

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202203017

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Climate Action
Contract or Grant Administrator:	Chris Elder
Contractor's / Agency Name:	WA Dept of Ecology
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? SEASMP- Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, grantor agency contract number(s): <u>2123-WhCo-PW-00012</u> CFDA#: _____	
Is this contract grant funded? If yes, Whatcom County grant contract number(s): _____ Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Is this contract the result of a RFP or Bid process? Contract Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____ Cost Center: <u>169122</u>	
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>100,000</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ <u>100,000</u>	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
These grant funds will allow Whatcom County Public Works Department to convene a multi-jurisdictional team to develop a Vulnerability & Risk Assessment (VRA) for Whatcom County marine and lower Nooksack riverine shorelines using Compound Flood Models. These models use sea level rise, tidal, wave, storm surge, and stream discharge data to assess vulnerability and risks exacerbated by climate change to public infrastructure and private development (assets), ecosystem functions/values (systems), and populations.	
Term of Contract:	<u>1/1/2022</u> Expiration Date: <u>6/30/2023</u>

- Contract Routing:
- | | |
|---|------------------------|
| 1. Prepared by: <u>Chris Elder</u> | Date: <u>3/8/2022</u> |
| 2. Attorney signoff: <u>Christopher Quinn</u> | Date: <u>3/11/2022</u> |
| 3. AS Finance reviewed: <u>M Caldwell</u> | Date: <u>3/11/22</u> |
| 4. IT reviewed (if IT related): _____ | Date: _____ |
| 5. Contractor signed: _____ | Date: _____ |
| 6. Submitted to Exec.: _____ | Date: _____ |
| 7. Council approved (if necessary): _____ | Date: _____ |
| 8. Executive signed: _____ | Date: _____ |
| 9. Original to Council: _____ | Date: _____ |

Agreement No. SEASMPC-2123-WhCoPW-00012**SHORELANDS SMP COMPETITIVE AGREEMENT****BETWEEN****THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY****AND****WHATCOM COUNTY - PUBLIC WORKS DEPARTMENT**

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

GENERAL INFORMATION

Project Title:	Whatcom Compound Flood Vulnerability & Risk Assessment
Total Cost:	\$100,000.00
Total Eligible Cost:	\$100,000.00
Ecology Share:	\$100,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	01/01/2022
The Expiration Date of this Agreement is no later than:	06/30/2023
Project Type:	Planning

Project Short Description:

Whatcom County Public Works Department (RECIPIENT) will convene a multi-jurisdictional team to develop a Vulnerability & Risk Assessment (VRA) for Whatcom County marine and lower Nooksack riverine shorelines using Compound Flood Models. These models use sea level rise, tidal, wave, storm surge, and stream discharge data to assess vulnerability and risks exacerbated by climate change to public infrastructure and private development (assets), ecosystem functions/values (systems), and populations.

Project Long Description:

This project will use Compound Flood Models to complete a VRA for Whatcom County marine shorelines and lower Nooksack riverine shorelines. Compound Flood Modeling accounts for sea level rise, tides, storm surge, waves, groundwater impacts, and projected increases in stream discharge.

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Recipient Name: Whatcom County - Public Works Department

The RECIPIENT will convene a multi-jurisdictional and collaborative partner team to complete the VRA. The RECIPIENT has identified the following partners: other Whatcom County departments, United States Geological Survey (USGS), Lummi Nation, City of Bellingham, City of Blaine, City of Ferndale, and Port of Bellingham.

The Compound Flood Models were developed by the USGS with many of the agencies participating in this project providing financial and staff support through the Coastal Storm Model System for the Puget Sound (CoSMoS-PS). The Whatcom County Council has funded earlier projects to develop a CoSMoS-PS model (jointly with the City of Bellingham, City of Blaine, Port of Bellingham and other partners) for its marine shorelines. USGS staff have also been working with Whatcom County Public Works River and Flood Division to develop flood models for future climate scenarios for the Nooksack River. Combining projected marine shoreline impacts with projected riverine flooding impacts provides the basis for the Compound Flood Model to inform a comprehensive and integrated model output to effectively inform vulnerability and risk along all Whatcom County marine shorelines and lower Nooksack riverine shorelines. Building off of the data inputs and model outputs for CoSMoS while incorporating projected increases in rainfall will provide significant additional value in addressing the changing exposure to flooding along tidally-influenced rivers that are also experiencing changes to sea levels and associated impacts.

