



**CITY COUNCIL** 345 6<sup>th</sup> Street, Suite 100, Bremerton, WA 98337 ☐ Phone (360) 473-5280

**WEDNESDAY, FEBRUARY 28, 2024**  
**CITY COUNCIL HYBRID STUDY SESSION AGENDA**  
**Starting at 5:00 PM in Council Conference Room 603**

*Council Conference Room 603 will be open to the public to attend the Study Session in-person, but there will be no opportunities for input. However, public questions or comments may be submitted at any time to [City.Council@ci.bremerton.wa.us](mailto:City.Council@ci.bremerton.wa.us). Please remember that the content of the Agenda Bill items is subject to change; and no action at the Study Session is anticipated. If approved by the Council, these items will be placed on the **March 6, 2024** City Council Meeting Agenda, or as indicated...*

- *Members of the public may click the link below to join the webinar:  
<https://us02web.zoom.us/j/87318266756?pwd=ZWIMVnVYbFBHYjY5U1RJUmFreDFXUT09>*
- *Or One tap mobile:  
US: +12532050468,,87318266756#,,,,\*857582# or +12532158782,,87318266756#,,,,\*857582#*
- *Or Telephone: Dial (for higher quality, dial a number based on your current location): US: +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799 or +1 669 444 9171 or +1 669 900 6833  
Webinar ID: 873 1826 6756  
Passcode: 857582*

**A. INFORMATION ONLY**

1. Diversity, Equity, and Inclusion Program Update and Presentation by MFR Coaching and Consulting, and Clarity Partnerships

**B. BRIEFINGS ON AGENDA BILL ITEMS**

1. Confirm Reappointment of Vanessa Acierto to Bremerton-Kitsap Access Television Citizens Advisory Committee
2. Resolution to approve the Capital Agreement with WA State Department of Commerce for the Connecting Housing to Infrastructure Program Grant for the Kitsap Community Resources Manette Housing Project
3. Contract Modification Agreement No. 4 with Kellermeyer Bergensons Services, LLC for Janitorial Services
4. Contract with Redside Construction, LLC for the Pine Road Basin Stormwater Improvements Marine Impact Basin Project
5. Stormwater Financial Assistance Program Grant Agreement with WA State Department of Ecology for Kitsap Lake Stormwater Retrofit Construction Project


**C. GENERAL COUNCIL BUSINESS**

1. Public Works Committee Briefing (*Last Meeting 2/20/2024*) – Chair Jane Rebelowski
2. Audit Committee Briefing (*Last Meeting 2/26/2024*) – Council Member Eric Younger
3. Finance, Investment, & Parking Committee Briefing (*Last Meeting 2/27/2024*) – Council Member Jane Rebelowski
4. Regional and Other Committee/Board Briefings
5. Other General Council Business (*As necessary, and as time allows...*)

**D. EXECUTIVE SESSION**

1. 15-Minutes to discuss Pending Litigation as allowed under RCW 42.30.110 (1)(i); and no action is anticipated...

**E. ADJOURNMENT OF STUDY SESSION**

 *Americans with Disabilities Act accommodations provided upon request. Those requiring special accommodations should contact the City Clerk's Office at (360) 473-5323 at least 24 hours prior to the meeting.*

**INFORMATION ONLY ITEM**  
CITY OF BREMERTON  
CITY COUNCIL

**A1**

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**SUBJECT:** Diversity, Equity, and Inclusion  
Update and Presentation by MFR Coaching  
and Consulting, and Clarity Partnerships

Study Session Date: February 28, 2024  
Presenters: Melanie Ryan &  
Anthony Farmer from  
MFR Coaching and  
Consulting, and  
Lucretia Robertson  
from Clarity  
Partnerships

**SUMMARY:** Presenters will be providing an update on their work on the City's Diversity, Equity, and Inclusion efforts. The presentation will be about 20 minutes long with Melanie Ryan appearing in person and Anthony Farmer and Lucretia Robertson appearing by Zoom. Approximately 10 minutes for Council questions have been allocated for a total presentation length of 30 minutes.

**PRESENTATION:** Update and Discussion with Melanie Ryan & Anthony Farmer – MFR Coaching and Consulting, and Lucretia Robertson – Clarity Partnerships

**STUDY SESSION AGENDA:**             No Presentation             Full Presentation



# CITY OF BREMERTON

## Diversity, Equity, & Inclusion Project Report

February 28, 2024



BREMERTON  
WASHINGTON



# MFR COACHING & CONSULTING CITY OF BREMERTON TEAM

MFR Coaching & Consulting's **mission** is to empower organizations, communities, and individuals to achieve equitable, impactful, and sustaining change that honors the worth and value of every human being by building capacity in culture development, DEI, and leadership via assessment, facilitation, learning, integration and coaching.



JOY BRISCOE  
(SHE/HER)



LATOIA BURKLEY  
(SHE/HER)



TONY FARMER  
(HE/HIM)



MELANIE F. RYAN  
(SHE/HER)



ELIZABETH  
DAVILA-SLEIGH  
(SHE/HER)

# CLARITY PARTNERSHIPS

The City hired Lucretia Robertson of Clarity Partnerships to serve as project manager and be the liaison with community organizations. Ms. Robertson leveraged her deep connections in the Bremerton community to invite and communicate the opportunity to participate in Facilitated Dialogues.



LUCRETIA ROBERTSON  
(SHE/HER)

# PROJECT OVERVIEW

The City outlined four objectives, with corresponding outcomes, it would like accomplished:

OBJECTIVES	OUTCOMES
<b>Stakeholder Engagement (Internal &amp; External)</b>	<b>Outcome 1:</b> Solicit community input that informs: <ul style="list-style-type: none"><li>• The creation and implementation of a strategic plan</li><li>• The creation of a job description and recruitment strategy for a DEI position</li><li>• Recommend support necessary for a race equity focused community advisory commission.</li></ul> <b>Outcome 2:</b> Assess the City's workplace culture and workforce /leadership DEI capacity and skills
<b>Diversity, Equity, &amp; Inclusion Position</b>	<b>Outcome 1:</b> Create a job description and recruitment plan for the City's DEI position.
<b>Race Equity Advisory Commission</b>	<b>Outcome 1:</b> Provide a framework and resources for the Race Equity Advisory Commission to fulfill the commission's duties as established by the City Council.
<b>Strategic Planning</b>	<b>Outcome 1:</b> Provide a DEI Strategic Plan inclusive of: <ul style="list-style-type: none"><li>• Stakeholder Engagement Objectives</li><li>• DEI Position Objectives</li><li>• Race Equity Advisory Commission Objectives</li><li>• Strategies, policies, and procedures that advance equality and inclusion in the community &amp; workplace.</li><li>• Estimated costs and resources necessary for a DEI Strategic Plan Implementation, preferably with a phased approach.</li></ul>

# DIVERSITY EQUITY & INCUSION POSITION

**Outcome 1:** Create a job description and recruitment plan for the City's DEI position.

## DELIVERABLES

- DEI position job description
- Recruitment Plan

## KEY TAKEAWAYS

- Seniority/Level: Director
- Scope of job description
- Recruiting plan highlights
- Community & employee involvement

## CITY COUNCIL ACTION

- Approve job description
- Approve Job Level (Director)
- **Approve budget for executive search firm?**

# RACE EQUITY ADVISORY COMMISSION

**Outcome 1:** Provide a framework and resources for the Race Equity Advisory Commission to fulfill the commission's duties as established by the City Council.

## DELIVERABLES

- REAC Engagement Model

## KEY TAKEAWAYS

- Engagement model vs. framework
- Framework highlights
- Equitable governance structure

## CITY COUNCIL ACTION

- Co-create Engagement model with REAC and City staff
- Incorporate community / REAC feedback into REAC appointments
- Approve financial stipend for REAC members.

**AGENDA BILL**  
CITY OF BREMERTON  
CITY COUNCIL

**B1**

**SUBJECT:** Confirm Reappointment of  
Vanessa Acierto to the Bremerton Kitsap  
Access Television Citizens Advisory  
Committee

Study Session Date: February 28, 2024  
COUNCIL MEETING Date: March 6, 2024  
Department: Executive  
Presenter: Mayor Wheeler  
Phone: (360) 473-5266

**SUMMARY:** The Mayor is seeking confirmation for the reappointment of Vanessa Acierto to the Bremerton Kitsap Access Television (BKAT) Citizens Advisory Committee as the City of Bremerton Representative. The term expires on December 31, 2024.

**ATTACHMENTS:** Application for City Board/Commissions/Committee - Vanessa Acierto

**FISCAL IMPACTS** (Include Budgeted Amount): None.

**STUDY SESSION AGENDA:**  Limited Presentation  Full Presentation

**STUDY SESSION ACTION:**  Consent Agenda  General Business  Public Hearing

**RECOMMENDED MOTION:**

Move to confirm the reappointment of Vanessa Acierto to the Bremerton Kitsap Access Television Citizens Advisory Committee for the term expiring on December 31, 2024.

**COUNCIL ACTION:**  Approve  Deny  Table  Continue  No Action



## Jennifer Hayes

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**From:** noreply@civicplus.com  
**Sent:** Monday, February 12, 2024 6:27 PM  
**To:** WebMaster; Greg Wheeler; Jennifer Hayes  
**Subject:** Online Form Submittal: Application for City Boards / Commissions / Committee

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

### Application for City Boards / Commissions / Committee

Date	2/12/2024
First Name	Vanessa
Middle Name	<i>Field not completed.</i>
Last Name	Acierto
Home Phone	██████████
Address1	██████████
Address2	<i>Field not completed.</i>
City	Silverdale
State	WA
Zip	98383
Occupation	Public Records/Legal Assistant
Employer	City of Bremerton
Work Address1	██████████
Work Address2	<i>Field not completed.</i>
City	Bremerton
State	WA
Zip	98337
Work Phone	360-473-2344
Fax	<i>Field not completed.</i>

Email	
Education	Bachelor of Arts in Political Science from University of Washington, Seattle Certificate in Business Administration, Foster School of Business, University of Washington, Seattle
Local References	Angela Hoover, 360-473-5323 Stephanie Olson, 360-473-2345
I am interested in serving:	Public Access Citizens Advisory Committee (Bremerton Kitsap Access Television/BKAT)
Is this an application for reappointment?	Yes
If yes, how many years have you served on this commission or committee?	First appointed August 2022
How long have you lived in Bremerton	almost 25 years total (moved and came back)
Why are you applying for this appointment?	I moved back to Bremerton after many years away shortly before Covid hit. I had enjoyed getting to know Bremerton again as an adult and had been looking for ways to become more involved in my community. Joining this Committee was a way to learn more about the area and grow personally and professionally as a representative for City Employees. A little over a year has passed, and I have much more to learn and contribute at BKAT. I'm so impressed by the hard work and dedication BKAT Staff and BKAT members have for the programming they put out and have been honored to be even a small part of that. I hope to be reappointed and serve another term.
Which of your personal and / or professional interests prompted you to apply for this appointment?	The law and government has always interested me. I'm an extrovert and really enjoy being around other people. This appointment would be an excellent way to combine these interests. I like the idea of BKAT bridging the gap between area citizens and those at City Hall and all the City Staff. As I learned the last year, the area served is much larger and the community connections, therefore, even greater than I initially thought! I definitely feel there is more to explore and accomplish with BKAT.
Have you ever served on any other Bremerton board, commission, committee or	N/A

task force? If yes, please list.

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Please list your qualifications for this appointment (include skills, activities, training, education):

The classes I took to earn my Certificate in Business Administration provided me with much training that could be very useful serving on this advisory committee. I learned about interpersonal communication, negotiation, project management, budgeting and accounting for businesses, advertising and communicating with a broad audience through various forms of media. My Political Science degree has taught me effective writing skills, critical thinking skills, an ability to always see both sides of an issue, and the appreciation of the difference even just one person can make in society. I've spent over 15 years working in the legal field where I've learned to have compassion, patience, and attention to detail. I've worked with many different types of people from varying socioeconomic backgrounds which will help me keep an open mind and be particularly inclusive on this committee. Of course, now that I've had a chance to serve a year on the Committee, I have that experience to help me as well.

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What are your community interests (committee, organizations, special activities)?

I am very open in my interests! I like the idea of helping BKAT target younger community members in order to grow support early from them and hopefully, gain some lifelong supporters.

I have spent the last year acting with various community theaters in Kitsap County, which takes quite a bit of my time. I also enjoy attending events around town, such as Story Night and Bremerton First Fridays.

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Please list any accommodations you need to perform volunteer duties:

N/A

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*We welcome your willingness to serve Bremerton.*

*Pursuant to the Washington Public Disclosure Act, (RCW 42.56), this form constitutes a public record and is subject to public release upon request. Prior to release, the following information may be redacted pursuant to RCW 42.56.250(3): Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, driver's license numbers, identicard numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency.*

*Applicants are considered for appointment without regard to race, color, religion,*

*gender, national origin, sexual orientation, age, genetic information, marital or veteran status, or the presence of any disability.*

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Updated 3/24/2020

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Email not displaying correctly? [View it in your browser.](#)

**AGENDA BILL**  
CITY OF BREMERTON  
CITY COUNCIL

**B2**

**SUBJECT:**

Resolution to approve the Capital Agreement with WA State Department of Commerce for the Connecting Housing to Infrastructure Program (CHIP) Grant for the Kitsap Community Resources Manette Housing Project

Study Session Date:	<u>February 28, 2024</u>
COUNCIL MEETING Date:	<u>March 6, 2024</u>
Department:	<u>DCD/CDBG</u>
Presenter:	<u>S. Lynam</u>
Phone:	<u>(360) 473-5375</u>

**SUMMARY:**

In 2022, the City was awarded funding from the Connecting Housing to Infrastructure Grant (CHIP). The purpose of the CHIP grant is to support the development of affordable housing by funding the water, sewer, and stormwater utility improvements for the Manette Housing project. To that end, the City has been awarded \$430,000. The \$430,000 CHIP will be administered by the City on a reimbursements basis to Kitsap Community Resources for the Manette Housing project.

**ATTACHMENTS:**

1. Resolution with Exhibits  
Exhibit A: Washington State Department of Commerce Capital Agreement  
Exhibit B: Award Letter dated April 2022

**FISCAL IMPACTS (Include Budgeted Amount):** None, the City will administer the funds on a reimbursement basis to Kitsap Community Resources.

**STUDY SESSION AGENDA:**             Limited Presentation         Full Presentation

**STUDY SESSION ACTION:**     Consent Agenda         General Business         Public Hearing

**RECOMMENDED MOTION:**

Move to pass Resolution No. \_\_\_\_\_ approving the Approving the Capital Agreement with Washington State Department of Commerce for funding via the Connecting Housing to Infrastructure Program (CHIP); and authorize the Mayor to finalize and execute the agreement with substantially the same terms and conditions as presented.

**COUNCIL ACTION:**     Approve         Deny         Table         Continue         No Action

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION** of the City Council of the City of Bremerton, Washington, adopting the Capital Agreement with City of Bremerton through America Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds - Connecting Housing to Infrastructure Program (CHIP)

WHEREAS, the City of Bremerton (City) is experiencing an affordable housing crisis; and

WHEREAS, the Washington State Legislature has allocated \$55.5 million for local governments and public utility districts to partner with affordable housing developers to pay for "system development charges and utility improvements" through a Connecting Housing Infrastructure Program (CHIP) program that is being managed by the Washington State Department of Commerce; and

WHEREAS, in 2022 the City in partnership with Kitsap Community Resources was City was awarded \$430,000 from the Connecting Housing to Infrastructure Grant (CHIP) for the purpose of funding the water, sewer, and stormwater utility improvements for the Manette Housing project; and

WHEREAS, the City of Bremerton and Kitsap County as a consortium already allocated via the Grant Review Committee \$802,226.05 in HOME funds to Kitsap Community Resources for their 9 unit affordable housing complex in between 2021 and 2022; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF BREMERTON, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:

**SECTION 1.** The recitals and findings of fact set forth in this resolution are hereby incorporated as if fully set forth herein.

**SECTION 2.** The Capital Agreement with City of Bremerton through America Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds - Connecting Housing to Infrastructure Program (CHIP) attached hereto as **Exhibit A** is hereby adopted.

**SECTION 3. Severability.** If any one or more sections, subsections, or sentences of this Resolution are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Resolution and the same shall remain in full force and effect.

