

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202306028

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept, Division and Program)</i>	Natural Resources/Whatcom LIO (907010)
Contract or Grant Administrator:	Austin Rose
Contractor's / Agency Name:	Environmental Science Associates
<p>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"/></p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____</p> <p>Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, include WCC: _____</p> <p>Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</p> <p>Is this a grant agreement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, grantor agency contract number(s): _____ CFDA#: _____</p> <p>Is this contract grant funded? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, Whatcom County grant contract number(s): <u>202211021</u></p> <p>Is this contract the result of a RFP or Bid process? Contract _____ Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, RFP and Bid number(s): <u>MRSC Consultant Roster</u> Cost Center: <u>169121</u></p> <p>Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> If no, include Attachment D Contractor Declaration form.</p> <p>If YES, indicate exclusion(s) below:</p> <p><input type="checkbox"/> Professional services agreement for certified/licensed professional. <input checked="" 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 type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.</p>	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>45,000</u>	<p>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:</p> <ol style="list-style-type: none">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 Ordinance5. 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.
This Amendment Amount: \$ _____	
Total Amended Amount: \$ _____	
<p>Summary of Scope: In 2022, ESA developed a WRIA 1 integrated funding strategy for the WRIA 1 Watershed Management Board through a previous contract with Whatcom County (County Contract #202202030). This scope of work implements key recommendations in that strategy document. This scope of work is identified in and funded by the Puget Sound Partnership contract (County Contract # 202211021) which supports the Local Integrating Organization with EPA/National Estuary Program funding. This scope covers work to be conducted by ESA through federal fiscal years (ending September 30): FY23 and FY24.</p>	
Term of Contract: July 1, 2023	Expiration Date: September 30, 2024
Contract Routing:	
1. Prepared by: <u>Austin Rose</u>	Date: <u>06/21/2023</u>
2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>6/26/2023</u>
3. AS Finance reviewed: <u>A Martin</u>	Date: <u>6/26/2023</u>
4. IT reviewed (if IT related): _____	Date: _____
5. Contractor signed: _____	Date: _____
6. Submitted to Exec.: _____	Date: _____
7. Council approved (if necessary): <u>AB2023-443</u>	Date: <u>07/11/2023</u>
8. Executive signed: _____	Date: _____
9. Original to Council: _____	Date: _____

CONTRACT FOR SERVICES
Between Whatcom County Flood Control Zone District and Environmental Science Associates

Environmental Science Associates, hereinafter called **Contractor** and Whatcom County Flood Control Zone District, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 12,
- Exhibit A (Scope of Work), pp. 13 to 14,
- Exhibit B (Compensation), p. 15
- Exhibit C (Certificate of Insurance) pp. 16 to 19
- Exhibit D (Grant Terms and Conditions) pp. 20 to 29

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 1st day of July, 2023, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30th day of September, 2024.

The general purpose or objective of this Agreement is to: continue to develop and implement the WRIA 1 Integrated Funding Strategy, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$45,000. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 20 ____.

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

CONTRACTOR:

Environmental Science Associates

Stacy Bumback, Pacific Northwest Regional Director

CONTRACTOR INFORMATION:

Environmental Science Associates

Stacy Bumback, Pacific Northwest Regional Director

Address:

5309 Shilshole Ave. NW #200

Seattle, WA 98107

Mailing Address:

P.O. Box 7209

Carol Stream, IL 60197-7209

**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:**

Elizabeth Kosa, Public Works Director Date

Approved as to form:

Christopher Quinn, Senior Deputy Prosecuting Attorney - Civil Division Date

Approved:

Accepted for Whatcom County Flood Control Zone District:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

11.1 Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Reduction in Funding:

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

In providing services under this Contract, the Contractor is an independent contractor, and neither it nor its officers, agents, or employees are employees of the County for any purpose. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the Contractor, its employees, and/or others by reason of this Contract.

The Contractor shall protect, indemnify, defend, and save harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Contractor's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) the supplying to the Contractor of work, services, materials, or supplies by Contractor employees or other suppliers in connection with or support of the performance of this Contract.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced and Public Records Act:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County. If the Contractor creates any copyrightable materials or invents any patentable property, the Contractor may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Contractor further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

31.2 Patent/Copyright Infringement:

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.