Information and data outputs from these models will inform completion of a VRA with the support and direction from project partners. Developing a VRA allows the RECIPIENT and its partner jurisdictions to assess the vulnerability of and risks to public infrastructure and private development (assets) and ecosystem functions and values (systems) due to projected sea level rise and other impacts described above. This will allow the RECIPIENT and its partner jurisdictions to better plan for asset improvements/modifications and mitigation to such infrastructure, ecosystem resilience actions, and changes to the land use regulatory framework.

Overall Goal:

To convene a multi-jurisdictional and collaborative partner team to complete a VRA for marine shorelines and lower Nooksack riverine shorelines in Whatcom County based on a common set of agreed upon assumptions, scenarios, and probabilistic outcomes. The VRA will be used by the RECIPIENT and partner jurisdictions to craft policies, regulations, land use plans, infrastructure plans, maintenance plans, and mitigation plans to address projected climate impacts and build community resilience. Partners will also gain shared understanding of projected impacts and have a platform for ongoing collaboration on shoreline and community resilience measures.

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Recipient Name: Whatcom County - Public Works Department

RECIPIENT INFORMATION

Organization Name: Whatcom County - Public Works Department

Federal Tax ID: 91-6001383
DUNS Number: 060044641 UEI Number: NT6RMN8THTN7

Mailing Address: 322 N. Commercial Street, Suite 220
Bellingham, Washington 98225

Physical Address: 322 N. Commercial Street, Suite 220
Bellingham, Washington 98225

Organization Email: rrydel@co.whatcom.wa.us

Contacts

Agreement No: SEASMP-2123-WhCoPW-00012
 Project Title: Whatcom Compound Flood Vulnerability & Risk Assessment
 Recipient Name: Whatcom County - Public Works Department

<p>Project Manager</p>	<p>Chris Elder Senior Planner</p> <p>322 N. Commercial Bellingham, Washington 98225 Email: celder@co.whatcom.wa.us Phone: (360) 778-6225</p>
<p>Billing Contact</p>	<p>Christy Fowler</p> <p>322 N. Commercial St. Suite 210 Bellingham, Washington 98225 Email: cfowler@co.whatcom.wa.us Phone: (360) 778-6214</p>
<p>Authorized Signatory</p>	<p>Satpal Singh Sidhu County Executive</p> <p>311 Grand Avenue, Suite 108 Bellingham, Washington 98225 Email: ssidhu@co.whatcom.wa.us Phone: (360) 778-5200</p>

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 Project Title: Whatcom Compound Flood Vulnerability & Risk Assessment
 Recipient Name: Whatcom County - Public Works Department

ECOLOGY INFORMATION

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

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

Contacts

<p>Project Manager</p>	<p>Sydney Fishman Shoreline Armoring Planning Associate</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: syfi461@ecy.wa.gov Phone: (360) 480-2209</p>
<p>Financial Manager</p>	<p>Cindy James</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: cjam461@ecy.wa.gov Phone: (360) 280-8645</p>

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Recipient Name: Whatcom County - Public Works Department

AUTHORIZING SIGNATURES

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

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

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

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

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

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

Washington State
Department of Ecology

Whatcom County - Public Works Department

By: _____

By: _____

Joenne McGerr
Shorelands
Program Manager
Date

Satpal Singh Sidhu
County Executive
Date

Template Approved to Form by
Attorney General's Office

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 Project Title: Whatcom Compound Flood Vulnerability & Risk Assessment
 Recipient Name: Whatcom County - Public Works Department

SCOPE OF WORK

Task Number: 1 **Task Cost: \$0.00**

Task Title: 1. Project Administration / Management

Task Description:

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

A. The RECIPIENT shall coordinate with ECOLOGY throughout the project. The RECIPIENT will provide ECOLOGY opportunities to review draft deliverables at appropriate intervals. ECOLOGY will provide ongoing technical assistance, and will evaluate consistency of deliverables with the Shoreline Management Act and applicable guidelines throughout the review process.

B. The RECIPIENT shall conduct project management activities including compliance with state statutes and rules, project scheduling, adherence to the scope of work, timelines, and due dates; request for, and if applicable, conducting the competitive procurement process including preparation of contractor bidding documents, advertisements, and grant monitoring.