**SECTION 4. Effective Date.** This Resolution shall take effect and be in force immediately upon its passage.

PASSED by the City Council of the City of Bremerton, Washington this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
JENNIFER CHAMBERLIN,  
Council President

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
KYLIE J. FINNELL, City Attorney

\_\_\_\_\_  
ANGELA HOOVER, City Clerk



## **Capital Agreement with**

### **City of Bremerton**

through

America Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds -

Connecting Housing to Infrastructure Program (CHIP)

### **Purpose**

To support the development of affordable housing by paying for water, sewer, and stormwater utility improvements for the Manette Housing project.

**Start date:** July 1, 2021



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**Washington State Department of Commerce  
Local Government Division  
Community Assistance & Research Unit  
ARPA State and Local Fiscal Recovery Funds Grant**

<b>1. Grantee</b> City of Bremerton 345 Sixth Street Suite 100 Bremerton, WA 98337		<b>2. Project Name and Address</b> Manette Housing 2115 East 19th Street Bremerton, WA 98310	
<b>3. Grantee Representative</b> Sarah Lynam CDBG Administrator (360)473-5375 sarah.lynam@ci.bremerton.wa.us		<b>4. COMMERCE Representative</b> Eric Guida CHIP Program Manager (360)725-3044 eric.guida@commerce.wa.gov <span style="float: right;">                     PO Box 42525                      1011 Plum Street SE                      Olympia, WA 98504-2525                 </span>	
<b>5. Grant Amount</b> \$430,000	<b>6. Funding Source</b> Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> July 1, 2021	<b>8. End Date</b> June 30, 2025
<b>9. Federal Funds (as applicable)</b> \$430,000	<b>Federal Agency</b> US Dept. Treasury	<b>ALN (CFDA #):</b> 21.027	
<b>10. SWV #</b> 0000221-00	<b>11. UBI #</b> 181-007-710	<b>12. DUNS #</b> 556846970	<b>13. UNIQUE ENTITY ID #</b> HV84RG6NYNG4
<b>14. Grant Purpose</b> The outcome of this performance-based Grant Agreement is to undertake the construction of water, sewer, and stormwater utility improvements as referenced in Attachment A – Scope of Work for the Manette Housing project.			
COMMERCE, defined as the Department of Commerce and Grantee acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grantee Terms and Conditions including Attachment “A” – Scope of Work, Attachment “B” – Certification of Availability of Funds to Complete the Project, Attachment “C” – Certification of the Payment and Reporting of Prevailing Wages,			
<b>FOR GRANTEE</b>  _____ Greg Wheeler, Mayor  _____ Date  <b>APPROVED AS TO FORM ONLY</b>  _____ Name  _____ Date		<b>FOR COMMERCE</b>  _____ Mark K. Barkley, Assistant Director, Local Government Division  _____ Date  <b>APPROVED AS TO FORM ONLY</b>  _____ Sandra Adix Assistant Attorney General March 31, 2022 Date	

# DECLARATIONS

## CLIENT INFORMATION

GRANTEE Name: City of Bremerton  
Grant Number: 22-96720-209

## PROJECT INFORMATION

Project Name: Manette Housing  
Project Address: 2115 East 19th Street  
Project City, State Zip Code: Bremerton, WA 98337

## GRANT INFORMATION

Grant Amount:	<b>\$430,000</b>
Appropriation Number:	2021 Washington State Capital Budget SSB 1080, Section 1074
Re-appropriation Number (if applicable):	
Grant End Date:	June 30, 2025
Biennium:	2021-2023, 2023-2025
Biennium Close Date:	June 30, 2025
Earliest Date for Reimbursement:	March 3, 2021
Time of Performance:	<b>In accordance with Special Terms and Conditions Number 4</b>

## FUNDING INFORMATION

Federal Funding:	Sec. 602 Coronavirus State Fiscal Recovery Funds of Title VI of Social Security Act as added by American Rescue Plan Act of 2021 (ARPA or "Act"), Title IX, Subtitle M, Sec. 9901, Public Law 117-2, codified at 42 U.S.C. 802 et seq.
Federal Award Agency:	US Department of Treasury
Amount of Federal Funds Obligated by this Action:	\$430,000

## ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

### Extension of Grant Upon Reappropriation.

Notwithstanding General Term and Condition No. 4, the End Date of this Grant **may be extended upon written notice to Grantee from Commerce** for a period of time consistent with the effective date of any re-appropriation of funds, and/or with terms reflecting new Federal requirements for ARPA funds, if any. In Commerce's sole discretion, after review of any funding re-appropriation terms and applicable Federal law or guidance, a contract amendment in accordance with General Term and Condition No. 4 may be required to extend the End Date.

**SPECIAL TERMS AND CONDITIONS  
CAPITAL  
FEDERAL FUNDS**

**1. AUTHORITY**

Funding for this Grant has been provided in the 2021-2023 biennial state Capital Budget, SSB 1080, pursuant to Federal grants to Washington State under the American Rescue Plan Act of 2021 (ARPA or "Act"), sec. 9901, Public Law 117-2, codified at 42 U.S.C. 802 et seq. Funding unexpended during the 2021-23 state biennium has been re-appropriated to the 2023-2025 biennia, subject to Federal requirements.

**2. ACKNOWLEDGEMENT OF FEDERAL FUNDING**

Federal Award Identification Number (FAIN): SLRF0002  
Total amount of the federal award: \$430,000

Federal Awarding Agency: US Department of Treasury  
Research & Development (R&D): award will not be used for R&D

The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Grant, shall contain the following statements:

"This project was supported by grant awarded by the US Department of the Treasury. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of the Treasury. Grant funds are administered by the America Rescue Plan Act, State and Local Fiscal Recovery Funds, Washington State Department of Commerce."

**3. GRANT MANAGEMENT**

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

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

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

**4. PERIOD OF PERFORMANCE, COSTS INCURRED, REIMBURSEMENT**

- a) Period of Performance. The initial period of performance for this award begins on the date hereof and ends on June 30, 2025. If unexpended funds under this Grant are re-appropriated, the period of performance (Contract End Date) will be extended to not later than October 30, 2026.
- b) Costs Incurred Period. As set forth in Treasury's implementing regulations, Grantee may use funds awarded under ARPA to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024. Pursuant to Federal rules, a cost shall be considered to have been incurred if the Grantee has incurred an obligation with respect to such cost by December 31, 2024. All change orders for which reimbursement is requested must be executed on or before December 31, 2024.
- c) Reimbursement Period. All requests for reimbursement of eligible costs incurred between March 3, 2021 and December 31, 2024 payable from ARPA funds must be submitted to COMMERCE by the **earlier of** October 30, 2026 or 30 days prior to the Contract End Date.

**5. COMPENSATION**

COMMERCE shall pay an amount not to exceed the total contract amount listed on the contract Face Sheet for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

**SPECIAL TERMS AND CONDITIONS  
CAPITAL  
FEDERAL FUNDS**

**6. BILLING PROCEDURES AND PAYMENT**

COMMERCE shall reimburse the GRANTEE for eligible Project expenditures, up to the maximum payable under this Grant Agreement. When requesting reimbursement for expenditures made, the GRANTEE shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed for the billing period. The GRANTEE can submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Grants Management System (CMS), which is available through the Secure Access Washington (SAW) portal. The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Grant Number listed on the contract Face Sheet.

The voucher must be certified (signed) by an official of the GRANTEE with authority to bind the GRANTEE. The final voucher shall be submitted to COMMERCE within sixty (60) days following the completion of work or other termination of this Grant Agreement, or if work is not completed or Grant terminated, within fifteen (15) days following the end of the state biennium unless Grant Agreement funds are reappropriated by the Legislature in accordance with Additional Special Terms and Conditions set forth in the Declarations page above.

Each request for payment must be accompanied by:

- a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the GRANTEE.
- Any documentation of costs, and prevailing wage as per section 8 of the Special Terms and Conditions and Attachment C, CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES.
- A reportable expenses form as detailed in Section 7 of Special Terms and Conditions, SUBCONTRACTOR DATA COLLECTION.

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

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

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

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

Invoices and End of Fiscal Year

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The grantee must invoice for all expenses from the beginning of the contract through June 30, 2025, regardless of the contract start and end date.

Duplication of Billed Costs

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

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Disallowed Costs

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

Withholding

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

**7. SUBCONTRACTOR DATA COLLECTION**

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

**8. HISTORICAL OR CULTURAL RESOURCES, HUMAN REMAINS**

CHIP projects are subject to the requirements of Washington State Governor's Executive Order (GEO) 21-02 "Archaeological and Cultural Resources". CHIP Grantees will cooperate with Commerce to fulfill the requirements of GEO-21-02. Commerce will delegate consultation authority to the grantee by letter, and each project must complete the EZ-1 Form to comply with the [GEO 21-02](#). In the event that historical or cultural artifacts are discovered at the Project site during construction or rehabilitation, the Grantee or subcontractor shall immediately stop work and notify the local historical preservation officer and the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. If human remains are discovered, the Grantee shall immediately stop work and report the presence and location of the remains to the coroner and local enforcement, then contact DAHP and any concerned tribe's cultural staff or committee.

**9. AUDIT**

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

1. Submit to COMMERCE the reporting package specified in Uniform Guidance 2 CFR 200, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
2. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to the [Federal Audit Clearinghouse](#).  
<https://facides.census.gov/Account/Login.aspx>

**10. DEBARMENT**

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
  - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.



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- ii. Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
  - iv. Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this Grant, the Grantee shall attach an explanation to this Grant.
- C. The Grantee agrees by signing this Grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE. Grantees should review section 14 of the Special Terms and Conditions for information on documenting that any subcontractors are not on the federal debarment list.
- D. The Grantee further agrees by signing this Grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

**LOWER TIER COVERED TRANSACTIONS**

- i. The lower tier Grantee certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- ii. Where the lower tier Grantee is unable to certify to any of the statements in this Grant, such contractor shall attach an explanation to this Grant.

The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

**11. INSURANCE**

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

**12. COMPLIANCE WITH APPLICABLE LAW AND REGULATIONS**

- A. Grantee agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Grantee also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Grantee shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- B. Federal regulations applicable to this award include, but are not necessarily limited to the following:
  - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

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- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
  - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
  - iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
  - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
  - vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
  - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
  - ix. Generally applicable federal environmental laws and regulations.
  - x. Prohibition on certain telecommunications and video surveillance services or equipment 2 CFR [§ 200.216](#).
- C. Statutes and regulations prohibiting discrimination applicable to this award include, but are not necessarily limited to the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
  - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
  - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
  - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
  - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
  - vi.

**13. FEDERAL EXCLUSION**

These terms add to the terms in Section 12 Certification Regarding Debarment, Suspension or Ineligibility and Voluntary Exclusion — Primary and Lower Tier Covered Transactions in General Terms and Conditions. The Grantee also agrees to access the Federal Exclusion List at [www.sam.gov](http://www.sam.gov) and provide Federal Exclusion documentation to Commerce and to keep a copy on file with the Grantee's project records.

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**14. REGISTRATION WITH THE SYSTEM FOR AWARD MANAGEMENT (SAM)**

By signing this Grant, the Grantee accepts the requirements stated in 48 CFR 52.204-7 to register with the System for Award Management at the SAM website (<https://www.sam.gov>). To register in SAM, a valid Unique Entity Identifier (UEI) is required. The Grantee is responsible for the accuracy and completeness of the data within the SAM database and for any liability resulting from the Government's reliance on inaccurate or incomplete data. The Grantee must remain registered in the SAM database after the initial registration. The Grantee is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in SAM to ensure it is current, accurate and complete. The Grantee shall provide evidence documenting registration and renewal of SAM registration to Commerce.

In the event of the Grantee's noncompliance or refusal to comply with the requirement stated above, Commerce reserves the right to suspend payment until the Grantee cures this noncompliance.

**15. REDUCTION IN FUNDS**

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

**16. OWNERSHIP OF PROJECT/CAPITAL FACILITIES**

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this Grant Agreement and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Grant Agreement; provided, however, that COMMERCE may be granted a security interest in real property, to secure funds awarded under this Grant Agreement to assure affordability when the CHIP grant program contributed to the project, unless monitored by another funder. The funding for this program, [SB 5651 (section 1032), laws of 2021] requires that projects serve and benefit low-income households, and requires affordability for at least 25 years. This provision does not extend to claims that COMMERCE may bring against the GRANTEE in recapturing funds expended in violation of this Grant Agreement.

**17. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY**

- A. The GRANTEE understands and agrees that any and all real property or facilities owned by the GRANTEE that are acquired, constructed, or otherwise improved by the GRANTEE using state funds under this Grant Agreement, shall be held and used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least twenty five (25) years from the date the final payment is made hereunder.
- B. This provision shall not be construed to prohibit the GRANTEE from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this Grant Agreement.
- C. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 34 (Recapture provision).

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**18. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE**

- A. The GRANTEE understands and agrees that any facility leased by the GRANTEE that is constructed, renovated, or otherwise improved using state funds under this Grant Agreement shall be used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least twenty five (25) years from the date the final payment is made hereunder.
- B. In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 34 (Recapture Provision).

**19. TERMINATION FOR FRAUD OR MISREPRESENTATION**

In the event the GRANTEE commits fraud or makes any misrepresentation in connection with the Grant application or during the performance of this Grant Agreement, COMMERCE reserves the right to terminate or amend this Grant Agreement accordingly, including the right to recapture all funds disbursed to the GRANTEE under the Grant.

**20. FRAUD AND OTHER LOSS REPORTING**

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

**21. ORDER OF PRECEDENCE**

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

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Certification of the Availability of Funds to Complete the Project
- Attachment C – Certification of the Payment and Reporting of Prevailing Wages

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**1. DEFINITIONS**

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Grant" or "Agreement" means the entire written agreement between COMMERCE and the Grantor, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the Grantee.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate contract with the Grantee. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

**2. ADMINISTRATIVE COST ALLOCATION**

Administrative costs that may be allowed are set forth in the Special Terms and Conditions. Administrative services shared by other programs shall be assigned to this Grant based on an allocation plan that reflects allowable administrative costs that support services provided under each Grant administered by the Grantee. An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed.

**3. ALLOWABLE COSTS**

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

**4. ALL WRITINGS CONTAINED HEREIN**

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

**5. AMENDMENTS**

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

**6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35**

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

**7. APPROVAL**

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

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**8. ASSIGNMENT**

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE. For the purpose of the CHIP contracts, which require a city, county or public utility sponsor of the affordable housing project, Commerce preapproves the grantee to assign this contract to their affordable housing partner. In this case, all requirements and contract terms flow to the assignee's subcontractors, specifically section 11, certification regarding debarment, and section 40, subcontracting, of the General Terms and Conditions. After assignment, all references to Grantee shall mean Grantee's assignee.

**9. ATTORNEYS' FEES**

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

**10. AUDIT**

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

1. Submit to COMMERCE the reporting package specified in Uniform Guidance 2 CFR 200, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
2. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to the [Federal Audit Clearinghouse](https://facides.census.gov/Account/Login.aspx).  
<https://facides.census.gov/Account/Login.aspx>

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

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
  - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
  - ii. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
  - iv. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this contract, the Grantee shall attach an explanation to this contract.

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- C. The Grantee agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Grantee further agrees by signing this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

**LOWER TIER COVERED TRANSACTIONS**

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

**12. CODE REQUIREMENTS**

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

**13. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

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

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

**14. CONFORMANCE**

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

**15. CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the Grantee terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the Grantee in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The Grantee and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the Commerce program administering this contract, including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the Grantee may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Grantee. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

**16. COPYRIGHT PROVISIONS**

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

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

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

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



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**17. DISALLOWED COSTS**

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

**18. DISPUTES**

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

The request for a dispute hearing must:

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

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

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

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

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

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

**19. DUPLICATE PAYMENT**

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

**20. GOVERNING LAW AND VENUE**

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

**21. INDEMNIFICATION**

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of, or resulting from, the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subcontractor's performance or failure to perform the contract. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

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

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**22. INDEPENDENT CAPACITY OF THE GRANTEE**

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

**23. INDUSTRIAL INSURANCE COVERAGE**

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

**24. LAWS**

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

**25. LICENSING, ACCREDITATION AND REGISTRATION**

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

**26. LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant.

**27. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

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

The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

**28. PAY EQUITY**

The Grantee agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- B. Grantee may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
  - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

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(ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Grant may be terminated by the Department, if the Department or the Department of Enterprise services determines that the Grantee is not in compliance with this provision.

**29. POLITICAL ACTIVITIES**

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

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

**30. PREVAILING WAGE LAW**

The Grantee certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Grantee shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

**31. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS**

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR 200 for all purchases funded by this contract.

