. Upload to EAGL.	
2.2	Written communication to Snoqualmie Tribe. Upload to EAGL.	
2.3	Draft SMP user guide. Upload to EAGL.	
2.4	Final SMP user guide. Upload to EAGL.	
2.5	Website updates. Include a website link in quarterly Progress Report.	
2.6	Revised permit forms. Upload a PDF to EAGL. Summarize what changes were made and why in quarterly Progress Report.	
2.7	Recommendations for what information should be tracked for future permit monitoring efforts. Upload to EAGL.	
2.8	Shoreline property owner mailer. Upload to EAGL.	

## BUDGET

Funding Distribution: EGXXXXX  
Funding Title: NOAA-SMP Coastal Zone Management (CZM)  
Funding Type: Grant  
Funding Effective Date: 05/01/2022  
Funding Expiration Date: 06/30/2024  
Funding Source:

Title: NOAA-SMPCZM  
Fund: FD  
Type: Federal  
Funding Sources %: 100%  
Description: SEASMP CZM-2224

Federal Awarding Agency: NOAA – Office for Coastal Management  
Federal Awarding Agency Contact: Kris Wall  
Federal Awarding Agency Phone: 541-843-0252  
Federal Awarding Agency Email: kris.wall@noaa.gov  
Federal Awarding Agency Address: 2234 South Hobson Avenue  
Charleston, South Carolina 29405-2413

CFDA Catalog Name: Coastal Zone Management Administration Awards  
CFDA Number: 11.419  
FAIN: NA20NOS4190065  
Research Grant: No  
Federal Award Date: 4/18/2022  
Total Federal Award Amount: \$303,448.00

**Approved Indirect Costs Rate:** **Approved Federal Indirect Rate: XX%**

Recipient Match %: 0%

InKind Interlocal Match Allowed: No

InKind Other Match Allowed: No

Is this Funding Distribution used to match a federal grant? No

NOAA – SMP Coastal Zone Management (CZM)	Task Total
1. Project Administration / Management	\$0.00
2. SMP user guide and program enhancements	\$30,000.00
<b>Total</b>	<b>\$30,000.00</b>

**Funding Distribution Summary**

Recipient/Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
NOAA – SMP Coastal Zone Management (CZM)	0.00%	\$0.00	\$30,000.00	\$30,000.00
<b>Total</b>		<b>\$0.00</b>	<b>\$30,000.00</b>	<b>\$30,000.00</b>

## **AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

### **SPECIAL TERMS AND CONDITIONS As of 05/01/2022**

#### **A. COASTAL ZONE MANAGEMENT PROVISIONS**

1. Field Work: The RECIPIENT must ensure that any field work conducted as part of educational, training or volunteer programs/activities will be conducted in accordance with appropriate Federal, state and local laws and will follow recognized best practices for minimizing impacts to the human and natural environment.
2. Safety: The RECIPIENT is responsible for safety in the project, including the safety of project personnel, associates, visitors, and volunteers.
3. Unoccupied Aircraft Systems: If this project involves Unoccupied Aircraft Systems (UAS or drone technology), the RECIPIENT is responsible for ensuring it has complied with applicable federal/state/local laws and have the appropriate permits in hand prior to conducting drone operations.
4. Acknowledgement of Sponsorship and Disclaimer:
  - a. The title or acknowledgements page(s) of all reports, studies, or other documents, published or distributed electronically or hard copy (and acknowledgement pages of websites and web pages) that are supported in whole or in part by this award or any subawards shall acknowledge the financial assistance provided by this award. See below.
  - b. Non-Federal entities are responsible for assuring that every publication of material based on, developed under, or otherwise produced pursuant to this financial assistance award contains the following disclaimer or other disclaimer approved by ECOLOGY. See below.
  - c. To meet the above requirements, ECOLOGY recommends including the following statement on the title page and/or acknowledgements page of materials published or distributed through this award: This [report/video/etc.] was prepared by [RECIPIENT] using Federal funds under Washington State Coastal Zone Management Award NA20NOS4190065 from the NOAA Office for Coastal Management, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.
5. Lobbying Restriction: No funds may be used for the payment of membership dues to any entity to engage in lobbying activities, as provided in 2 CFR 200.450 and 200.454.
6. Scholarly publications:

a. Acknowledgement: Federal funding sources shall be identified in all scholarly publications. An Acknowledgements section shall be included in the body of the publication stating the relevant Grant Programs and Award Numbers.

b. Disclaimer: The following disclaimer should be included within every publication of material based on, developed under, or otherwise produced pursuant to this financial assistance award, or other disclaimer approved by ECOLOGY: The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

c. Manuscript submission: The final pre-publication manuscripts of scholarly publications produced with NOAA funding shall be submitted to the NOAA Institutional Repository at <https://repository.library.noaa.gov/> after acceptance, and no later than upon publication, of the paper by a journal. NOAA will produce a publicly-visible catalog entry directing users to the published version of the article. After an embargo period of one year after publication, NOAA shall make the manuscript itself publicly visible, free of charge, while continuing to direct users to the published version of record.

d. Data Citation: Publications based on data, and new products derived from source data, must cite the data used according to the conventions of the Publisher, using unambiguous labels such as Digital Object Identifiers (DOIs). All data and derived products that are used to support the conclusions of a peer-reviewed publication must be made available in a form that permits verification and reproducibility of the results.

#### **B. DELIVERABLE DUE DATE FORM – As seen in Ecology's Administration of Grants and Loans (EAGL):**

The RECIPIENT will negotiate the task deliverable due dates with the ECOLOGY Project Manager, and the ECOLOGY Project Manager will enter the information in the Deliverable Due Date EAGL form. The RECIPIENT will keep track of these due dates, and will note any date changes on the quarterly progress reports. The Deliverable Due Date form can be found on the Application Menu - Forms page in EAGL. (Note: This form does not automatically print out with the agreement.)

#### **GENERAL FEDERAL CONDITIONS As of 4/1/2022**

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.

- Receives more than \$30,000 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**Error! Hyperlink reference not valid.** Unique Entity Identifier in [www.SAM.gov](http://www.SAM.gov) within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <<http://www.usaspending.gov/>>.

For more details on FFATA requirements, see [www.fsrs.gov <http://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](#), 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 \(SAM\)](#) exclusion list.

## **GENERAL TERMS AND CONDITIONS** As of 06/24/2021

### **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.

• 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](mailto: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.
- 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.

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.

**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

- 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 compreto 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.

## 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.

### 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 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**