C. The RECIPIENT shall submit quarterly progress reports and payment requests (PRPRs) with supporting documentation; maintain project records; and submit ECOLOGY-approved deliverables by the due dates established between ECOLOGY and the RECIPIENT.

Task Goal Statement:

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

Task Expected Outcome:

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

Recipient Task Coordinator: Chris Elder

1. Project Administration / Management

Deliverables

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

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Recipient Name: Whatcom County - Public Works Department

SCOPE OF WORK

Task Number: 2 **Task Cost: \$95,000.00**

Task Title: 2. Conduct Compound Flood Model VRA

Task Description:

- A. The RECIPIENT will secure qualified consultant services. In accordance with the RECIPIENT or State of Washington procurement procedures, the RECIPIENT will enter into a contract with the selected consultant(s) and prepare a contract in accordance with the scope of work in this agreement.
- B. In coordination with ECOLOGY, the RECIPIENT will meet requirements in section 12. Environmental Data Standards of the Agreement General Terms and Conditions for a Quality Assurance Project Plan (QAPP); ECOLOGY's Environmental Information Management (EIM) database; and GIS data.
- C. The RECIPIENT will identify a minimum of three sea level rise and compound flood scenarios for the VRA. Scenarios will be identified based on multi-jurisdictional project team conversations and review of available sea level rise and flood planning resources. A range of scenarios will be developed with high and low probabilities to cross-cut risk and disaster thresholds. These scenarios will be used to bracket the expected range of effects across Whatcom County, and to allow for temporal evaluations of risk out to at least 2100, based on current climate projections.
- D. The RECIPIENT will define the spatial extent for the VRA. At a minimum, the RECIPIENT will evaluate the spatial extent associated with the highest sea level rise and compound flood scenario plus an additional 200 feet landward. The RECIPIENT will determine whether to add a buffer of additional parcels or tracts that may be impacted by flooding, and to identify built and natural systems to be evaluated that may lay beyond the projected flooding extent but that may suffer indirect impacts from flooding.
- E. The RECIPIENT will compile an inventory of existing assets (public infrastructure and private development) and environmental systems within the VRA boundary. The RECIPIENT will produce a geospatial data layer of the inventory data.
- F. The RECIPIENT will produce a geospatial inventory of assets, systems, and populations exposed to flooding (i.e., the exposure analysis). The RECIPIENT will produce a table of exposed assets, systems, and populations that are geo-located and mapped with the selected sea level rise and flood scenario(s), and coastal hazard data per Task 2B. The degree and timeframes of exposure will also be recorded.
- G. The RECIPIENT will conduct a sensitivity analysis of the assets, systems, and populations identified in task 2E in at least two geographically defined locations within Whatcom County. The RECIPIENT will determine the degree to which the condition or functionality of assets, systems, and populations will be affected as a result of flooding.
- H. The RECIPIENT will conduct an analysis to identify the adaptive capacity of vulnerable assets, systems, and populations in at least two geographically defined locations within Whatcom County across five metrics: System redundancy, Ability to relocate, Adaptive Learning, Ability to elevate, and Cost-benefit of action.
- I. The RECIPIENT will produce a summary report of recommendations to identify next steps and to capture lessons learned

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during the project. The RECIPIENT will be responsible for compiling a summary of recommended actions for Whatcom County and partners to pursue as a result of this project, including but not limited to: specific regulation changes; specific adaptation actions; and identification of funding opportunities, process pathways, and timelines for implementation.

Task Goal Statement:

- To ensure the RECIPIENT has qualified personnel to conduct the scope of this project.
- To develop a range of a minimum of three sea level rise and compound flood scenarios, expressed as a total water level (TWL) that span both high probability and low probability outcomes.
- To define the geographic region in which the VRA will be performed.
- To create an updated inventory and characterization of public infrastructure, private development, and ecosystems within the VRA boundary.
- To identify, catalogue, and categorize assets, systems, and populations exposed to flooding within the VRA extent.
- To determine the degree to which the identified at-risk assets, systems, and populations are sensitive to the impacts of flooding.
- To characterize the natural, built, and social systems by their ability to develop functional redundancy, relocate, elevate, and adaptively learn given a selected flood scenario, and to identify costs and benefits associated with adaptation.
- To provide guidance on recommended next steps and action items to effectively address the impacts of sea level rise, storm surge, and compound flood impacts.