All recipients of funds under this Contract, including Contractor and subrecipients or subcontractors of any tier, must follow the procurement standards in 2 CFR §§ 200.318 through 200.327, including ensuring that the procurement method used for the contracts are appropriate based on the dollar amount and conditions specified in 2 CFR § 200.320.

The Grantee's procurement system should include but not necessarily be limited to, the following:

- A. General procurement standards 2 CFR [§ 200.318](#). A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Competition 2 CFR [§ 200.319](#). Procedures that ensure all procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](#).
- C. Methods of procurement to be followed 2 CFR [§ 200.320](#).
- D. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms 2 CFR [§ 200.321](#).
- E. Domestic preferences for procurements 2 CFR [§ 200.322](#).

**32. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Grant shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Grant provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

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**33. PUBLICITY**

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

**34. RECAPTURE**

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

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

**35. RECORDS MAINTENANCE**

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

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

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

**36. REGISTRATION WITH DEPARTMENT OF REVENUE**

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

**37. RIGHT OF INSPECTION**

At no additional cost all records relating to the Grantee's performance under this Grant shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Grant. The Grantee shall provide access to its facilities for this purpose.

**38. SAVINGS**

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

**39. SEVERABILITY**

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

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**40. SUBCONTRACTING**

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

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

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

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

**41. SURVIVAL**

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

**42. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the Grantee's income or gross receipts, any other taxes, insurance or expenses for the Grantee or its staff shall be the sole responsibility of the Grantee.

**43. TERMINATION FOR CAUSE**

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

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

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

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

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**44. TERMINATION FOR CONVENIENCE**

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

**45. TERMINATION PROCEDURES**

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

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

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

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

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Grantee, under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Grantee and in which COMMERCE has or may acquire an interest.

**46. TREATMENT OF ASSETS**

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of

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this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

All reference to the Grantee under this clause shall also include Grantee's employees, agents or Subcontractors.

**47. WAIVER**

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

**48. WORK HOURS AND SAFETY STANDARDS**

The Grant Work Hours and Safety Standards Act (40 U.S.C. 327-333)-Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Grant Work Hours Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

## SCOPE OF WORK

Funds awarded under this grant will be used for \$430,000 in capital expenditures for the Manette Housing project, a 9-unit affordable housing project in Bremerton. The location of the project is: 2115 East 19th Street, Bremerton, WA 98310. This project is expected to be complete by **December 31, 2024**.

Project activities will include and be limited to the construction of the following utility improvements:

- Water utility improvements: An 8-inch ductile iron water main extension from E Highlands St. to the project and along frontage is required due to now existing water service along frontage and for hydrant(s) installation. A 4-inch ductile iron water main extension from E 19th St. to provide individual water services is needed as well.
- Sewer utility improvements: An 8 inch PVC main extension from E. Highlands St. and E. 19th Street along the entire frontage of the property is required because there is not any existing sewer mains adjacent to the property.
- Stormwater utility improvements: Infiltrate runoff for the entire site as the City of Bremerton does not have any stormwater management infrastructure nearby.

The "Copyright Provisions", Section 16 of the General Terms and Conditions, are not intended to apply to any architectural and engineering design work funded by this grant.

Based on the criteria within the state capital budget, SSB 1080 Sec 1074, (Laws of 2021), and criteria developed by Commerce to ensure the terms of the appropriation are met, all grants must meet the following criteria:

- Applicant must be a city, county or public utility district, applying in coordination with the developer of a multi-unit affordable housing project, located within a jurisdiction that imposed a sales and use tax under RCW 82.14.530(1)(a)(ii), 82.14.530(1)(b)(i)(B), 82.14.540, or 84.52.105.
- The utility project must serve new multi-unit affordable<sup>1</sup> housing projects that serve and benefit low-income households.<sup>2</sup> If the project is a mixed-income project, the affordable portion of the development must be at least 25%.
- The affordable housing project should be part of a program that will monitor affordability for a minimum of 25 years, such as the Housing Trust Fund, low-income housing tax credits, housing authority, or a city monitoring process. A covenant and/or note and deed of trust may be required as part of securitization to ensure affordability.

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<sup>1</sup> "Affordable housing" has the same meaning as in RCW 43.185A.010, and means residential housing for rental occupancy which, as long as the same is occupied by low-income households, requires payment of monthly housing costs, including utilities other than telephone, of no more than thirty percent of the family's income. In the context of homeownership, the definition from the [Housing Trust Fund Handbook](#) applies (Section 701.7): "affordability occurs when a household's monthly housing costs are generally no more than 38 percent of monthly household income and total debt is no more than 45 percent of monthly household income. Housing costs include mortgage principal, interest, property taxes, homeowner insurance, homeowner association fees, and land lease fees, as applicable. Total debt includes other debt and utilities."

<sup>2</sup> "Low-income household" has the same definition as in RCW 43.185.010(6), and means a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the project is located.



CERTIFICATION PERFORMANCE MEASURE – SCOPE OF WORK

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

\_\_\_\_\_  
Greg Wheeler, Mayor

\_\_\_\_\_  
DATE

**How this project meets criteria for APRA SLFRF Projects**

This project aligns to the Expenditure Category 3 of ARPA SLRF, services to Disproportionately Impacted Communities, Housing Support: Affordable Housing EC 2.15,<sup>3</sup> Under ARPA’s SLFRF guidance, funding for this grant falls under the category of responding to “*Public Health and Economic Impacts*” of the COVID-19 public health emergency. Within that category of eligible actions, this program is intended to “*Building Stronger Communities through Investments in Housing and Neighborhoods*” by serving those communities that were hardest hit by the pandemic through investments in affordable housing development. Eligible services include: *Affordable housing development to increase supply of affordable and high quality living units*. Supporting the development of affordable housing is important to address a limited supply of housing, some of which is inadequate, or of poor quality.<sup>4</sup> The Interim Final Rule supports this finding by stating that “both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began” including “low income communities, people of color, and Tribal communities.”<sup>5</sup>

<sup>3</sup> <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>

<sup>4</sup> See specific language at printed pages 26795 and 26796 of the [Interim Final Rule](#) to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under ARPA).

<sup>5</sup> Ibid, page 26787.

**CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE ENTIRE PROJECT**

<b>Type of Funding</b>	<b>Source Description and purpose</b>	<b>Amount</b>
CHIP Grant	Washington State Department of Commerce	\$430,000
<b>Other Grants</b>		
Grant #1	Kitsap HOME (Kitsap County portion \$219,254.09 & City of Bremerton portion \$582,971.96)	\$802,226.05
Grant #2	HTF Capital Funds (Apple Health & Home)	\$3,247,697.00
Grant #3	Direct Appropriation from HTF for acquisition	\$499,550.00
Grant #4	First Federal Community Foundation	\$50,000.00
<b>Total Other Grants</b>		<b>\$4,599,473.05</b>
<b>Other Loans</b>		
Loan #1		\$
Loan #2		\$
<b>Total Loans</b>		<b>\$0.00</b>
<b>Other Local Revenue</b>		
Source #1		\$
<b>Total Local Revenue</b>		<b>\$0.00</b>
<b>Other Funds</b>		
Source #1		\$
Source #2		\$
<b>Total Other Funds</b>		<b>\$0.00</b>
<b>Total Project Funding</b>		<b>\$5,029,473.05</b>

CERTIFICATION PERFORMANCE MEASURE - AVAILABILITY OF FUNDS

The GRANTEE by its signature, certifies that project funding from sources other than those provided by this Grant Agreement has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this Grant Agreement, as of the date and year written below. The GRANTEE shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for COMMERCE's review upon reasonable request.

\_\_\_\_\_  
Greg Wheeler, Mayor

\_\_\_\_\_  
DATE

**CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES**

The GRANTEE, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the Project funded by this Grant Agreement, including but not limited to the filing of the “Statement of Intent to Pay Prevailing Wages” and “Affidavit of Wages Paid” as required by RCW 39.12.040. See section 8 of the Special Terms and Conditions and section 30 of the General Terms and Conditions.

Before invoices are paid, the “awarding agency” must provide documentation of the “intent to pay prevailing wages”. Before the final funds are paid from the state, an “affidavit of wages paid” from L&I must also be provided. The GRANTEE or assignee, shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE’s review upon request.

CERTIFICATION PERFORMANCE MEASURE – PREVAILING WAGES

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE and their subcontractors as of the date and year written below.

\_\_\_\_\_  
Greg Wheeler, Mayor

\_\_\_\_\_  
DATE



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

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

April 26, 2022

City of Bremerton  
345 6th St Ste 100  
Bremerton, WA 98337  
Delivered via Email to Sarah Achaoui: sarah.achaoui@ci.bremerton.wa.us

RE: Connecting Housing to Infrastructure (CHIP) Grant

Dear CHIP recipient:

I am pleased to inform you that the City of Bremerton has been awarded \$430,000 in grant funds from the Connecting Housing to Infrastructure (CHIP) grant program for the KCR Manette Housing project. The 2021 Legislature created this grant program to facilitate the development of affordable housing construction.

Funding for this program is provided from two accounts:

- For waived system development charges, funds are from the State Building Construction Account, and your grant will be governed by state building construction account rules. Projects funded with State Building Construction Account funds (state) may only be used to cover eligible costs incurred during the period of May 18, 2021, thru June 30, 2023, subject to re-appropriation by the Legislature. If re-appropriated, the project must be completed and invoiced by June 30, 2025.
- For infrastructure improvements, funds are from the state's allocation of Coronavirus State and Local Fiscal Recovery Funds (SLFRF) from the federal American Rescue Plan Act (ARPA) stimulus funding provided by the U.S. Department of the Treasury (US Treasury).<sup>7</sup> Your grant is a sub-award of the state's allocation for the SLFRF funds it received directly from the U.S. Treasury. All grants must adhere to any and all compliance and reporting requirements for the use and expenditure of SLFRF funds.<sup>8</sup> Projects funded with Coronavirus State and Local Fiscal Recovery Funds (federal) may only be used to cover eligible costs incurred during the period of March 3, 2021, thru December 31, 2026, subject to re-appropriation by the Legislature, and must be obligated by December 30, 2024.

This grant will be administered by the Washington Department of Commerce, Growth Management Services (GMS) unit. Before we disburse the funds, a contract with an agreed upon scope of work and budget will need to be executed between your organization and the Department of Commerce.

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<sup>7</sup> The federal funds are available under [Section 602 Coronavirus State Fiscal Recovery Funds](#) of Title VI of the Social Security Act, as added by ARPA of 2021, Title IX, Subtitle M, Section 9901. The unique 5-digit federal assistance number assigned to the SLFRF funds on [SAM.gov](#) is Assistance Listing Number (ALN) 21.027, formerly known as a CFDA number.

<sup>8</sup> [Compliance and Reporting Guidance](#) for State and Local Fiscal Recovery Funds dated November 5, 2021

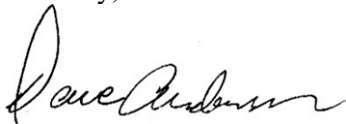
All pre-contracting requirements must be met prior to executing a contract and before drawing down any grant funds. If not already provided, these may include:

- Proof of site control.
- Commitment of other funds, and a project schedule showing affordable housing development be able to begin construction within 24 months of the grant award.
- Documentation of a program that will monitor affordability of units for a minimum of 25 years or securitization (covenant and/or note and deed of trust for affordable housing units) if no other partner.
- For awards for system development charges, documentation of waived charges/fees or a letter of commitment that the fees will be waived and the timeframe for such waiver.
- For requests for utility improvement funding, documentation of state commercial prevailing wages on the utility portion of the affordable housing project. Also, for the purposes of utility contracts, you may subcontract, provided that a competitive process is used, and all contract requirements flow down to the subcontractor.
- Documentation of consultation with Department of Archeology and Historic Preservation (DAHP) and affected tribes is completed or in process, consistent with GEO 21-02. With this letter, Commerce delegates consultation authority to the grantee. Please complete the EZ-1 form and submit to DAHP, and ensure Commerce is included in subsequent communications.
- Risk assessment survey, if requested.
- Proof of insurance coverage, if requested by Commerce.
- Any documents needed to respond to new federal guidance.

Once all pre-contracting requirements have been met, a contract will be prepared and sent to you for signature. The authorized representative will need to sign the contract and then return a scanned pdf copy to the Commerce project manager. Then the project manager will route the contract for Commerce's signature. It generally takes two to four weeks to fully execute a contract. Once executed by Commerce, a fully executed copy will be scanned and a pdf copy emailed to the jurisdiction and you will have access to the funds. This is a reimbursement-style grant, meaning no advance payments under any circumstances, reimbursable costs are those that you or a subcontractor have already incurred.

Eric Guida from our GMS housing programs will be in touch with you to develop the contract(s) and answer any questions you may have. His email is [eric.guida@commerce.wa.gov](mailto:eric.guida@commerce.wa.gov), and his phone number is 360.725.3044.

Sincerely,



Dave Andersen, AICP  
Managing Director  
Growth Management Services

cc: Eric Guida, Senior Planner, Growth Management Services  
Anne Fritzel, AICP, Housing Programs Manager, Growth Management Services

AGENDA BILL  
CITY OF BREMERTON  
CITY COUNCIL

**B3**

**SUBJECT:**

Contract Modification Agreement No. 4  
with Kellermeyer Bergensons Services, LLC  
for Janitorial Services

Study Session Date: February 28, 2024  
COUNCIL MEETING Date: March 6, 2024  
Department: PW & U  
Presenter: Matt Donleycott  
Phone: (360) 473-2316

**SUMMARY:**

This Contract Modification with Kellermeyer Bergenson Services adds an additional year onto contract #5857, has an increase in compensation due to the rise of Washington State's minimum wage increase as well as inflation, and adds an additional site for janitorial service.

**ATTACHMENTS:** 1) Contract Modification Agreement with Kellermeyer Bergensons Services LLC  
2) Attachment A, letter outlining new monthly costs and addition of one new site

**FISCAL IMPACTS (Include Budgeted Amount):** The additional year, service location addition, and increase in service costs will result in a total annual cost of \$121,057.68, which is included in the 2024 budget. The annual increase per the modification agreement No. 04 is \$15,397.56.

**STUDY SESSION AGENDA:**

Limited Presentation    Full Presentation

**STUDY SESSION ACTION:**

Consent Agenda    General Business    Public Hearing

**RECOMMENDED MOTION:**

Move to approve Contract Modification Agreement No. 04 with Kellermeyer Bergensons Services, LLC; and authorize the Mayor to finalize and execute the agreement with substantially the same terms and conditions as presented.

**COUNCIL ACTION:**    Approve    Deny    Table    Continue    No Action

**CONTRACT MODIFICATION AGREEMENT NO. 04  
BETWEEN THE CITY OF BREMERTON AND KELLERMEYER  
BERGENSONS SERVICES, LLC (FKA VARSITY FACILITY SERVICES)**

**PROJECT: Janitorial Services**

**CONTRACTOR: Kellermeyer Bergensons Services, LLC**

**CONTRACT#: 5857**

**DATE:**

**THIS CONTRACT MODIFICATION AGREEMENT SPECIFICALLY AMENDS THE  
AGREEMENT (the "Contract") entered into between the City of Bremerton and  
Kellermeyer Bergensons Services, LLC on August 6, 2018.**

All provisions in the Contract shall remain in full force and effect except as expressly modified by this document.

For valuable consideration and by mutual consent of the parties, the modifications to the Contract are as follows:

**I.**

Section **I. Vendor Services**, is modified as follows:

Attachment "A" Specifications: Additional site requiring janitorial services, to add City Property Location City of Bremerton Police Operations.

Section **II. Time of Completion**, is modified as follows:

The time of completion will be extended for an additional one (1) year term, time of completion will be 12/31/2024.

Section **III. Compensation**, is modified as follows:

The original contract amount was **\$91,668.00 Dollars**. The City shall pay the contractor for the updated costs, based on increased to Washington State's minimum wage rates, beginning January 1, 2024, that apply to janitorial services, per email/letter dated December 22, 2023, as attachment "A", and will become effective January 1, 2024. Addition of one new service location listed as City of Bremerton Police Operations also shown on attachment "A".

The City shall therefore pay Contractor an amount not to exceed **\$15,397.56 Dollars** for a total amended contract amount of **\$121,057.68 Dollars**, including this Contract Modification.