B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

32.1 Confidentiality:
The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Insurance
The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

1. Professional Liability

Professional Liability - \$1,000,000 per occurrence

- a. Obtain professional liability insurance covering the negligent acts, errors, or omissions of the professional in connection with the performance of services to the County. If any insurance policy or the professional liability insurance is written on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims-made form coverage shall be maintained by the Contractor for a minimum of 36 months following the Completion Date or earlier termination of this Contract, and the Contractor shall annually provide the Contracting Agency with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Contracting Agency to assure financial responsibility for liability for services performed.

Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non-contributory to Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain

such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.

- e. **Review of and Revision of Policy Provisions.** Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. **Verification of Coverage/Certificates and Endorsements.** The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. **No Limitation on Liability.** The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. **Payment Conditioned on Insurance and Failure to Maintain Insurance.** Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. **Workers' Compensation.** The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. **Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification.** The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.
- l. **Availability of Contractor Limits.** If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor,

irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.

- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement. To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

35.1 Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant

for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, political affiliation, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

36.1 Waiver of Noncompetition:

Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Austin Rose, Planner I, 322 N. Commercial St. (second floor), Bellingham, WA 98225

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

To: Contractor, Environmental Science Associates

5309 Shilshole Ave. NW Suite #200
Seattle, WA 98107

Attention: Susan O'Neill

Telephone: (206) 450-7547

Email: soneil@esassoc.com

To: Whatcom County Public Works

322 N. Commercial St. (second floor)
Bellingham, WA 98225

Attention: Austin Rose

Telephone: (360) 778-6286

Email: arose@co.whatcom.wa.us

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If applicable, Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:

If applicable, the Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "Excluded Parties List System in the System for Award Management (SAM) website is available to research this information at WWW.SAM.GOV. Contractor shall immediately notify Whatcom County if, during the term of this Contract, Contractor becomes debarred.

38.3 E-Verify:

The E-Verify contractor program for Whatcom County applies to contracts of \$100,000 or more and sub contracts for \$25,000 or more if the primary contract is for \$100,000 or more. If applicable, Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and

agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes

- 40.1 Modifications:
Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.
- 40.2 Contractor Commitments, Warranties and Representations:
Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.
- 41.1 Severability:
If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.
- 41.2 Waiver:
Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.
- 42.1 Disputes:
- a. General:
Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.
 - b. Notice of Potential Claims:
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.
 - c. Detailed Claim:
The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.
 - d. Arbitration:
Other than claims for injunctive relief, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable

American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract shall be governed by the laws of Whatcom County and the State of Washington.

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A"
(SCOPE OF WORK)

This scope of work is identified in and funded by the Puget Sound Partnership contract (County Contract #202211021) which supports the Local Integrating Organization with EPA/National Estuary Program funding. This scope covers work to be conducted by Environmental Science Associates through federal fiscal years (ending September 30) FY23 and FY24. In 2022, ESA developed a WRIA 1 integrated funding strategy for the WRIA 1 Watershed Management Board through a previous contract with Whatcom County. This scope of work is based on the key recommendations to implement that strategy with the WRIA 1 Watershed Management Board.

ESA will:

- work with WRIA 1 Board and partner organizations to identify priority recommendations in the Integrated Funding Strategy to be implemented in FY23 and FY24 in alignment with the Board's revised Work Plan (2024-2028 under development separate from this SOW)
- prepare grant applications and necessary supporting materials agreed to by the WRIA 1 Watershed Management Board (WMB) or its administrative management team

The Contractor will coordinate closely with the WMB and Whatcom County staff to complete the following activities:

Task 1: Develop a focused scope of work which will guide the WMB and Whatcom County in implementing the WRIA 1 Integrated Funding Strategy.

A. Work with contract administrator (Whatcom County), LIO Coordinator and Management Team Steering Committee to identify the tasks and deliverables for FY 2023-2024 that will implement recommendations in the WRIA 1 Integrated Funding Strategy. The Contractor will:

- Attend up to three (virtual) WMB Steering Committee meetings
- Facilitate a process for the WMB Steering Committee to prioritize funding opportunities and strategies in alignment with the 2024-2028 work plan.

B. Develop a draft and a final work plan for FY24. Following completion of the final work plan, the consultant will work with the LIO Coordinator and the Watershed Management Board to adaptively manage the work plan as necessary. The Contractor will:

- Develop a Work Plan that identifies tasks, deliverables, and clear implementation timelines. Examples of tasks that may be included: facilitate workshops or subgroup meetings, research funding opportunities, develop prioritizations, and draft grant proposals. The final tasks to be included are dependent on the priorities of the WMB, the funding opportunities available, and the available budget.
- Engage throughout the development of the work plan with Management Team, Steering Committee, and/or their designated teams. Comments from the draft will be addressed in a final work plan for FFY 2024.