Task Expected Outcome:

- Signed contract and sub-agreement with consultant(s).
- Selection of sea level rise and compound flood rise scenarios to guide development of the vulnerability and risk assessment.
- Defined geographic region in which the Vulnerability Assessment will be performed.
- Current inventory and characterization of public infrastructure and private development within the VRA boundary, including development of a geospatial data layer.
- Identification of exposed assets, systems, and populations, including development of geospatial data.
- Analysis of the degree to which the identified at risk assets, systems, and populations are sensitive to the impacts of the flooding.
- Adaptive capacity analysis identifying the natural, built, or social systems' existing adaptive capacities and plausible future approaches in addressing deficiencies, plus costs and benefits associated with future adaptation approaches.
- Summary report identifying recommended next steps and action items for Whatcom County and partners to address the impacts of sea level rise, storm surge, and compound floods.

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Project Title: Whatcom Compound Flood Vulnerability & Risk Assessment

Recipient Name: Whatcom County - Public Works Department

Recipient Task Coordinator: Chris Elder**2. Conduct Compound Flood Model VRA****Deliverables**

Number	Description	Due Date
2.1	Final signed consultant contract. Upload to EAGL and notify ECOLOGY Project Manager.	
2.2	Quality Assurance Project Plan (QAPP). Upload to EAGL and notify ECOLOGY Project Manager.	
2.3	Selection of a minimum of 3 sea level rise and compound flood scenarios. Upload to EAGL and notify ECOLOGY Project Manager.	
2.4	Description of the Vulnerability Assessment Extent. Upload to EAGL and notify ECOLOGY Project Manager.	
2.5	Inventory and characterization of assets and systems within the VRA boundary, including a geospatial layer of this inventory. Upload to EAGL and notify ECOLOGY Project Manager.	
2.6	Geospatial inventory and table of assets, systems, and populations exposed to flooding within the VRA boundary. Upload to EAGL and notify ECOLOGY Project Manager.	
2.7	Sensitivity Analysis. Upload to EAGL and notify ECOLOGY Project Manager.	
2.8	Adaptive Capacity Analysis. Upload to EAGL and notify ECOLOGY Project Manager.	
2.9	Draft Recommendations Summary Document. Upload to EAGL and notify ECOLOGY Project Manager.	
2.10	Final Recommendations Summary Document. Upload to EAGL and notify ECOLOGY Project Manager.	

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Recipient Name: Whatcom County - Public Works Department

SCOPE OF WORK

Task Number: 3 **Task Cost: \$5,000.00**

Task Title: 3. Identify and Organize Stakeholder Engagement

Task Description:

A. The RECIPIENT will develop and maintain a project webpage on Whatcom County's website. This website will be used for posting meeting materials, schedules, and notices to the public.

B. The RECIPIENT will identify stakeholder engagement opportunities and develop a Public Participation Plan for the project. The Public Participation Plan will identify methods for public outreach, including a list of stakeholders to be notified when public meetings are scheduled on the project.

C. The RECIPIENT will develop stakeholder and public outreach and education materials. Materials will be used during outreach as identified in the Public Participation Plan.

For any publications, and education and outreach materials, the RECIPIENT will follow ECOLOGY's requirements in the following sections of the Agreement General Terms and Conditions: 3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY; and 19. PRESENTATION AND PROMOTIONAL MATERIALS. For more information, see in the Agreement General Terms and Conditions.

For communications and materials, the RECIPIENT will acknowledge that funding was provided by ECOLOGY. The ECOLOGY Project Manager can provide a copy of ECOLOGY's logo.

The RECIPIENT will provide a copy of education and outreach materials to the ECOLOGY Project Manager for review prior to distribution.

D. The RECIPIENT will solicit stakeholder and community feedback on the VRA using methods identified in the Public Participation Plan. The RECIPIENT will issue public notices and inform stakeholders identified in the Public Participation Plan about upcoming public meetings, and will use the project webpage to distribute meeting materials.

The RECIPIENT will take meeting attendance and submit meeting agendas and attendance logs to ECOLOGY by uploading a copy in EAGL.