**II.**

**Contractor accepts all requirements of this Contract Modification by endorsing below. Contractor further agrees that this Contract Modification constitutes full and final settlement of all of the Contractor's claims for contract time and for all costs of any kind, including without limitation, costs of delays related to any work either covered or affected by this Contract Modification, claims related to on-site or home office overhead, or lost profits. This Contract Modification does not limit the City's right to bring a claim for past performance.**

**The undersigned contractor approves the foregoing Contract Modification as to the changes, if any, in the contract price specified for each item, including any and all supervision costs and other miscellaneous costs relating to the change in work, and as to the extension of time allowed, if any, for completion of the entire work due to said Contract Modification.**

**This document will become a supplement of the contract and all provisions will apply hereto. It is understood that this Contract Modification shall be effective when approved by the City of Bremerton.**

**The parties whose names appear below warrant that they are authorized to enter into a contract modification that is binding on the parties of this contract. In addition, Contractor warrants that it has or will inform the surety of this change, and shall take appropriate action to modify any bonds required under the contract to address this change.**

**IN WITNESS WHEREOF, the parties have executed this Contract Modification on the day and year first written above.**

Public Works Director: Approved to process \_\_\_\_\_ (Initials and Date)

**CONTRACTOR**

**THE CITY OF BREMERTON**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

**ATTEST:**

By: \_\_\_\_\_  
KYLIE J. FINNELL, Bremerton City Attorney

By: \_\_\_\_\_  
ANGELA HOOVER, City Clerk



**NOTICES TO BE SENT TO:**

Mr. Misker Arefeayne  
Kellermeyer Bergensons Services, LLC  
1502 Pike Street  
NW Suite #1  
Auburn, WA. 98001  
Phone: (253) 218-0794

**NOTICES TO BE SENT TO:**

Matt Donleycott  
Internal Services Manager  
City of Bremerton Public Works & Utilities  
100 Oyster Bay Avenue N.  
Bremerton, WA 98312  
Phone: (360) 473-2316

R:\Legal\Legal\Forms\FORMS ON COBWEB\Contract Modification Rev. 09 2021.docx



Attachment "A"

3605 Ocean Ranch Boulevard
Suite 200
Oceanside, CA 92056
P 800-537-1375
kbs-services.com

To: City of Bremerton

From: Misker Arefeayne, RVP, KBS Operations

As look forward to 2024, the entire KBS team would like to thank City of Bremerton for the opportunity to serve your business by delivering facility services that deliver a great brand experience for your team and guests. We appreciate your trust in us and remain committed to keeping your facilities healthy and clean in the coming year.

While inflationary pressures have slowed, costs have still risen over the last 12 months. Additionally, legislative minimum wage increases have been enacted in WA states, though in many cases they have already been outpaced by the wage rate required to remain competitive. KBS has worked to absorb these costs, but given the inflation of the last several years, we cannot address these increases alone.

As a result, KBS will be increasing your monthly services billing effective January 1st, 2024.

Table with 4 columns: Name, Current Monthly Price (pre-tax), New Monthly Price (pre-tax), and a final column for totals. Rows include various City of Bremerton services like Police Station, Courts, Public Works & Utilities, BKAT, SOG, and Fire Station, plus a new service for Police Operations.

We do not take this increase lightly. Our team continues to take steps to minimize the impact of inflation, from continued investment in technology that drives service efficiency to seeking alternative sources of supplies. As a reminder, if you require invoices to be submitted to a portal or require a PO on the invoice, you will need to update those to match the new billing amount to avoid any delays in invoicing or payment.

We understand the current market conditions have been challenging for everyone. You have our commitment as your partner to continue to focus on driving efficiencies wherever possible to provide the most cost-effective solution possible that meets the standards we both expect. If you have any questions regarding the increase, please contact CPIclientadjustments@kbs-services.com and a member of the KBS Operations team will reach out to discuss with you further.

KBS appreciates your business and wishes you a healthy and successful 2024.

**AGENDA BILL**  
CITY OF BREMERTON  
CITY COUNCIL

**B4**

**SUBJECT:**

Contract with Redside Construction, LLC  
for the Pine Road Basin Stormwater  
Improvements Marine Impact Basin Project

Study Session Date:	<u>February 28, 2024</u>
COUNCIL MEETING Date:	<u>March 6, 2024</u>
Department:	<u>PW&amp;U</u>
Presenter:	<u>David Dinkuhn</u>
Phone:	<u>(360) 473-5331</u>

**SUMMARY:**

This project replaces a failing stormwater outfall located at the intersection of Sheridan Road and Lebo Boulevard. Work will include construction of a concrete impact basin and installation of beach gravels, cobble, and boulders for energy dissipation. This project is the second phase of the Pine Road Basin Stormwater Improvements Project. The first phase of the project was construction of the storm system in Eagle and Robin Avenues which was completed in 2023. Six bids were received and were opened on January 30, 2024. Redside Construction LLC was the lowest responsive bidder with a total bid in the amount of \$883,910 (including sales tax).

**ATTACHMENTS:** 1) Contract 2) Vicinity Map; 3) Bid Tabulation

**FISCAL IMPACTS (Include Budgeted Amount):** The project is included in the 2024 Stormwater budget.

**STUDY SESSION AGENDA:**

Limited Presentation       Full Presentation

**STUDY SESSION ACTION:**

Consent Agenda       General Business       Public Hearing

**RECOMMENDED MOTION:**

Move to approve the contract with Redside Construction LLC in the amount of \$883,910 (including sales tax) for the Pine Road Basin Marine Impact Basin project and authorize the Mayor to finalize and execute the agreement with substantially the same terms and conditions as presented.

**COUNCIL ACTION:**

Approve       Deny       Table       Continue       No Action

# CONTRACT

(Page 1 of 4)

THIS AGREEMENT is dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ by and between the **City of Bremerton** (hereinafter called CITY) and **Redside Construction LLC** (hereinafter called CONTRACTOR).

CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

## ARTICLE 1. WORK.

CONTRACTOR shall complete the WORK as specified or indicated in the CITY's Contract Documents entitled **Pine Road Basin Stormwater Improvements Marine Impact Basin Project**.

## ARTICLE 2. CONTRACT TIMES.

The WORK shall obtain Physical Completion within **80** working days after the commencement date stated in the Notice to Proceed. Time is of the essence as to each and every deadline set forth in this agreement. This provision has been specifically negotiated.

## ARTICLE 3. LIQUIDATED DAMAGES.

CITY and the CONTRACTOR recognize that time is of the essence for this Agreement and that the CITY will suffer financial loss if the WORK is not completed within the time specified in Article 2 herein, plus any extensions thereof allowed in accordance with Section 1-08.8 of the Standard Specifications which may be modified by the Special Provisions. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the CITY if the WORK is not completed on time. Accordingly, instead of requiring any such proof, the CONTRACTOR shall pay the CITY liquidated damages in accordance with Section 1-08.9 of the Special Provisions after the date of Physical Completion for each phase.

## ARTICLE 4. CONTRACT PRICE.

CITY shall pay CONTRACTOR for completion of the WORK in accordance with the Contract Documents in the amount set forth in the Bid Proposal, which shall include sales tax as provided in Section 1-07.2 of the Special Provisions.

## ARTICLE 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Section 1-09.9 of the Standard Specifications which may be modified by the Special Provisions. Applications for Payment will be processed by ENGINEER as provided in the Special Provisions

\_\_\_\_\_  
Contractor Initials

## CONTRACT

(Page 2 of 4)

### ARTICLE 6. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between CITY and CONTRACTOR concerning the WORK consist of this Contract and the following attachments to this Contract:

- Notice Inviting Bids,
- Bidders Checklist,
- Bid Proposal including the Proposal Forms, Information Required of Bidder, Bid Bond, and all required certificates and affidavits,
- Performance Bond,
- Payment Bond,
- Standard Specifications,
- Amendments to the Standard Specifications,
- Special Provisions,
- Appendices
- Contract Plans,
- Addenda numbers 01 to 02, inclusive.
- Change Orders which may be delivered or issued after Effective Date of the Agreement and are not attached hereto.

There are no Contract Documents other than those listed in this Article 6. The Contract Documents may only be amended by Change Order as provided in Section 1-04.4 of the Standard Specifications which may be modified by the Special Provisions.

### ARTICLE 7. INDEMNIFICATION.

The CONTRACTOR and CITY acknowledge and agree that they have negotiated the following in accordance with the requirements of RCW 4.24.115 and the CONTRACTOR specifically waives his immunity under industrial insurance under Title 51 RCW. To the fullest extent permitted by Laws and Regulations, the CONTRACTOR shall indemnify, defend, and hold harmless the CITY, ENGINEER, their consultants, subconsultants, and the officers, directors, employees, and agents of each and any of them, against and from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, all claims and liability arising under, by reason of, related, or incidental to the Contract Documents or any performance of the WORK, but not from the sole negligence or willful misconduct of the CITY and/or the ENGINEER as further defined in the Contract Documents. The provisions of this section shall survive the termination of the contract.

\_\_\_\_\_  
Contractor Initials

**CONTRACT**

(Page 3 of 4)

**ARTICLE 8. ASSIGNMENT**

No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. The CITY, in its sole discretion, may refuse to allow the CONTRACTOR to assign any or all of its duties, rights and/or responsibilities under the Agreement, except with regards to an assignment of funds for security purposes. In the case of an assignment for security purposes the CITY may condition its approval to the extent it deems necessary to assure that there will be adequate funds to complete the WORK and to pay a subcontractors and suppliers.

**ARTICLE 9. EQUAL EMPLOYMENT OPPORTUNITY STATEMENT**

In the hiring of employees for the performance of work under this Contract, the Contractor, its subcontractors, or any person acting on behalf of the Contractor shall not discriminate in any employment practice on the basis of age (40+), sex, race, creed, color, national origin, sexual orientation/gender identity, marital status, military status, or the presence of any physical, mental, or sensory disability.

**ARTICLE 10. ADA STATEMENT**

The City of Bremerton does not discriminate on the basis of disability in programs and activities, which it operates pursuant to the requirements of the Americans with Disabilities Act of 1990, and ADA Amendments Act. This policy extends to both employment and admission to participation in the programs, services, and activities of the City of Bremerton. Reasonable accommodation for employees or applicants for employment will be provided.

CITY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, CITY and CONTRACTOR have caused this Agreement to be executed the day and year first above written.

CITY : City of Bremerton

CONTRACTOR \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices

345 6TH STREET, STE 100, BREMERTON, WA 98337

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Address for giving notices

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License No. \_\_\_\_\_

**CONTRACT**

(Page 4 of 4)

Approved as to Form:

\_\_\_\_\_  
(Signature)

Agent for service of process:

\_\_\_\_\_  
(Title)

\_\_\_\_\_





VICINITY MAP

PINE ROAD BASIN MARINE IMPACT BASIN PROJECT

PROJECT NO. 870

**CITY OF BREMERTON  
BID TABULATION**

<b>BID TITLE:</b>	Pine Road Basin Stormwater Improvements Marine Impact Basin Project		<b>OPENED BY:</b>	Stephanie Olson
<b>DATE OPENED:</b>	1/30/2024	<b>TIME OPENED:</b>	11:00	<b>RECORDED BY:</b> Ryan Nash

NAME OF BIDDER	BOND	BASE BID	SALES TAX	TOTAL
Redside Construction LLC	Y		0.00	883,910.00
JJH Earthworks	Y		0.00	1,123,573.50
Northwest Cascade, Inc	Y		0.00	1,129,863.00
Midway Underground	Y		0.00	1,188,598.00
Active Construction, Inc	Y		0.00	1,130,130.00
			0.00	0.00
			0.00	0.00
CURRENT SALES TAX RATE	9.20%			

SUMMARY	
ENGINEER ESTIMATE (INCLUDING SALES TAX)	\$ 873,415.00
APPARENT LOW BIDDER - Redside Construction LLC	\$ 883,910.00
SECOND LOW BIDDER - JJH Earthworks	\$ 1,123,573.50
THIRD LOW BIDDER - Northwest Cascade, Inc	\$ 1,129,863.00

**AGENDA BILL**  
CITY OF BREMERTON  
CITY COUNCIL

**B5**

**SUBJECT:**

Stormwater Financial Assistance Program  
Grant Agreement with WA State Department  
of Ecology for Kitsap Lake Stormwater  
Retrofit Construction Project

Study Session Date: February 28, 2024  
COUNCIL MEETING Date: March 6, 2024  
Department: Public Works & Utilities  
Presenter: Chance Berthiaume  
Phone: (360) 473-5929

**SUMMARY:** Washington State Department of Ecology has awarded the city a grant to construct stormwater treatment systems at four locations around Kitsap Lake. This project will treat stormwater discharged to the lake at four locations which will support efforts to improve the overall lake health and will help meet Total Maximum Daily Load (TMDL) requirements.

**ATTACHMENTS:** Ecology Agreement No. WQC-2024-BremPW-00179, Kitsap Lake Stormwater Treatment Construction

**FISCAL IMPACTS (Include Budgeted Amount):** \$2,415,646.45 grant funding and \$426,290.55 Stormwater Utility Capital Fund. Project is in the approved 2024 Budget.

**STUDY SESSION AGENDA:**  Limited Presentation  Full Presentation

**STUDY SESSION ACTION:**  Consent Agenda  General Business  Public Hearing

**RECOMMENDED MOTION:**

Move to approve the Kitsap Lake Stormwater Treatment Construction Grant Agreement with the State of Washington Department of Ecology; and authorize the Mayor to finalize and execute the agreement with substantially the same terms and conditions as presented.

**COUNCIL ACTION:**  Approve  Deny  Table  Continue  No Action



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

## **Agreement No. WQC-2024-BremPW-00179**

### **WATER QUALITY COMBINED FINANCIAL ASSISTANCE AGREEMENT**

**BETWEEN**

**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

**AND**

**CITY OF BREMERTON - PUBLIC WORKS AND UTILITIES**

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 Bremerton - Public Works and Utilities, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

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#### **GENERAL INFORMATION**

Project Title:	Kitsap Lake Stormwater Treatment Retrofit Construction
Total Cost:	\$2,841,937.00
Total Eligible Cost:	\$2,841,937.00
Ecology Share:	\$2,415,646.45
Recipient Share:	\$426,290.55
The Effective Date of this Agreement is:	07/01/2023
The Expiration Date of this Agreement is no later than:	06/30/2026
Project Type:	Stormwater Facility

#### Project Short Description:

This project will improve water quality in Kitsap Lake through installation of six BioPods and two pretreatment devices at four locations around Kitsap Lake in the city of Bremerton. This project will provide treatment for total suspended solids, dissolved copper, dissolved zinc, and phosphorus.

#### Project Long Description:

Untreated stormwater from residential, commercial, and public roads currently discharges via existing pipes and outfalls into Kitsap Lake, a 303(d) listed water body for fecal coliform and phosphorus. Kitsap Lake is used by the public for fishing, boating, and general recreation. The lake’s elevated phosphorus and nitrogen feed recurring algae blooms, including cyanobacteria (blue-green toxic algae), which is a frequent issue in the spring and summer months. Stormwater runoff was identified as a significant source of nutrient discharge in the Kitsap Lake Phosphorus Reduction Plan completed in June 2011.

Agreement No: WQC-2024-BremPW-00179  
Project Title: Kitsap Lake Stormwater Treatment Retrofit Construction  
Recipient Name: City of Bremerton - Public Works and Utilities

The RECIPIENT will install six General Use Level Designation (GULD) approved BioPod systems in four sub-basins to treat 17.56 acres of pollution generating impervious surface, in a basin of 77.43 acres that includes primarily low- and mid-density residential use. The two largest BioPods will also have CDS pretreatment devices installed to help reduce sediment entering the systems. The systems will treat stormwater runoff prior to discharge at four locations around Kitsap Lake, as designed in ECOLOGY grant WQC-2020-BremPW-0047. Improved water quality of Kitsap Lake will provide benefits including habitat for salmonids, wildlife, and humans in and around the lake and receiving waters. Kitsap Lake discharges to Kitsap Creek, which flows into Chico Creek and is a productive salmon-bearing stream that outfalls to Dyes Inlet, part of Puget Sound.

Overall Goal:

This project will help protect and restore water quality in Washington state by reducing stormwater impacts from existing infrastructure and development.