Task 2: Provide support to project sponsors for grant application(s) prioritized by the WMB.

Staff and WMB will identify an appropriate grant opportunity and ESA will work with the identified project sponsor and partners under the direction of the WMB and Project Manager to help develop grant application materials. For each opportunity identified in the work plan, the Contractor will:

- Develop a schedule and list of materials for submittal based on the Request for Proposals (RFP) or Notice of

Funding Opportunity (NOFO)

- Research associated plans and existing project information; compile content related to project to be funded
- Develop a draft and a final narrative with up to 2 reviews by project sponsor/county
- Draft a letter of intent (if necessary step of selected grant)
- Schedule and facilitate check in meetings with project sponsor, County staff, and LIO Coordinator based on grant submittal schedule
- Review grant materials developed by project sponsor (budget, maps, etc.)

Assumption: The project sponsor will be responsible for final narrative in addition to necessary budget forms, legal documentation, and grant application submittal.

Task 3: Project Management

The Contractor will conduct administrative tasks related to implementation of this project, including submittal of monthly invoices with progress reports.

Deliverables:

- **Draft work plan (September 1, 2023).**
- **Final work plan (September 30, 2023).**
- **Grant materials as defined in Task 2 (by the schedule dictated in the grant opportunity or September 30, 2024).**
- **Monthly invoices and progress reports (due by the 20th of each month)**

EXHIBIT "B"
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A, "Scope of Work", the County agrees to compensate the Contractor according to the hourly rates provided (below).

Contractor will invoice monthly. Invoices will include hours worked by employee by day together with tasks accomplished. **Compensation shall not exceed \$45,000.00.** Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor's expense.

Budget Summary

Task	Hours	Labor (\$ /hr)	Expenses	Estimated budget
Task 1.0	68	See labor rates below	\$0	\$12,620
Task 2.0	168		\$0	\$26,780
Task 3.0	31		\$0	\$5,585
Totals			Not to Exceed	\$45,000.00

All meeting participation will be virtual, no travel expenses budgeted; no equipment or printing is anticipated for the duration of the project.

Budget estimates include the following rates:

Planner IV = \$223/hour (estimated at 40 hours for Task 1; 40 for Task 2; 15 hours for Task 3)

Planner III = \$200/hour (estimated at 8 hours for Task 2)

Planner II = \$137/hour (estimated at 20 hours for Task 1)

Planner I = \$122/hour (estimated 40 hours for Task 2)

Project Coordinator = \$110/hour (estimated at 8 hours for Task 1, 12 hours for Task 2; 1 hour for Task 3)

Project Accountant = \$142/hour (estimated at 15 hours for Task 3)

Technical editor = \$200/hour (estimated at 8 hours for Task 2)

These match the rates used for recent contracts with Puget Sound Partnership and meet their EPA funding requirements.

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)



ENVISCI-05

MCCOWANA

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/30/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0E67768 IOA Insurance Services 4370 La Jolla Village Drive Suite 600 San Diego, CA 92122	CONTACT NAME: Ali Smith PHONE (A/C, No, Ext): (619) 788-5795 50206 FAX (A/C, No): (619) 574-6288 E-MAIL ADDRESS: Ali.Smith@ioausa.com	
	INSURER(S) AFFORDING COVERAGE NAIC # INSURER A : RLI Insurance Company 13056 INSURER B : Crum & Forster Specialty Insurance Company 44520 INSURER C : INSURER D : INSURER E : INSURER F :	
INSURED Environmental Science Associates 575 Market Street, Suite 3700 San Francisco, CA 94105		

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Cont Liab/Sev of Int <input checked="" type="checkbox"/> EXU/BFPD GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PERCT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER Incl Water Craft Liability		X	PSB0007416	12/1/2022	12/1/2023	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMPROP AGG \$ 4,000,000 Deductible \$ 0
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> Camp Ded \$1,000 <input checked="" type="checkbox"/> Coll Ded \$1,000		X	PSA0002468	12/1/2022	12/1/2023	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			PSE0003196	12/1/2022	12/1/2023	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	PSW0004135	12/1/2022	12/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Prof Liab/Ded. \$50K			PKC113632	12/1/2022	12/1/2023	Per Claim \$ 5,000,000
B	Poll Liab/Ded. \$50K			PKC113632	12/1/2022	12/1/2023	Aggregate \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Re: Whatcom County LOI Funding Strategy (D202101349)

Whatcom County are Additional Insureds with respect to General and Auto Liability per the attached endorsements as required by written contract. Insurance is Primary and Non-Contributory.