Light refreshments (not meals) for meetings, as defined by ECOLOGY's Administrative Requirements of Ecology's Grants and Loans (2017 Yellow Book), may be eligible for reimbursement. Prior to each public meeting, the RECIPIENT must request and receive approval by ECOLOGY's Project Manager for light refreshment reimbursement(s). The ECOLOGY Project Manager can send a copy of the light refreshment request form. Approved request forms must be submitted with the corresponding Payment Request/Progress Report (PRPR).

Task Goal Statement:

To ensure the meaningful engagement of stakeholders and consideration of their input. To inform stakeholders and the public about the RECIPIENT's progress on the VRA.

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Task Expected Outcome:

Stakeholders will be informed of the risks and vulnerabilities facing Whatcom County due to sea level rise and compound flood impacts. Stakeholder and public input will be collected and used to assist with the successful completion of the VRA. The RECIPIENT will engender public and stakeholder support of an action plan to address the risks identified in the VRA.

Recipient Task Coordinator: Chris Elder

3. Identify and Organize Stakeholder Engagement

Deliverables

Number	Description	Due Date
3.1	Link to project website. Upload to EAGL and notify ECOLOGY Project Manager.	
3.2	Public Participation Plan. Upload to EAGL and notify ECOLOGY Project Manager.	
3.3	Stakeholder and public outreach and education materials. Submit to ECOLOGY Project Manager for review prior to distribution. Upload copy in EAGL, and notify ECOLOGY Project Manager.	
3.4	Meeting agendas and attendance logs. Upload to EAGL and notify ECOLOGY Project Manager.	

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BUDGET

Funding Distribution EG220567

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: Model Toxics Control Operating Account (MT) Funding Type: Grant
 Funding Effective Date: 01/01/2022 Funding Expiration Date: 06/30/2023
 Funding Source:

Title: Model Toxics Control Operating Account (MTCOA)
 Fund: FD
 Type: State
 Funding Source %: 100%
 Description: Model Toxics Control Operating Account (MTCOA)

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

Model Toxics Control Operating Account (MTCOA)	Task Total
1. Project Administration / Management	\$ 0.00
2. Conduct Compound Flood Model VRA	\$ 95,000.00
3. Identify and Organize Stakeholder Engagement	\$ 5,000.00

Total: \$ 100,000.00

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 Recipient Name: Whatcom County - Public Works Department

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
Model Toxics Control Operating Account (MTCOA)	0.00 %	\$ 0.00	\$ 100,000.00	\$ 100,000.00
Total		\$ 0.00	\$ 100,000.00	\$ 100,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

Deliverable Due Date Form:

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

GENERAL FEDERAL CONDITIONS

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

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

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

Agreement No: SEASMP-2123-WhCoPW-00012
Project Title: Whatcom Compound Flood Vulnerability & Risk Assessment
Recipient Name: Whatcom County - Public Works Department

GENERAL TERMS AND CONDITIONS

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

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

06/24/2021 Version

1. ADMINISTRATIVE REQUIREMENTS

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

2. AMENDMENTS AND MODIFICATIONS

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

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

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

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

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

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

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
- * For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

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

RECIPIENT shall:

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

5. ASSIGNMENT

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

6. COMMUNICATION

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

7. COMPENSATION

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

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

8. COMPLIANCE WITH ALL LAWS

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

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

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

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

9. CONFLICT OF INTEREST

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

10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

11. DISPUTES

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

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

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

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

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

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

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

12. ENVIRONMENTAL DATA STANDARDS

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

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

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

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

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

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

13. GOVERNING LAW

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

14. INDEMNIFICATION

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

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

15. INDEPENDENT STATUS

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

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16. KICKBACKS

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

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

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

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

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

18. ORDER OF PRECEDENCE

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

19. PRESENTATION AND PROMOTIONAL MATERIALS

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

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

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

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

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

20. PROGRESS REPORTING

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

21. PROPERTY RIGHTS

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

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22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

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

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

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

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

23. RECOVERY OF FUNDS

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

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

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

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

24. SEVERABILITY

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

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

26. SUSPENSION

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

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27. SUSTAINABLE PRACTICES

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

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

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

28. TERMINATION

a) For Cause

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

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

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

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

b) For Convenience

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

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

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

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

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

c) By Mutual Agreement

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

d) In Event of Termination

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

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

29. THIRD PARTY BENEFICIARY

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

30. WAIVER

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

End of General Terms and Conditions