Agreement No: WQC-2024-BremPW-00179  
Project Title: Kitsap Lake Stormwater Treatment Retrofit Construction  
Recipient Name: City of Bremerton - Public Works and Utilities

**RECIPIENT INFORMATION**

Organization Name: City of Bremerton - Public Works and Utilities

Federal Tax ID: 91-6001231  
UEI Number: HV84RG6NYNG4

Mailing Address: 100 Oyster Bay Ave N  
Bremerton, WA 98312

Physical Address: 345 6th Street  
Bremerton, WA 98337

Organization Email: chance.berthiaume@ci.bremerton.wa.us

**Contacts**

Agreement No: WQC-2024-BremPW-00179  
 Project Title: Kitsap Lake Stormwater Treatment Retrofit Construction  
 Recipient Name: City of Bremerton - Public Works and Utilities

<p><b>Project Manager</b></p>	<p>Chance Berthiaume                  Utility Manager</p> <p>100 Oyster Bay Ave N                  Bremerton, Washington 98312                  Email: chance.berthiaume@ci.bremerton.wa.us                  Phone: (360) 473-5929</p>
<p><b>Billing Contact</b></p>	<p>Kirsten Cooper</p> <p>345 6th Street, Suite 100                  Bremerton, Washington 98337                  Email: kirsten.cooper@ci.bremerton.wa.us                  Phone: (360) 473-5209</p>
<p><b>Authorized Signatory</b></p>	<p>Greg Wheeler                  Mayor</p> <p>345 6th Street, Suite 600                  Bremerton, Washington 98337                  Email: greg.wheeler@ci.bremerton.wa.us                  Phone: (360) 473-5266</p>

Agreement No: WQC-2024-BremPW-00179  
 Project Title: Kitsap Lake Stormwater Treatment Retrofit Construction  
 Recipient Name: City of Bremerton - Public Works and Utilities

**ECOLOGY INFORMATION**

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

Physical Address: Water Quality  
 300 Desmond Drive SE  
 Lacey, WA 98503

**Contacts**

<p><b>Project Manager</b></p>	<p>Julia Stinson Ebert                  Stormwater/Nonpoint Project Manager</p> <p>PO Box 330316                  Shoreline, Washington 98133-9716                  Email: JSEB461@ecy.wa.gov                  Phone: (425) 651-9046</p>
<p><b>Financial Manager</b></p>	<p>Joe Kinerk                  Stormwater Financial Manager</p> <p>PO Box 47600                  Olympia, Washington 98504-7600                  Email: joek461@ecy.wa.gov                  Phone: (360) 742-2875</p>
<p><b>Technical Advisor</b></p>	<p>Julian Sung</p> <p>PO Box 47600                  Olympia, Washington 98504-7600                  Email: JSUN461@ecy.wa.gov                  Phone: (360) 529-7611</p>



Agreement No: WQC-2024-BremPW-00179
Project Title: Kitsap Lake Stormwater Treatment Retrofit Construction
Recipient Name: City of Bremerton - Public Works and Utilities

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.

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.

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

City of Bremerton - Public Works and Utilities

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

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

Vincent McGowan, P.E.
Date
Water Quality
Program Manager

Greg Wheeler
Date
Mayor

Template Approved to Form by
Attorney General's Office

Agreement No: WQC-2024-BremPW-00179  
Project Title: Kitsap Lake Stormwater Treatment Retrofit Construction  
Recipient Name: City of Bremerton - Public Works and Utilities

Chance W Berthiaume

---

Utility Manager, Project Manager

Date

Agreement No: WQC-2024-BremPW-00179  
 Project Title: Kitsap Lake Stormwater Treatment Retrofit Construction  
 Recipient Name: City of Bremerton - Public Works and Utilities

**SCOPE OF WORK**

Task Number: 1 **Task Cost: \$3,000.00**

Task Title: Grant and Loan Administration

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: Maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; and the EAGL (Ecology Administration of Grants and Loans) recipient closeout report (including photos, if applicable). In the event that the RECIPIENT elects to use a contractor to complete project elements, the RECIPIENT shall retain responsibility for the oversight and management of this funding agreement.

B. The RECIPIENT shall keep documentation that demonstrates the project is in compliance with applicable procurement, contracting, and interlocal agreement requirements; permitting requirements, including application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items. This documentation shall be available upon request.

C. The RECIPIENT shall maintain effective communication with ECOLOGY and maintain up-to-date staff contact information in the EAGL system. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

Properly managed and fully documented project that meets ECOLOGY’s grant or loan administrative requirements.

Task Expected Outcome:

- \* Timely and complete submittal of requests for reimbursement, quarterly progress reports, Recipient Closeout Report, and two-page outcome summary report.
- \* Properly maintained project documentation.

Recipient Task Coordinator: Chance W Berthiaume

**Grant and Loan Administration**

**Deliverables**

Number	Description	Due Date
1.1	Progress Reports that include descriptions of work accomplished, project challenges or changes in the project schedule. Submitted at least quarterly.	
1.2	Recipient Closeout Report (EAGL Form)	

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Recipient Name: City of Bremerton - Public Works and Utilities

## SCOPE OF WORK

Task Number: 2 **Task Cost: \$5,000.00**

Task Title: Cultural and Environmental Review, and Permitting

### Task Description:

The RECIPIENT must ensure the following items are completed and provide the associated deliverables to ECOLOGY. The RECIPIENT must approve all materials prior to submitting them to ECOLOGY for acceptance.

A. The RECIPIENT will submit the documents listed below to initiate ECOLOGY's cultural resources review. Property acquisition and above and below ground activities proposed at any project site must be reviewed by ECOLOGY for potential affects to cultural resources.

The RECIPIENT must receive written notice from ECOLOGY prior to proceeding with work. Examples of work may include (but are not limited to) geotechnical work, acquisition, site prep work, and BMP installations. Work done prior to written notice to proceed shall not be eligible for reimbursement.

To initiate cultural resources review:

1. The RECIPIENT will submit the Cultural Resources Review Form to ECOLOGY, using the ECOLOGY template. Any supporting materials must conform to the Department of Archeology and Historic Preservation's (DAHP) Washington State Standards for Cultural Resource Reporting. The Cultural Resources Review Form template may be found on the ECOLOGY website.

2. The RECIPIENT will submit an Inadvertent Discovery Plan (IDP) to ECOLOGY, using the ECOLOGY template. The RECIPIENT will ensure that all contractors and subcontractors have a copy of the completed IDP prior to and while working on-site. The IDP template may be found on the ECOLOGY website.

B. The RECIPIENT will submit the State Environmental Policy Act (SEPA) checklist for ECOLOGY project manager review and notify the ECOLOGY project manager when the official comment period begins. The RECIPIENT will also upload the final SEPA determination.

C. The RECIPIENT is responsible for application of, receipt of, and compliance with all required local, state, tribal, and federal permits, licenses, easements, or property rights necessary for the project.

### Task Goal Statement:

The RECIPIENT will complete all cultural and environmental reviews and permitting tasks in a timely manner.

### Task Expected Outcome:

The project will meet the requirements set forth by the cultural resource protection requirements, State Environmental Policy Act, and all other applicable federal, state, and local laws, and regulations.

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**Cultural and Environmental Review, and Permitting**

**Deliverables**

Number	Description	Due Date
2.1	ECOLOGY Cultural Resources Review Form. Email the form and any supplemental cultural resources documentation directly to the ECOLOGY Project Manager. DO NOT upload the cultural resources form or documentation to EAGL.	
2.2	ECOLOGY Inadvertent Discovery Plan (IDP). Email the form directly to the ECOLOGY Project Manager for review. Upload to EAGL once review is complete.	
2.3	SEPA Checklist. Upload the checklist, or other documentation for projects considered exempt from SEPA review, to EAGL and notify ECOLOGY when official comment period begins.	
2.4	Final SEPA Determination. Upload to EAGL and notify ECOLOGY.	

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## SCOPE OF WORK

Task Number: 3 **Task Cost: \$82,000.00**

Task Title: Design Plans and Specifications

### Task Description:

The RECIPIENT must ensure the following items are completed and provide the associated deliverables to ECOLOGY. The RECIPIENT must approve all materials prior to submitting them to ECOLOGY for acceptance.

The RECIPIENT will develop a stormwater project design. The design submittals must conform to the Deliverables for Stormwater Projects with Ecology Funding Document. Projects must be designed in accordance with the Stormwater Management Manual for Eastern Washington, Stormwater Management Manual for Western Washington, or equivalent manual. Refer to the ECOLOGY website for specific guidance. Project must be reviewed and accepted in writing by ECOLOGY to be eligible for reimbursement.

The RECIPIENT will upload the design submittals listed below to EAGL for ECOLOGY review. Reduce design figures to 11x17 inches in size and ensure they are legible.

A. The RECIPIENT will submit a Design Report to ECOLOGY for review and acceptance. Allow 45 calendar days for ECOLOGY review.

The RECIPIENT agrees to respond to ECOLOGY comments. The RECIPIENT must receive an Ecology Design Report Acceptance Letter prior to proceeding to 90 Percent Design.

1. The RECIPIENT will calculate and submit a preliminary equivalent new/re-development area for the completed design using the methods outlined in the Stormwater Deliverables Document.

B. The RECIPIENT will submit a 90 Percent Design Package to ECOLOGY for review and acceptance. At a minimum, this package must include 90 percent plans, specifications, engineer's opinion of cost including a schedule of eligible costs, and project construction schedule. The current required bid inserts and specifications may be found on the Ecology website. Allow 45 calendar days for ECOLOGY review.

The RECIPIENT agrees to respond to ECOLOGY comments. The RECIPIENT must receive an Ecology 90 Percent Design Acceptance Letter prior to proceeding to Final Bid Package.

C. The RECIPIENT will submit a Final Bid Package to ECOLOGY for review and acceptance prior to advertising the project. The Final Bid Package includes: project plans, specifications, engineer's opinion of cost including a schedule of eligible costs, and project construction schedule. Allow 15 calendar days for ECOLOGY review.

The RECIPIENT agrees to respond to ECOLOGY comments. The RECIPIENT must receive an Ecology Final Bid Package Acceptance Letter prior to advertising the project.

### Task Goal Statement:

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The RECIPIENT will complete all design tasks and respond to ECOLOGY comments in a timely manner.

Task Expected Outcome:

The project will meet the requirements set forth by ECOLOGY water quality facility design standards and all other applicable federal, state, and local laws, and regulations.

## Design Plans and Specifications

### Deliverables

Number	Description	Due Date
3.1	Contract documents, if procuring services for design. The contract must include ECOLOGY's standard contract clauses and/or specification insert. Upload to EAGL and notify ECOLOGY.	
3.2	Design Report. Upload to EAGL and notify ECOLOGY.	
3.3	Responses to ECOLOGY Design Report comments. Upload to EAGL and notify ECOLOGY.	
3.4	ECOLOGY Design Report Acceptance Letter. Upload to EAGL and notify ECOLOGY.	
3.5	90 Percent Design Package. Upload to EAGL and notify ECOLOGY.	
3.6	Responses to ECOLOGY 90 Percent Design Package comments. Upload to EAGL and notify ECOLOGY.	
3.7	ECOLOGY 90 Percent Design Acceptance Letter. Upload to EAGL and notify ECOLOGY.	
3.8	Final Bid Package. Upload to EAGL and notify ECOLOGY.	
3.9	Responses to ECOLOGY Final Bid Package comments. Upload to EAGL and notify ECOLOGY.	
3.10	Ecology Final Bid Package Acceptance Letter. Upload to EAGL and notify ECOLOGY.	
3.11	Bid Documents (e.g. bid announcement, bid tabulations, and bid award). Upload to EAGL and notify ECOLOGY.	

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**SCOPE OF WORK**

Task Number: 4 **Task Cost:** \$88,000.00

Task Title: Construction Management

Task Description:

The RECIPIENT must ensure the following items are completed and provide the associated deliverables to ECOLOGY. The RECIPIENT must approve all materials prior to submitting them to ECOLOGY for acceptance.

- A. The RECIPIENT will provide construction oversight and management of the project.
  
- B. The RECIPIENT will submit a detailed Construction Quality Assurance Plan (CQAP) to ECOLOGY for review and acceptance before the start of construction. This plan must describe how the RECIPIENT will perform adequate and competent construction oversight. Guidance for CQAP development is located in the Design Deliverables Document available on the ECOLOGY website. Allow 15 calendar days for ECOLOGY review.
  
- C. The RECIPIENT will conduct a pre-construction conference meeting and invite ECOLOGY to attend.
  
- D. The RECIPIENT will submit a project schedule prior to the start of construction and whenever major changes occur.
  
- E. Prior to execution, the RECIPIENT will submit to ECOLOGY any eligible change orders that deviate from ECOLOGY-accepted plans and specifications. ECOLOGY must review and accept all change orders that affect grant eligible activities prior to implementation. Allow 10 calendar days for ECOLOGY review.

Task Goal Statement:

The RECIPIENT will oversee and manage construction, communicate with ECOLOGY in a timely fashion, and provide ECOLOGY with all requested project documentation.

Task Expected Outcome:

The project will be constructed on schedule and in accordance with accepted plans.



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**Construction Management**

**Deliverables**

Number	Description	Due Date
4.1	Construction Quality Assurance Plan. Upload to EAGL and notify ECOLOGY. Upload ECOLOGY acceptance documentation.	
4.2	Pre-Construction Conference Meeting Minutes. Upload to EAGL and notify ECOLOGY.	
4.3	Project Schedule. Submit prior to construction and when changes occur. Upload to EAGL and notify ECOLOGY.	
4.4	Change Order(s). Upload to EAGL and notify ECOLOGY. Upload ECOLOGY acceptance documentation.	

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**SCOPE OF WORK**

Task Number: 5 **Task Cost: \$2,655,937.00**

Task Title: Construction

Task Description:

The RECIPIENT must ensure the following items are completed and provide the associated deliverables to ECOLOGY. The RECIPIENT must approve all materials prior to submitting them to ECOLOGY for acceptance.

A. The RECIPIENT will complete construction of the project in accordance with ECOLOGY-accepted plans and specifications. The construction project will include installation of four BioPods to mitigate runoff from approximately 17.56 acres of pollution-generating impervious surfaces.

B. Stormwater Construction Completion Form signed by a professional engineer indicating that the project was completed in accordance with the plans and specifications, and major change orders approved by ECOLOGY’s Project Engineer and shown on the Record Drawings. The Stormwater Construction Completion Form can be found on the ECOLOGY website.

Task Goal Statement:

Construction of the project in accordance with ECOLOGY-accepted plans and specifications.

Task Expected Outcome:

Constructed project will provide water quality benefits including reductions in total suspended solids, dissolved copper, dissolved zinc, and phosphorus.

**Construction**

**Deliverables**

Number	Description	Due Date
5.1	Signed and dated construction contract. Upload to EAGL and notify ECOLOGY.	
5.2	Stormwater Construction Completion Form. Upload to EAGL and notify ECOLOGY.	

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## SCOPE OF WORK

Task Number: 6 **Task Cost: \$8,000.00**

Task Title: Project Close Out

### Task Description:

The RECIPIENT must ensure the following items are completed and provide the associated deliverables to ECOLOGY. The RECIPIENT must approve all materials prior to submitting them to ECOLOGY for acceptance.

A. The RECIPIENT will operate and maintain the constructed facility for the design life of the facility. The RECIPIENT will develop and submit an Operations and Maintenance (O&M) plan for all facilities constructed with ECOLOGY funding to ECOLOGY for review. The O&M plan must address long-term activities to assure ongoing pollutant removal and flow-control capability of the project in accordance with the design manual. O&M plan development guidance is located in the Deliverables Document available on the ECOLOGY website. Allow 15 calendar days for ECOLOGY review.

B. The RECIPIENT will submit a GIS compatible project area as a shapefile, geodatabase file, or ECOLOGY-accepted equivalent. The project area should include polygon features for stormwater facilities and contributing areas.

C. The RECIPIENT will submit the Recipient Close Out Report (RCOR) in EAGL in accordance with Task 1.

D. The RECIPIENT will submit an Outcomes Summary using the ECOLOGY template.

E. The RECIPIENT will calculate and submit a final equivalent new/re-development area for the completed retrofit project(s) using the methods outlined in the Stormwater Deliverables Document. Include a table showing the final equivalent new/re-development area compared to the area provided in the ECOLOGY-accepted Design Report.

### Task Goal Statement:

The RECIPIENT will complete all close out submittals in a timely manner.

### Task Expected Outcome:

\* Timely and complete submittal of O&M plan, equivalent area calculation, GIS, Recipient Closeout Report, and Outcomes Summary.

\* Proper maintenance of the constructed facility to maintain water quality benefits.

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**Project Close Out****Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
6.1	Facility Operation and Maintenance Plan. Upload to EAGL and notify ECOLOGY. Upload ECOLOGY acceptance documentation.	
6.2	Project area shapefile, geodatabase file, or ECOLOGY-accepted equivalent. Upload to EAGL and notify ECOLOGY. Upload ECOLOGY acceptance documentation.	
6.3	Outcomes Summary. Upload to EAGL and notify ECOLOGY.	
6.4	Final, as constructed, equivalent new/redevelopment area determination. Upload to EAGL and notify ECOLOGY.	