30 Days Notice of Cancellation with 10 Days Notice for Non-Payment of Premium in accordance with the policy provisions.

CERTIFICATE HOLDER Whatcom County Marine Resources Planner/ Whatcom MRC Coordinator Whatcom County Public Works - Natural Resources 322 N. Commercial St. Suite 110 Bellingham, WA 98225	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**RLIPack® FOR PROFESSIONALS
BLANKET ADDITIONAL INSURED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM - SECTION II – LIABILITY

1. **C. WHO IS AN INSURED** is amended to include as an additional insured any person or organization that you agree in a contract or agreement requiring insurance to include as an additional insured on this policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by you or those acting on your behalf:
 - a. In the performance of your ongoing operations;
 - b. In connection with premises owned by or rented to you; or
 - c. In connection with "your work" and included within the "product-completed operations hazard".
2. The insurance provided to the additional insured by this endorsement is limited as follows:
 - a. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this policy.
 - b. This insurance does not apply to the rendering of or failure to render any "professional services".
 - c. This endorsement does not increase any of the limits of insurance stated in **D. Liability And Medical Expenses Limits of Insurance**.
3. The following is added to **SECTION III H.2. Other Insurance – COMMON POLICY CONDITIONS (BUT APPLICABLE ONLY TO SECTION II – LIABILITY)**

However, if you specifically agree in a contract or agreement that the insurance provided to an

additional insured under this policy must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:

- a. The "bodily injury" or "property damage" for which coverage is sought occurs after you have entered into that contract or agreement; or
- b. The "personal and advertising injury" for which coverage is sought arises out of an offense committed after you have entered into that contract or agreement.

4. The following is added to **SECTION III K. 2. Transfer of Rights of Recovery Against Others to Us – COMMON POLICY CONDITIONS (BUT APPLICABLE TO ONLY TO SECTION II – LIABILITY)**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" arising out of "your work" performed by you, or on your behalf, under a contract or agreement with that person or organization. We waive these rights only where you have agreed to do so as part of a contract or agreement with such person or organization entered into by you before the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

BUSINESS AUTO COVERAGE FORM

A. Broad Form Named Insured

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any business entity newly acquired or formed by you during the policy period, provided you own fifty percent (50%) or more of the business entity and the business entity is not separately insured for Business Auto Coverage. Coverage is extended up to a maximum of one hundred eighty (180) days following the acquisition or formation of the business entity.

This provision does not apply to any person or organization for which coverage is excluded by endorsement.

B. Employees As Insureds

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Blanket Additional Insured

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any person or organization that you are required to include as an additional insured on this coverage form in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs is an "insured" for liability coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

The insurance provided to the additional insured will be on a primary and non-contributory basis to the additional insured's own business auto coverage if you are required to do so in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs.

D. Blanket Waiver Of Subrogation

The following is added to the **SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against any person or organization to the extent required of you by a contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out

of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

E. Employee Hired Autos

1. The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. Changes In General Conditions:

Paragraph **5.b.** of the **Other Insurance** Condition in the **BUSINESS AUTO CONDITIONS** is deleted and replaced with the following:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

(1) Any covered "auto" you lease, hire, rent or borrow; and

(2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

F. Fellow Employee Coverage

SECTION II – COVERED AUTOS LIABILITY COVERAGE, Exclusion B.5. does not apply if you have workers compensation insurance in-force covering all of your employees.

G. Auto Loan Lease Gap Coverage

SECTION III – PHYSICAL DAMAGE COVERAGE, C. Limit Of Insurance, is amended by the addition of the following:

In the event of a total "loss" to a covered "auto" shown in the Schedule of Declarations, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

1. The amount paid under the **PHYSICAL DAMAGE COVERAGE** section of the policy; and

2. Any:

a. Overdue lease/loan payments at the time of the "loss";

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2 % of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

All persons or organizations that are party to a contract that requires you to obtain this agreement, provided you executed the contract before the loss.