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**BUDGET**

**Funding Distribution EG240508**

**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: SFAP Funding Type: Grant  
 Funding Effective Date: 07/01/2023 Funding Expiration Date: 06/30/2026

Funding Source:

Title: SFAP-SFY24  
 Fund: FD  
 Type: State  
 Funding Source %: 100%  
 Description: Environmental Legacy Stewardship Account (ELSA) - State

Approved Indirect Costs Rate: Approved State Indirect Rate: 30%  
 Recipient Match %: 15%  
 InKind Interlocal Allowed: No  
 InKind Other Allowed: No  
 Is this Funding Distribution used to match a federal grant? No

SFAP	Task Total
Grant and Loan Administration	\$ 3,000.00
Cultural and Environmental Review, and Permitting	\$ 5,000.00
Design Plans and Specifications	\$ 82,000.00
Construction Management	\$ 88,000.00
Construction	\$ 2,655,937.00
Project Close Out	\$ 8,000.00

**Total: \$ 2,841,937.00**

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**Funding Distribution Summary**

**Recipient / Ecology Share**

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
SFAP	15.00 %	\$ 426,290.55	\$ 2,415,646.45	\$ 2,841,937.00
<b>Total</b>		<b>\$ 426,290.55</b>	<b>\$ 2,415,646.45</b>	<b>\$ 2,841,937.00</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS**

WQC-2024—Water Quality Program Special Terms and Conditions (Update June 2023)

**SECTION 1: DEFINITIONS**

Unless otherwise provided, the following terms will have the respective meanings for all purposes of this agreement:

“Administration Charge” means a charge established in accordance with Chapter 90.50A RCW and Chapter 173-98 WAC, to be used to pay Ecology’s cost to administer the State Revolving Fund by placing a percentage of the interest earned in an Administrative Charge Account.

“Administrative Requirements” means the effective edition of ECOLOGY's Administrative Requirements for Recipients of Ecology Grants and Loans at the signing of this agreement.

“Annual Debt Service” for any calendar year means for any applicable bonds or loans including the loan, all interest plus all principal due on such bonds or loans in such year.

“Average Annual Debt Service” means, at the time of calculation, the sum of the Annual Debt Service for the remaining years of the loan to the last scheduled maturity of the loan divided by the number of those years.

“Accrued Interest” means the interest incurred as loan funds are disbursed.

“Acquisition” means the purchase or receipt of a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

“Build American Buy American (BABA)” means a portion of the Infrastructure Investment and Jobs Act and establishes a domestic content procurement preference for all Federal financial assistance obligated for infrastructure projects after May 14, 2022.

“Bipartisan Infrastructure Law (BIL)” means funding to improve drinking water, wastewater and stormwater infrastructure.

“Centennial Clean Water Program” means the state program funded from various state sources.

“Contract Documents” means the contract between the RECIPIENT and the construction contractor for construction of the project.

“Construction Materials” means an article, material, or supply (other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; aggregate binding agents or additives; or non-permanent products) that is or consists primarily of, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), (including optic glass), lumber, and drywall.

“Cost Effective Analysis” means a comparison of the relative cost-efficiencies of two or more potential ways of solving a water

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quality problem as described in Chapter 173-98-730 WAC.

“Davis Bacon Prevailing Wage Act” means the federal law mandating on-site workers on public works projects be paid certain wages, benefits, and overtime (also known as “prevailing wage” on all government-funded construction, alteration, and repair projects.

“Defeasement” or “Defeasance” means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.

“Effective Date” means the earliest date on which eligible costs may be incurred.

“Effective Interest Rate” means the total interest rate established by Ecology that includes the Administrative Charge.

“Estimated Loan Amount” means the initial amount of funds loaned to the RECIPIENT.

“Estimated Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Estimated Loan Amount and the estimated schedule for completion of the project.

“Equivalency” means the amount of State Revolving Fund (SRF) funding each funding cycle equivalent to the EPA grant to Ecology.

“Equivalency Project” means State Revolving Fund (SRF) funded project(s) designated by ECOLOGY to receive federal funding and meet additional federal requirements.

“Expiration Date” means the latest date on which eligible costs may be incurred.

“Final Accrued Interest” means the interest accrued beginning with the first disbursement of funds to the RECIPIENT through such time as the loan is officially closed out and a final loan repayment schedule is issued.

“Final Loan Amount” means all principal of and accrued interest on the loan from the Project Start Date through the Project Completion Date.

“Final Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Final Loan Amount and the initiation of operation or completion date, whichever comes first.

“Forgivable Principal” means the portion of a loan that is not required to be paid back by the borrower.

“General Obligation Debt” means an obligation of the RECIPIENT secured by annual ad valorem taxes levied by the RECIPIENT and by the full faith, credit, and resources of the RECIPIENT.

“General Obligation Payable from Special Assessments Debt” means an obligation of the RECIPIENT secured by a valid general obligation of the Recipient payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all the taxable property within the boundaries of the RECIPIENT.

“Gross Revenue” means all of the earnings and revenues received by the RECIPIENT from the maintenance and operation of the Utility and all earnings from the investment of money on deposit in the Loan Fund, except (i) Utility Local Improvement Districts (ULID) Assessments, (ii) government grants, (iii) RECIPIENT taxes, (iv) principal proceeds of bonds and other obligations, or (v) earnings or proceeds (A) from any investments in a trust, Defeasance, or escrow fund created to Defeasement or refund Utility obligations or (B) in an obligation redemption fund or account other than the Loan Fund until commingled with other earnings and revenues of the Utility or (C) held in a special account for the purpose of paying a rebate to the United States Government under the Internal Revenue Code.

“Guidelines” means the ECOLOGY’s Funding Guidelines that that correlate to the State Fiscal Year in which the project is funded.

“Initiation of Operation Date” means the actual date the facility financed with proceeds of the loan begins to operate for its intended purpose. (For loans only)

“Iron and Steel Products” means products made primarily of iron or steel including but may not be limited to: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

“Loan” means the Washington State Water Pollution Control Revolving Fund Loan or Centennial Clean Water Fund (Centennial) Loan made pursuant to this loan agreement.

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“Loan Amount” means either an Estimated Loan Amount or a Final Loan Amount, as applicable.

“Loan Fund” means the special fund created by the RECIPIENT for the repayment of the principal of and interest on the loan.

“Loan Security” means the mechanism by which the RECIPIENT pledges to repay the loan.

“Loan Term” means the repayment period of the loan.

“Maintenance and Operation Expense” means all reasonable expenses incurred by the RECIPIENT in causing the Utility to be operated and maintained in good repair, working order, and condition including payments to other parties, but will not include any depreciation or RECIPIENT levied taxes or payments to the RECIPIENT in lieu of taxes.

“Manufactured Products” means, items and construction materials composed in whole or in part of non-ferrous metals such as aluminum plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

“Produced in the United States” means for iron and steel products, that all manufacturing processes, from the initial melting state through the application of coatings, occurred in the United States.

“Net Revenue” means the Gross Revenue less the Maintenance and Operation Expense.

“Original Engineer’s Estimate” means the engineer’s estimate of construction costs included with bid documents.

“Prevailing Wage” means hourly wage, usual benefits, and overtime paid in the largest city in each county, to the majority of workers, laborers, and mechanics performing the same work. The rate is established separately for each county.

“Principal and Interest Account” means, for a loan that constitutes Revenue-Secured Debt, the account created in the loan fund to be first used to repay the principal of and interest on the loan.

“Project” means the project described in this agreement.

“Project Completion Date” means the date specified in the agreement on which the Scope of Work will be fully completed and is the last day eligible costs can be incurred. This term is only used in loan agreements.

“Project Schedule” means that schedule for the project specified in the agreement.

“Revenue-Secured Debt” means an obligation of the RECIPIENT secured by a pledge of the revenue of a utility and one not a general obligation of the RECIPIENT.

“Reserve Account” means, for a loan that constitutes a Revenue Secured Debt and if specifically identified as a term and condition of the funding agreement, the account of that name created in the loan fund to secure the payment of the principal of and interest on the loan.

“Risk-Based Determination” means an approach to sub-recipient monitoring and oversight based on risk factors associated to a RECIPIENT or project.

“Scope of Work” means the tasks and activities constituting the project.

“Section 319” means the section of the Clean Water Act that provides funding to address nonpoint sources of water pollution.

“Senior Lien Obligations” means all revenue bonds and other obligations of the RECIPIENT outstanding on the date of execution of this loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this loan agreement having a claim or lien on the Gross Revenue of the Utility prior and superior to the claim or lien of the loan, subject only to Maintenance and Operation Expense.

“State Water Pollution Control Revolving Fund (Revolving Fund)” means the water pollution control revolving fund established by Chapter 90.50A.020 RCW.

“Termination Date” means the effective date of ECOLOGY’s termination of the agreement.

“Termination Payment Date” means the date on which the RECIPIENT is required to repay to ECOLOGY any outstanding balance of the loan and all accrued interest.

“Total Eligible Project Cost” means the sum of all costs associated with a water quality project that have been determined to be eligible for ECOLOGY grant or loan funding, including any required recipient match.

“Total Project Cost” means the sum of all costs associated with a water quality project, including costs that are not eligible for ECOLOGY grant or loan funding.



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“Unique Entity Identity Identifier (UEI)” means a 12-character alphanumeric ID assigned by SAM.gov. to an entity doing business with or receiving funds from the federal government. This number replaces the DUNS number.

“ULID” means any utility local improvement district of the RECIPIENT created for the acquisition or construction of additions to and extensions and betterments of the Utility.

“ULID Assessments” means all assessments levied and collected in any ULID. Such assessments are pledged to be paid into the Loan Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID Assessments will include principal installments and any interest or penalties which may be due.

“Utility” means the sewer system, stormwater system, or the combined water and sewer system of the RECIPIENT, the Net Revenue of which is pledged to pay and secure the loan.

## SECTION 2: CONDITIONS APPLY TO ALL RECIPIENTS OF WATER QUALITY COMBINED FINANCIAL ASSISTANCE FUNDING.

The Water Quality Financial Assistance Funding Guidelines are included in this agreement by reference and are available on ECOLOGY’s Water Quality Program website.

A. Accounting Standards: The RECIPIENT shall maintain accurate records and accounts for the project (PROJECT Records) in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), including standards related to the reporting of infrastructure assets or in accordance with the standards in Chapter 43.09.200 RCW “Local Government Accounting – Uniform System of Accounting.”

B. Architectural and Engineering Services: The RECIPIENT certifies by signing this agreement that the requirements of Chapter 39.80 RCW, “Contracts for Architectural and Engineering Services,” have been, or shall be, met in procuring qualified architectural/engineering services. The RECIPIENT shall identify and separate eligible and ineligible costs in the final architectural/engineering services contract and submit a copy of the contract to ECOLOGY.

C. Acquisition: The following provisions shall be in force only if the project described in this agreement is an acquisition project:

- a. Evidence of Land Value and Title. The RECIPIENT shall submit documentation of the cost of the property rights and the type of ownership interest that has been acquired.
- b. Legal Description of Real Property Rights Acquired. The legal description of the real property rights purchased with funding assistance provided through this agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the agreement before final payment.
- c. Conveyance of Rights to the State of Washington. Upon purchase of real property rights (both fee simple and lesser interests), the RECIPIENT shall execute the document necessary to convey certain rights and responsibilities to ECOLOGY, on behalf of the State of Washington. The documents required will depend on the project type, the real property rights being acquired, and whether or not those rights are being acquired in perpetuity (see options below). The RECIPIENT shall use language provided by ECOLOGY, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to ECOLOGY.

### Documentation Options:

1. Deed of Right. The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. RECIPIENTS shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the RECIPIENT has acquired a perpetual easement for public purposes. The RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the deed of right.
2. Assignment of Rights. The Assignment of Rights document transfers certain rights such as access and enforcement to ECOLOGY. The RECIPIENT shall use this document when an easement or lease is being acquired for water quality and habitat conservation. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
3. Easements and Leases. The RECIPIENT may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language

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will depend on the situation; therefore, the RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the easement or lease.

d. Real Property Acquisition and Relocation Assistance.

1. Federal Acquisition Policies. See Section 4 of this agreement for requirements specific to Section 319 and SRF funded projects.
2. State Acquisition Policies. When state funds are part of this agreement, the RECIPIENT agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.
3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the RECIPIENT agrees to provide any housing and relocation assistance required.

e. Hazardous Substances.

1. Certification. The RECIPIENT shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(10), and certify:
  - i. No hazardous substances were found on the site, or
  - ii. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site is deemed “clean.”
2. Responsibility. Nothing in this provision alters the RECIPIENT's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.
3. Hold Harmless. The RECIPIENT will defend, protect and hold harmless ECOLOGY and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the RECIPIENT is acquiring.

f. Restriction On Conversion Of Real Property And/Or Facilities To Other Uses

The RECIPIENT shall not at any time convert any real property (including any interest therein) or facility acquired, developed, maintained, renovated, and/or restored pursuant to this agreement to uses other than those purposes for which funds were approved without prior approval of ECOLOGY. For acquisition projects that are term limited, such as one involving a lease or a term-limited restoration, renovation or development project or easement, this restriction on conversion shall apply only for the length of the term, unless otherwise provided in written documents or required by applicable state or federal law. In such case, the restriction applies to such projects for the length of the term specified by the lease, easement, deed, or landowner agreement.

D. Best Management Practices (BMP) Implementation: If the RECIPIENT installs BMPs that are not approved by ECOLOGY prior to installation, the RECIPIENT assumes the risk that part or all of the reimbursement for that activity may be delayed or ineligible. For more details regarding BMP Implementation, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY's Water Quality Program funding website.

E. Electronic Fund Transfers: Payment will be issued 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 or electronic fund transfers, you can contact Statewide Payee Help Desk at (360) 407-8180 or email [PayeeRegistration@ofm.wa.gov](mailto:PayeeRegistration@ofm.wa.gov).

F. Equipment Purchase: Equipment purchases over \$5,000 and not included in the scope of work or the Ecology approved construction plans and specifications, must be pre-approved by ECOLOGY's project manager before purchase. All equipment purchases over \$5,000 and not included in a contract for work being completed on the funded project, must also be reported on the Equipment Purchase Report in EAGL.

G. Funding Recognition: The RECIPIENT must inform the public about any ECOLOGY or EPA funding participation in this

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project through the use of project signs, acknowledgement in published materials, reports, the news media, websites, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Contact your Ecology Project Team to determine the appropriate recognition for your project.

H. Growth Management Planning: The RECIPIENT certifies by signing this agreement that it is in compliance with the requirements of Chapter 36.70A RCW, "Growth Management Planning by Selected Counties and Cities." If the status of compliance changes, either through RECIPIENT or legislative action, the RECIPIENT shall notify ECOLOGY in writing of this change within 30 days.

I. Interlocal: The RECIPIENT certifies by signing this agreement that all negotiated interlocal agreements necessary for the project are, or shall be, consistent with the terms of this agreement and Chapter 39.34 RCW, "Interlocal Cooperation Act." The RECIPIENT shall submit a copy of each interlocal agreement necessary for the project to ECOLOGY upon request.

J. Lobbying and Litigation: Costs incurred for the purposes of lobbying or litigation are not eligible for funding under this agreement.

K. Post Project Assessment Survey: The RECIPIENT agrees to participate in a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project approximately three years after project completion. A representative from ECOLOGY's Water Quality Program may contact the RECIPIENT to request this data. ECOLOGY may also conduct site interviews and inspections, and may otherwise evaluate the project, as part of this assessment.

L. Project Status Evaluation: ECOLOGY may evaluate the status at any time. ECOLOGY's Project Manager and Financial Manager will meet with the RECIPIENT to review spending trends, completion of outcome measures, and overall project administration and performance. If the RECIPIENT fails to make satisfactory progress toward achieving project outcomes, ECOLOGY may change the scope of work, reduce grant funds, or increase oversight measures.

M. Technical Assistance: Technical assistance for agriculture activities provided under the terms of this agreement shall be consistent with the current U.S. Natural Resource Conservation Service ("NRCS") Field Office Technical Guide for Washington State and specific requirements outlined in the Water Quality Funding Guidelines. Technical assistance, proposed practices, or project designs that do not meet these standards may be eligible if approved in writing by ECOLOGY.

### SECTION 3: CONDITIONS APPLY TO SECTION 319 AND CENTENNIAL CLEAN WATER FUNDED PROJECTS BEING USED TO MATCH SECTION 319 FUNDS.

The RECIPIENT must submit the following documents to ECOLOGY before this agreement is signed by ECOLOGY:

1. Federal Funding Accountability and Transparency Act (FFATA) Form is available on the Water Quality Program website and must be completed and submitted to Ecology. (This form is used for Section 319 (federal) funds only)
2. "Section 319 Initial Data Reporting" form must be completed in EAGL.

A. Data Reporting: The RECIPIENT must complete the "Section 319 Initial Data Reporting" form in EAGL before this agreement can be signed by Ecology. This form is used to gather general information about the project for EPA.

B. Funding Recognition and Outreach: In addition to Section 2.F. of these Special Terms and Conditions, the RECIPIENT shall provide signage that informs the public that the project is funded by EPA. The signage shall contain the EPA logo and follow usage requirements available at <http://www2.epa.gov/stylebook/using-epa-seal-and-logo>. To obtain the appropriate EPA logo or seal graphic file, the RECIPIENT may send a request to their Ecology Financial Manager.

To increase public awareness of projects serving communities where English is not the predominant language, RECIPIENTS are encouraged to provide their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable. (Applies to both the Section 319 funded projects and the Centennial match projects)

The RECIPIENT shall use the following paragraph in all reports, documents, and signage developed under this agreement: (Applies to Section 319 funded projects only)

"This project has been funded wholly or in part by the United States Environmental Protection Agency under an assistance agreement to the Washington State Department of Ecology. The contents of this document do not necessarily reflect the views

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and policies of the Environmental Protection Agency, nor does the mention of trade names or commercial products constitute endorsement or recommendation for use.”

C. Load Reduction Reporting: The RECIPIENT shall complete the “Section 319 Annual Load Reduction Reporting” form in EAGL by January 15 of each year and at project close-out. ECOLOGY may hold reimbursements until the RECIPIENT has completed the form. This form is used to gather information on best management practices (BMPs) installed and associated pollutant load reductions that were funded as a part of this project.

D. Time Extension: The RECIPIENT may request a one-time extension for up to 12 months. However, the time extension cannot exceed the time limitation established in EPA’s assistance agreement. In the event a time extension is requested and approved by ECOLOGY, the RECIPIENT must complete all eligible work performed under this agreement by the expiration date. (For Section 319 funded projects only)

#### SECTION 4: CONDITIONS APPLY TO ALL FEDERAL FUNDING AGREEMENTS, INCLUDING SECTION 319, State Revolving Fund (SRF) Equivalency Projects, and SEWER OVERFLOW AND STORMWATER REUSE MUNICIPAL GRANT (OSG)

A. Acquisitions: RECIPIENTS shall comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.

B. Audit Requirements: In accordance with 2 CFR 200.501(a), the RECIPIENT agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year. The RECIPIENT must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse’s Internet Data Entry System available at: <https://facweb.census.gov/>.

C. Archaeological Resources and Historic Properties (Section 106): This requires completion of the Ecology Cultural Resources Review Form, coordination with Ecology Cultural Resources staff, and receipt of the Ecology Final Determination prior to any property acquisition and above and below ground disturbing activities.

D. Architectural and Engineering Services Procurement: The RECIPIENT must procure architectural and engineering services in accordance with the federal requirements in Chapter 11 of Title 40, U.S.C. (see <https://uscode.house.gov/view.xhtml?path=/prelim@title40/subtitle1/chapter11&edition=prelim>).

E Build America, Buy America (BABA – Pub. L. No. 117-58, 70901-52) (Federally funded SRF Equivalency projects only): The RECIPIENT identified by ECOLOGY as receiving federal equivalency funding agrees to comply with all federal requirements applicable to the assistance received (including those imposed by the Infrastructure Investment and Jobs Act (“IIJA”/BIL), Public Law No. 117-58) which the RECIPIENT understands includes, but is not limited to, the following requirements: that all the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States (“Build America, Buy America Requirements”) unless (i) the RECIPIENT has requested and obtained a waiver from the cognizant Agency pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (ii) all of the contributing Agencies have otherwise advised the RECIPIENT in writing that the Build America, Buy America Requirements are not applicable to the project.

RECIPIENT shall comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the funding authority (such as EPA and/or a state), such as performance indicators of program deliverables, information on costs and project progress. The RECIPIENT identified by ECOLOGY as receiving federal equivalency funding, understands that (i) each contract and subcontract related to the project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and this Agreement may result in a default hereunder that results in a repayment of the assistance agreement in advance of termination and/or repayment of assistance, and/or other remedial actions.

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EPA has granted an adjustment period waiver of the requirements of Section 70914(a) of the BIL, pursuant to Section 70914(b)(1) (public interest waiver), for eligible projects financed by SRF projects that have initiated project design planning prior to May 14, 2022, the statutory effective date of the BABA requirements. This action permits the use of non-domestic manufactured products and construction materials in such projects funded by a Clean Water or Drinking Water SRF that may otherwise be prohibited under the BABA requirements of Section 70914. This action permits the use of non-domestic manufactured products and construction materials in such projects funded by a Clean Water or Drinking Water SRF that may otherwise be prohibited under the BABA requirements of Section 70914. Sections 70917(a) and (b) of BIL provide a savings provision for existing statutory requirements that meet or exceed BABA requirements. The statutory American Iron and Steel (AIS) requirements of Clean Water Act (CWA) Section 608 and Safe Drinking Water Act (SDWA) Section 1452(a)(4) has previously applied to SRF projects and will continue to do so as part of BABA requirements.

Where manufactured products used in the project are required to be produced in the United States, manufactured product shall mean manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. The manufactured products included cover the majority of potential water infrastructure products, including complex products made up of a variety of material types and components. For water infrastructure projects, commonly manufactured products would include, but not be limited to, pumps, motors, blowers, aerators, generators, instrumentation and control systems, gauges, meters, measurement equipment, treatment equipment, dewatering equipment, actuators, and many other mechanical and electrical items.

F. Disadvantaged Business Enterprise (DBE): General Compliance, 40 CFR, Part 33. The RECIPIENT agrees to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises (MBE/WBE) 40CFR, Part 33 in procurement under this agreement.

Six Good Faith Efforts, 40 CFR, Part 33, Subpart C. The RECIPIENT agrees to make the following good faith efforts whenever procuring construction, equipment, services, and supplies under this agreement. Records documenting compliance with the following six good faith efforts shall be retained:

- 1) Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government RECIPIENTS, this shall include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- 2) Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- 3) Consider, in the contracting process, whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State, and Local Government RECIPIENTS, this shall include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- 4) Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- 5) Use services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 6) If the prime contractor awards subcontracts, require the prime contractor to take the five good faith efforts steps in paragraphs 1 through 5 above.

The RECIPIENT agrees to submit ECOLOGY's Contractor Participation Report Form D with each payment request. Contract Administration Provisions, 40 CFR, Section 33.302. The RECIPIENT agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

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**Non-discrimination Provision.** The RECIPIENT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement. The RECIPIENT shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the RECIPIENT to carry out these requirements is a material breach of this agreement which may result in the termination of this contract or other legally available remedies.

This does not preclude the RECIPIENT from enacting broader nondiscrimination protections.

The RECIPIENT shall comply with all federal and state nondiscrimination laws, including but not limited to, Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the RECIPIENT's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this agreement may be rescinded, canceled, or terminated in whole or in part and the RECIPIENT may be declared ineligible for further funding from ECOLOGY. The RECIPIENT shall, however, be given a reasonable time in which to cure this noncompliance.

The RECIPIENT shall include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services pertaining to this agreement.

“The Contractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor will carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract or other legally available remedies.”

Bidder List, 40 CFR, Section 33.501(b) and (c). The RECIPIENT agrees to create and maintain a bidders list. The bidders list shall include the following information for all firms that bid or quote on prime contracts, or bid or quote subcontracts, including both MBE/WBEs and non-MBE/WBEs.

1. Entity's name with point of contact
2. Entity's mailing address, telephone number, and e-mail address
3. The procurement on which the entity bid or quoted, and when
4. Entity's status as an MBE/WBE or non-MBE/WBE

**G. Electronic and information Technology (EIT) Accessibility:** RECIPIENTS shall ensure that loan funds provided under this agreement for costs in the development or purchase of EIT systems or products provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology as per Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7.

Systems or products funded under this agreement must be designed to meet the diverse needs of users without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology.

**H. Federal Funding Accountability and Transparency Act (FFATA) Form,** available on the Water Quality Program website.

**I. Hotel-Motel Fire Safety Act:** The RECIPIENT shall ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (15 USC 2225a, PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance, or to find other information about the Act. Pursuant to 15 USC 2225a.

**J. Prevailing Wage (Davis-Bacon Act):** The RECIPIENT agrees, by signing this agreement, to comply with the Davis-Bacon Act prevailing wage requirements. This applies to the construction, alteration, and repair of treatment works carried out, in whole or in part, with assistance made available by the State Revolving Fund as authorized by Section 513, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1372). Laborers and mechanics employed by contractors and subcontractors shall be paid wages not less often than once a week and at rates not less than those prevailing on projects of a

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character similar in the locality as determined by the Secretary of Labor.

The RECIPIENT shall obtain the wage determination for the area in which the project is located prior to issuing requests for bids, proposals, quotes, or other methods for soliciting contracts (solicitation). These wage determinations shall be incorporated into solicitations and any subsequent contracts. The RECIPIENT shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and subcontracts more than \$2,000. The RECIPIENT shall maintain records sufficient to document compliance with the Davis-Bacon Act and make such records available for review upon request. Wage determinations and instructions for their use can be found at <https://sam.gov/>.

The RECIPIENT also agrees, by signing this agreement, to comply with State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable. Compliance may include the determination whether the project involves “public work” and inclusion of the applicable prevailing wage rates in the bid specifications and contracts. The RECIPIENT agrees to maintain records sufficient to evidence compliance with Chapter 39.12 RCW and make such records available for review upon request. Where conflicts arise between the State prevailing wage rates and Davis-Bacon Act prevailing wage requirements the more stringent requirement shall govern. Washington State prevailing wage rates can be found at <https://www.lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>

K. Trafficking in Persons: The RECIPIENT and RECIPIENT employees that are private entities shall not engage in forms of trafficking in persons. This includes, but is not limited to, the procurement of a commercial sex act or forced labor. The RECIPIENT shall notify ECOLOGY immediately of any information received from any source alleging a violation under this provision.

L. Unique Entity Identity Identifier (UEI): The RECIPIENT agrees to register with and make their registration public in the System for Award Management (SAM.gov). The RECIPIENT will be assigned a UEI and agree to include their UEI Number under their organization’s information in EAGL. The UEI number must be entered into EAGL before a funding agreement is signed.

#### SECTION 5: CONDITIONS APPLY TO STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

The RECIPIENT must submit the following documents/forms to ECOLOGY before this agreement is signed by ECOLOGY:

1. Financial Capability Assessment Documentation (upon request)
2. Opinion of RECIPIENT’s Legal Council – Form available on the Ecology website must be completed and uploaded to the General Uploads form in EAGL.
3. Authorizing Ordinance or Resolution – Must be uploaded to the General Uploads form in EAGL.
4. Federal Funding Accountability and Transparency Act (FFATA) Form (Required for all federally funded SRF Equivalency projects – Form available on the Ecology website must be completed and uploaded to the General Uploads form in EAGL.
5. CWSRF Federal Reporting Information form – Must be completed in EAGL.
6. Fiscal Sustainability Plan (Asset Management) Certification Form (Only required if the project includes construction of a wastewater or stormwater facility construction) – Must be completed in EAGL.
7. Cost and Effectiveness Analysis Certification Form (Required for all projects receiving SRF Loan funding) – Must be completed in EAGL.
8. State Environmental Review Process (SERP) Documentation (Required for treatment works projects only) – Must be uploaded to the Environmental and Cultural Review form in EAGL.

A. Alteration and Eligibility of Project: During the term of this agreement, the RECIPIENT (1) shall not materially alter the design or structural character of the project without the prior written approval of ECOLOGY and (2) shall take no action which would adversely affect the eligibility of the project as defined by applicable funding program rules and state statutes, or which would cause a violation of any covenant, condition, or provision herein.

B. American Iron and Steel (Buy American – P.L 113-76, Consolidated Appropriations Act 2014, Section 436): This loan provision applies to projects for the construction, alteration, maintenance, or repair of a “treatment works” as defined in the Federal Water Pollution Control Act (33 USC 1381 et seq.) The RECIPIENT shall ensure that all iron and steel products

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used in the project are produced in the United States. Iron and Steel products means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The RECIPIENT may request waiver from this requirement from the Administrator of the Environmental Protection Agency. The RECIPIENT must coordinate all waiver requests through ECOLOGY. This provision does not apply if the engineering plans and specifications for the project were approved by ECOLOGY prior to January 17, 2014. ECOLOGY reserves the right to request documentation of RECIPIENT'S compliance with this provision.

C. Authority of RECIPIENT: This agreement is authorized by the Constitution and laws of the state of Washington, including the RECIPIENT's authority, and by the RECIPIENT pursuant to the authorizing ordinance or resolution. The RECIPIENT shall submit a copy of the authorizing ordinance or resolution to the ECOLOGY Financial Manager before this agreement shall be signed by ECOLOGY.

D. Equivalency Projects: ECOLOGY designated equivalency project and alternative designated equivalency project RECIPIENTS agree to accept federal funds and the federal requirements that accompany the funds. This includes all the requirements in Section 4 and this Section.

E. Fiscal Sustainability Plan Certification: The RECIPIENT shall submit a completed Fiscal Sustainability Plan Certification before this agreement is signed by ECOLOGY. The Fiscal Sustainability Plan Certification is available from the ECOLOGY Financial Manager or on the Water Quality Program website.

F. Funding Recognition and Outreach: The RECIPIENT agrees to comply with the EPA SRF Signage Guidance to enhance public awareness of EPA assistance agreements nationwide. Signage guidance can be found at: <https://ecology.wa.gov/About-us/How-we-operate/Grants-loans/Find-a-grant-or-loan/Water-Quality-grants-and-loans/Facility-project-resources>.

G. Insurance: The RECIPIENT shall at all times carry fire and extended insurance coverage, public liability, and property damage, and such other forms of insurance with responsible insurers and policies payable to the RECIPIENT on such of the buildings, equipment, works, plants, facilities, and properties of the Utility as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, and against such claims for damages as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, or it shall self-insure or participate in an insurance pool or pools with reserves adequate, in the reasonable judgment of the RECIPIENT, to protect it against loss.

H. Litigation Authority: No litigation is now pending, or to the RECIPIENT's knowledge, threatened, seeking to restrain, or enjoin:

- (i) the execution of this agreement; or
- (ii) the fixing or collection of the revenues, rates, and charges or the formation of the ULID and the levy and collection of ULID Assessments therein pledged to pay the principal of and interest on the loan (for revenue secured lien obligations); or
- (iii) the levy and collection of the taxes pledged to pay the principal of and interest on the loan (for general obligation-secured loans and general obligation payable from special-assessment-secured loans); or
- (iv) in any manner questioning the proceedings and authority under which the agreement, the loan, or the project are authorized. Neither the corporate existence, or boundaries of the RECIPIENT nor the title of its present officers to their respective offices is being contested. No authority or proceeding for the execution of this agreement has been repealed, revoked, or rescinded.

I. Loan Interest Rate and Terms: This loan agreement shall remain in effect until the date of final repayment of the loan, unless terminated earlier according to the provisions herein.

When the Project Completion Date has occurred, ECOLOGY and the RECIPIENT shall execute an amendment to this loan agreement which details the final loan amount (Final Loan Amount), and ECOLOGY shall prepare a final loan repayment schedule. The Final Loan Amount shall be the combined total of actual disbursements made on the loan and all accrued interest to the computation date.

The Estimated Loan Amount and the Final Loan Amount (in either case, as applicable, a "Loan Amount") shall bear interest



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based on the interest rate identified in this agreement as the “Effective Interest Rate,” per annum, calculated on the basis of a 365-day year. Interest on the Estimated Loan Amount shall accrue from and be compounded monthly based on the date that each payment is mailed to the RECIPIENT. The Final Loan Amount shall be repaid in equal installments, semiannually, over the term of this loan “Loan Term” as outlined in this agreement.