Job Description

Jobs performed for any person or organization that you have agreed with in a written contract to provide this agreement.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Named Insured: Environmental Science Associates
Policy Number: PSW0004135
Insurance Company: RLI Insurance Company

Countersigned By _____

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Exhibit "D"
(GRANT TERMS AND CONDITIONS)

Title: Whatcom County LIO – FFY 2023-2025 Funding

1. DEFINITIONS

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

- A. "AGENCY" means the Puget Sound Partnership (PSP) of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- B. "AGENT" means the Director, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "CONTRACTOR" means that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- D. "DEBARMENT" means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.
- E. "EPA" means U.S. Environmental Protection Agency.
- F. "SUBCONTRACTOR" means one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.
- G. "SUB-RECIPIENT" means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a contractor is provided in 2 CFR §200.330. Subrecipient and contractor determinations.

2. AMERICANS WITH DISABILITIES ACT (ADA)

If the contract includes federal funding, the CONTRACTOR must comply with Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance. The CONTRACTOR may also be required to 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.

3. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

4. AMENDMENT

This Agreement 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.

5. ASSIGNMENT

The work to be provided under this Agreement, and any claim arising under this Agreement, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

6. ASSURANCES

The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state and local laws, rules, and regulations as they currently exist or as amended.

This Agreement 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.

5. ASSIGNMENT

The work to be provided under this Agreement, and any claim arising under this Agreement, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

6. ASSURANCES

The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state and local laws, rules, and regulations as they currently exist or as amended.

7. CONFIDENTIALITY

Confidential information: The CONTRACTOR shall not use or disclose any information that is identified as such, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties. However, the parties acknowledge that state and local agencies are subject to chapter 42.56 RCW, the Public Records Act.

Personal Information (one form of confidential information): Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law. Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the AGENCY for any damages related to the CONTRACTOR'S unauthorized use of personal information.

8. CREDIT AND ACKNOWLEDGEMENT

Reports, documents, signage, videos, or other media, developed as part of projects funded by EPA funded Agreements shall display both the EPA and Puget Sound Partnership logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency under Assistance Agreement CE01J97401 to Puget Sound Partnership. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

9. DEBARMENT AND SUSPENSION

CONTRACTOR, by signature to this Contract, certifies that CONTRACTOR is not presently debarred, suspended, proposed for debarment, declared ineligible, or

voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). CONTRACTOR shall comply with applicable federal agency debarment and suspension rules adopted pursuant to Office of Management and Budget guidance at 2 CFR Part 180, such as 2 CFR Part 1532 for the Environmental Protection Agency, which implement Executive Order 12549. CONTRACTOR acknowledges that failing to disclose the information required at 2 CFR 180.335 may result in the delay or negation of this contract, or pursuance of legal remedies, including suspension and debarment.

CONTRACTOR shall not award subcontracts or subawards to persons (individuals or organizations) listed on the Excluded Parties List located at www.sam.gov/. CONTRACTOR agrees to include the above requirements in all subcontracts into which it enters. The CONTRACTOR shall immediately notify AGENCY if, during the term of this Contract, CONTRACTOR becomes Debarred. AGENCY may immediately terminate this Contract by providing CONTRACTOR written notice if CONTRACTOR becomes Debarred during the term hereof.

10. DISALLOWED COSTS

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

11. DISPUTES

In the event that CONTRACTOR is a state agency and a dispute arises under this Agreement, either of the parties may request intervention by the Governor, as provided by chapter 43.17.330 RCW, in which event the Governor's process will control.

In the event that a dispute arises under this Agreement, and the CONTRACTOR is not a state agency, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall evaluate the facts, Agreement terms, applicable statutes and rules, and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on both parties.

The cost of resolution will be borne as allocated by the Dispute Board or the Governor.

12. DUPLICATION OF BILLED COSTS

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

13. GOVERNING LAW AND VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought under this Agreement shall be in Superior Court for Thurston County.

14. HOTEL MOTEL FIRE SAFETY ACT

The Hotel and Motel Fire Safety Act of 1990 (Public Law 101-391) establishes a number of fire safety standards which must be met for hotels and motels. Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a if any portion of this contract will be paid with federal funds, CONTRACTOR agrees to 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 (PL 101-391, as amended). CONTRACTOR may search the Hotel-Motel National Master List at: <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

If necessary, the head of the Federal agency may waive this prohibition in the public interest.