#### J. Loan Repayment:

##### Sources of Loan Repayment

1. Nature of RECIPIENT's Obligation. The obligation of the RECIPIENT to repay the loan from the sources identified below and to perform and observe all other agreements and obligations on its part, contained herein, shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind. To secure the repayment of the loan from ECOLOGY, the RECIPIENT agrees to comply with all the covenants, agreements, and attachments contained herein.
2. For General Obligation. This loan is a General Obligation Debt of the RECIPIENT.
3. For General Obligation Payable from Special Assessments. This loan is a General Obligation Debt of the RECIPIENT payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all the taxable property within the boundaries of the RECIPIENT.
4. For Revenue-Secured: Lien Position. This loan is a Revenue-Secured Debt of the RECIPIENT’s Utility. This loan shall constitute a lien and charge upon the Net Revenue junior and subordinate to the lien and charge upon such Net Revenue of any Senior Lien Obligations.

In addition, if this loan is also secured by Utility Local Improvement Districts (ULID) Assessments, this loan shall constitute a lien upon ULID Assessments in the ULID prior and superior to any other charges whatsoever.

5. Other Sources of Repayment. The RECIPIENT may repay any portion of the loan from any funds legally available to it.
6. Defeasance of the Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT shall not be entitled to, and shall not affect, an economic Defeasance of the loan. The RECIPIENT shall not advance refund the loan.

If the RECIPIENT defeases or advance refunds the loan, it shall be required to use the proceeds thereof immediately upon their receipt, together with other available RECIPIENT funds, to repay both of the following:

- (i) The Loan Amount with interest
- (ii) Any other obligations of the RECIPIENT to ECOLOGY under this agreement, unless in its sole discretion ECOLOGY finds that repayment from those additional sources would not be in the public interest.

Failure to repay the Loan Amount plus interest within the time specified in ECOLOGY’s notice to make such repayment shall incur Late Charges and shall be treated as a Loan Default.

7. Refinancing or Early Repayment of the Project. So long as ECOLOGY shall hold this loan, the RECIPIENT shall give ECOLOGY thirty days written notice if the RECIPIENT intends to refinance or make early repayment of the loan.

##### Method and Conditions on Repayments

1. Semiannual Payments. Notwithstanding any other provision of this agreement, the first semiannual payment of principal and interest on this loan shall be due and payable no later than one year after the project completion date or initiation of operation date, whichever comes first.

Thereafter, equal payments shall be due every six months.

If the due date for any semiannual payment falls on a Saturday, Sunday, or designated holiday for Washington State agencies, the payment shall be due on the next business day for Washington State agencies.

Payments shall be mailed to:

Department of Ecology  
 Cashiering Unit  
 P.O. Box 47611  
 Olympia WA 98504-7611

In lieu of mailing payments, electronic fund transfers can be arranged by working with ECOLOGY’s Financial Manager.

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No change to the amount of the semiannual principal and interest payments shall be made without a mutually signed amendment to this agreement. The RECIPIENT shall continue to make semiannual payments based on this agreement until the amendment is effective, at which time the RECIPIENT's payments shall be made pursuant to the amended agreement.

2. Late Charges. If any amount of the Final Loan Amount or any other amount owed to ECOLOGY pursuant to this agreement remains unpaid after it becomes due and payable, ECOLOGY may assess a late charge. The late charge shall be one percent per month on the past due amount starting on the date the debt becomes past due and until it is paid in full.
3. Repayment Limitations. Repayment of the loan is subject to the following additional limitations, among others: those on defeasance, refinancing and advance refunding, termination, and default and recovery of payments.
4. Prepayment of Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT may prepay the entire unpaid principal balance of and accrued interest on the loan or any portion of the remaining unpaid principal balance of the Loan Amount. Any prepayments on the loan shall be applied first to any accrued interest due and then to the outstanding principal balance of the Loan Amount. If the RECIPIENT elects to prepay the entire remaining unpaid balance and accrued interest, the RECIPIENT shall first contact ECOLOGY's Revenue/Receivable Manager of the Fiscal Office.

#### K. Loan Security

Due Regard: For loans secured with a Revenue Obligation: The RECIPIENT shall exercise due regard for Maintenance and Operation Expense and the debt service requirements of the Senior Lien Obligations and any other outstanding obligations pledging the Gross Revenue of the Utility, and it has not obligated itself to set aside and pay into the loan Fund a greater amount of the Gross Revenue of the Utility than, in its judgment, shall be available over and above such Maintenance and Operation Expense and those debt service requirements.

Where collecting adequate gross utility revenue requires connecting additional users, the RECIPIENT shall require the sewer system connections necessary to meet debt obligations and expected operation and maintenance expenses.

Levy and Collection of Taxes (if used to secure the repayment of the loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors on all of the taxable property within the boundaries of the RECIPIENT in an amount sufficient, together with other money legally available and to be used therefore, to pay when due the principal of and interest on the loan, and the full faith, credit and resources of the RECIPIENT are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

Not an Excess Indebtedness: For loans secured with a general obligation pledge or a general obligation pledge on special assessments: The RECIPIENT agrees that this agreement and the loan to be made do not create an indebtedness of the RECIPIENT in excess of any constitutional or statutory limitations.

Pledge of Net Revenue and ULID Assessments in the ULID (if used to secure the repayment of this loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges the Net Revenue of the Utility, including applicable ULID Assessments in the ULID, to pay when due the principal of and interest on the loan.

Utility Local Improvement District (ULID) Assessment Collection (if used to secure the repayment of the loan): All ULID Assessments in the ULID shall be paid into the Loan Fund and used to pay the principal of and interest on the loan.

L. Maintenance and Operation of a Funded Utility: The RECIPIENT shall, at all times, maintain and keep the funded Utility in good repair, working order, and condition.

M. Opinion of RECIPIENT's Legal Counsel: The RECIPIENT must submit an "Opinion of Legal Counsel to the RECIPIENT" to ECOLOGY before this agreement will be signed. ECOLOGY will provide the form.

N. Prevailing Wage (Davis-Bacon Act): The RECIPIENT agrees, by signing this agreement, to comply with the Davis-Bacon Act prevailing wage requirements. This applies to the construction, alteration, and repair of treatment works carried out, in whole or in part, with assistance made available by the State Revolving Fund as authorized by Section 513, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1372). Laborers and mechanics employed by contractors and subcontractors shall be paid wages not less often than once a week and at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

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The RECIPIENT shall obtain the wage determination for the area in which the project is located prior to issuing requests for bids, proposals, quotes, or other methods for soliciting contracts (solicitation). These wage determinations shall be incorporated into solicitations and any subsequent contracts. The RECIPIENT shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and subcontracts more than \$2,000. The RECIPIENT shall maintain records sufficient to document compliance with the Davis-Bacon Act and make such records available for review upon request.

The RECIPIENT also agrees, by signing this agreement, to comply with State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable. Compliance may include the determination whether the project involves “public work” and inclusion of the applicable prevailing wage rates in the bid specifications and contracts. The RECIPIENT agrees to maintain records sufficient to evidence compliance with Chapter 39.12 RCW and make such records available for review upon request.

O. Progress Reports: RECIPIENTS funded with State Revolving Fund Loan or Forgivable Principal shall include the following verification statement in the “General Comments” text box of each progress report.

“We verified that we are in compliance with all the requirements as outlined in our funding agreement(s) with the Department of Ecology. This includes but is not limited to:

- The Davis-Bacon Act, 29 CFR , prevailing wage requirements, certified weekly payroll, etc.
- The Disadvantaged Business Enterprise (DBE), 40 CFR, Part 33
- The American Iron and Steel Act (Buy American)
- The Build America Buy America Act (BABA) (equivalency projects only)”

P. Representations and Warranties: The RECIPIENT represents and warrants to ECOLOGY as follows:

Application: Material Information. All information and materials submitted by the RECIPIENT to ECOLOGY in connection with its loan application were, when made, and are, as of the date the RECIPIENT signs this agreement, true and correct. There is no material adverse information relating to the RECIPIENT, the project, the loan, or this agreement known to the RECIPIENT, which has not been disclosed in writing to ECOLOGY.

Existence; Authority. It is a duly formed and legally existing municipal corporation or political subdivision of the state of Washington or a federally recognized Indian Tribe. It has full corporate power and authority to execute, deliver, and perform all of its obligations under this agreement and to undertake the project identified herein.

Certification. Each payment request shall constitute a certification by the RECIPIENT to the effect that all representations and warranties made in this loan agreement remain true as of the date of the request and that no adverse developments, affecting the financial condition of the RECIPIENT or its ability to complete the project or to repay the principal of or interest on the loan, have occurred since the date of this loan agreement. Any changes in the RECIPIENT’s financial condition shall be disclosed in writing to ECOLOGY by the RECIPIENT in its request for payment.

Q. Sale or Disposition of Funded Utility: The RECIPIENT shall not sell, transfer, or otherwise dispose of any of the works, plant, properties, facilities, or other part of the funded Utility or any real or personal property comprising a part of the funded Utility unless:

1. The facilities or property transferred are not material to the operation of the funded Utility, or have become unserviceable, inadequate, obsolete, or unfit to be used in the operation of the funded Utility or are no longer necessary, material, or useful to the operation of the funded Utility; or
2. The aggregate depreciated cost value of the facilities or property being transferred in any fiscal year comprises no more than three percent of the total assets of the funded Utility; or
3. The RECIPIENT receives from the transferee an amount equal to an amount which will be in the same proportion to the net amount of Senior Lien Obligations and this LOAN then outstanding (defined as the total amount outstanding less the amount of cash and investments in the bond and loan funds securing such debt) as the Gross Revenue of the funded Utility from the portion of the funded Utility sold or disposed of for the preceding year bears to the total Gross Revenue for that period.
4. Expressed written agreement by the ECOLOGY.

The proceeds of any transfer under this paragraph must be used (1) to redeem promptly, or irrevocably set aside for the

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redemption of, Senior Lien Obligations and to redeem promptly the loan, and (2) to provide for part of the cost of additions to and betterments and extensions of the Utility.

R. Sewer-Use Ordinance or Resolution for Funded Wastewater Facility Projects: If not already in existence, the RECIPIENT shall adopt and shall enforce a sewer-use ordinance or resolution. Such ordinance or resolution shall be submitted to ECOLOGY upon request.

The sewer use ordinance must include provisions to:

- 1) Prohibit the introduction of toxic or hazardous wastes into the RECIPIENT's sewer system.
- 2) Prohibit inflow of stormwater into separated sewer systems.
- 3) Require that new sewers and connections be properly designed and constructed.

S. Termination and Default:

Termination and Default Events

1. For Insufficient ECOLOGY or RECIPIENT Funds. ECOLOGY may terminate this loan agreement for insufficient ECOLOGY or RECIPIENT funds.
2. For Failure to Commence Work. ECOLOGY may terminate this loan agreement for failure of the RECIPIENT to commence project work.
3. Past Due Payments. The RECIPIENT shall be in default of its obligations under this loan agreement when any loan repayment becomes 60 days past due.
4. Other Cause. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance in full by the RECIPIENT of all its obligations under this loan agreement. The RECIPIENT shall be in default of its obligations under this loan agreement if, in the opinion of ECOLOGY, the RECIPIENT has unjustifiably failed to perform any obligation required of it by this loan agreement.

Procedures for Termination. If this loan agreement is terminated prior to project completion, ECOLOGY shall provide to the RECIPIENT a written notice of termination at least five working days prior to the effective date of termination (the "Termination Date"). The written notice of termination by the ECOLOGY shall specify the Termination Date and, when applicable, the date by which the RECIPIENT must repay any outstanding balance of the loan and all accrued interest (the "Termination Payment Date").

Termination and Default Remedies

No Further Payments. On and after the Termination Date, or in the event of a default event, ECOLOGY may, at its sole discretion, withdraw the loan and make no further payments under this agreement.

Repayment Demand. In response to an ECOLOGY initiated termination event, or in response to a loan default event, ECOLOGY may at its sole discretion demand that the RECIPIENT repay the outstanding balance of the Loan Amount and all accrued interest.

Interest after Repayment Demand. From the time that ECOLOGY demands repayment of funds, amounts owed by the RECIPIENT to ECOLOGY shall accrue additional interest at the rate of one percent per month, or fraction thereof.

Accelerate Repayments. In the event of a default, ECOLOGY may, in its sole discretion, declare the principal of and interest on the loan immediately due and payable, subject to the prior lien and charge of any outstanding Senior Lien Obligation upon the Net Revenue. That is, the loan is not subject to acceleration so long as any Senior Lien Obligations are outstanding.

Repayments not made immediately upon such acceleration will incur Late Charges.

Late Charges. All amounts due to ECOLOGY and not paid by the RECIPIENT by the Termination Payment Date or after acceleration following a default event, as applicable, shall incur late charges.

Intercept State Funds. In the event of a default event and in accordance with Chapter 90.50A.060 RCW, "Defaults," any state funds otherwise due to the RECIPIENT may, at ECOLOGY's sole discretion, be withheld and applied to the repayment of the loan.

Property to ECOLOGY. In the event of a default event and at the option of ECOLOGY, any personal property (equipment) acquired under this agreement may, in ECOLOGY's sole discretion, become ECOLOGY's property. In that circumstance,

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ECOLOGY shall reduce the RECIPIENT's liability to repay money by an amount reflecting the fair value of such property. Documents and Materials. If this agreement is terminated, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT shall, at the option of ECOLOGY, become ECOLOGY property. The RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Collection and Enforcement Actions. In the event of a default event, the state of Washington reserves the right to take any actions it deems necessary to collect the amounts due, or to become due, or to enforce the performance and observance of any obligation by the RECIPIENT, under this agreement.

Fees and Expenses. In any action to enforce the provisions of this agreement, reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of legal staff) shall be awarded to the prevailing party as that term is defined in Chapter 4.84.330 RCW.

Damages. Notwithstanding ECOLOGY's exercise of any or all the termination or default remedies provided in this agreement, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and/or 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.

T. User-Charge System for Funded Utilities: The RECIPIENT certifies that it has the legal authority to establish and implement a user-charge system and shall adopt a system of user-charges to assure that each user of the funded utility shall pay its proportionate share of the cost of operation and maintenance, including replacement during the design life of the project. The user-charge system will include provisions for a connection charge.

In addition, the RECIPIENT shall regularly evaluate the user-charge system, at least annually, to ensure the system provides adequate revenues necessary to operate and maintain the funded utility, to establish reserves to pay for replacement, and to repay the loan.

## **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

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“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 Unique Entity Identifier in [www.sam.gov](http://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.fsrc.gov](http://www.fsrc.gov) <http://www.fsrc.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](http://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf) <http://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

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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

07/01/2023 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/2301002.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](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.

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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



# ECOLOGY SFAP GRANT

## KITSAP LAKE STORMWATER TREATMENT RETROFIT

### CONSTRUCTION — \$2,841,937



## Project Scope

Construct stormwater treatment systems that were designed in 2022 with a previous Ecology grant. This will treat stormwater from approximately 82 acres before it enters Kitsap Lake and improves water quality by removing pollutants, including 6PPD-Q which is toxic to salmon. The systems provide basic, enhanced, and phosphorus treatment.



### BioPod Treatment systems remove:

- Total Suspended Solids (TSS)
- Dissolved Copper,
- Total Copper,
- Dissolved Zinc,
- Total Zinc,
- Motor Oil / Petroleum Hydrocarbons,
- Total Phosphorus
- Ortho Phosphorus
- Nitrogen

Phosphorus and nitrogen are nutrients that feed algae blooms, including cyanobacteria (blue-green toxic algae).

The BioPod will remove and retain debris, sediments, TSS, dissolved and particulate metals and nutrients including nitrogen and phosphorus, bacteria, BOD, oxygen demanding substances, organic compounds and hydrocarbons that would otherwise flow into Kitsap Lake during frequent storm events and continuous dry weather flows.

**Water Quality Total Maximum Daily Load (TMDL):** Kitsap Lake is a 303(d) Listed water body for elevated Fecal Coliform (listing #7649) and Total Phosphorus (Listing #6345). Phosphorus recycling, low transparency, aquatic macrophytes, fecal coliform are identified water quality issues (Parametrix, 1983). The treatment systems will reduce Total Phosphorus and Fecal Coliform originating from stormwater runoff. This project supports the stormwater runoff treatment portion of the water quality cleanup plan.

Project Cost / Grant application Budget: \$2,841,937  
Funding: 75% Ecology SFAP Grant \$2,415,646.45  
25% Stormwater Utility match \$426,290.55

Grant Manager: Chance Berthiaume, Utility Manager  
Chance.berthiaume@ci.bremerton.wa.us  
Project Manager: Dave Dinkuhn, Stormwater Project Manager  
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