15. INDEPENDENT CAPACITY

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

16. INTELLECTUAL PROPERTY RIGHTS

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act 17 U.S.C. § 101, et seq., and shall be owned by the AGENCY. Where federal funding is involved, the awarding federal agency may have a proprietary interest in patent rights to any inventions that are developed by the CONTRACTOR as provided in 35 U.S.C. §§ 200-212 and 37 CFR part 401 and retains a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

CONTRACTOR acknowledges that in accordance with 40 CFR 30.36 and 31.34, EPA has the rights to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or:
- termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

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.

In the event the materials are not considered "works for hire" under the U.S. Copyright laws CONTRACTOR shall grant AGENCY, and any federal entity which provided federal funds used in this contract, retain 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.

Material which CONTRACTOR uses to perform the contract but is not created for or paid for by AGENCY is not "work made for hire"; however, CONTRACTOR grant the AGENCY a nonexclusive, royalty-free, irrevocable license to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display, provided that such license shall be limited to the extent which CONTRACTOR has a right to grant such a license to use this material for AGENCY internal purposes at no charge to AGENCY.

17. INTERNATIONAL TRAVEL (including Canada) – FOR FEDERAL FUNDED AGREEMENTS ONLY

All International Travel must be approved by the Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your EPA Project Officer as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can obtain appropriate approvals from EPA Headquarters. If you have questions, please contact your EPA Project Officer listed on the front page of the Award Document

18. LIGHT REFRESHMENTS and/or MEALS

Unless the event(s) and all of its components are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- 1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- 2) A description of the purpose, agenda, location, length and timing for the event; and,
- 3) An estimated number of participants in the event and a description of their roles.

Cost for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under EPA assistance agreements.

19. LOBBYING PROHIBITED

- a. By signing this contract, CONTRACTOR agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying, 31 U.S.C. § 1352, and 40 CFR Part 30 if applicable. CONTRACTOR shall include the language of this provision in subcontracts that exceed \$100,000 of federal funds and require all subcontractors to certify and disclose accordingly.

No Federal appropriated funds shall be paid by or on behalf of the CONTRACTOR to any person for influencing or attempting to influence an

officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- b. If this contract includes federal funds exceeding \$100,000, CONTRACTOR shall sign and submit to AGENCY Exhibit D, Attachment 2, PSP Certification Regarding Lobbying (based on EPA Form 6600-06 (Rev. 06/2008)). If CONTRACTOR signed and submitted the PSP Certification Regarding Lobbying form during the procurement process for this contract it is not necessary to resubmit the certification.
- c. If CONTRACTOR expends non-federal funds in any amount to lobby as detailed in a., above, CONTRACTOR shall complete and submit to Standard Form LLL (Rev. 4/2012), Disclosure of Lobbying Activity. The form can be found at:
http://www.epa.gov/ogd/AppKit/form/sfillin_sec.pdf.

20. LOBBYING AND LITIGATION

a. All recipients

- i. The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- ii. The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.
- iii. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- iv. Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- v. Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

21. NONDISCRIMINATION and DISADVANTAGED BUSINESS ENTERPRISES

In accordance with 40 CFR 33.106 and its Appendix A, the CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor 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 contractor to carry out these requirements is a

material breach of this contract which may result in the termination of this contract or other legally available remedies.

22. PAYMENT TO CONSULTANTS

EPA will limit its participation in salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipients' contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Sub agreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individual who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 30.27(b) or 40 CFR 31.369(j), as applicable, for additional information.

As of January 1, 2021, the limit is \$661.20 per day \$82.65 per hour.
(Calculations: 2021 Level IV Executive Schedule annual pay = \$172,500 / 2087 = \$82.65 per hour or \$661.20 per day).

23. PROJECT APPROVAL

The quality, extent and character of any and all work, deliverables and/or services to be performed under this agreement by the CONTRACTOR shall be subject to the review and approval of the AGENCY through the Project Manager or other designated official. In the event that the AGENCY determines, that any work, deliverable, and/or service performed by the CONTRACTOR is unsatisfactory, the AGENCY may withhold reimbursement for the unsatisfactory work performed by the CONTRACTOR or require that the CONTRACTOR remediate their work product to get it to the satisfaction of the AGENCY. Such approval and satisfaction not be unreasonably withheld. The Parties may agree in the Statement of Work to specific approval, acceptance, and/or remediation terms. If the Statement of Work is silent on this topic, the Disputes provision, above, will govern the resolution process.

24. RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. CONTRACTOR shall retain such records for a period of six years following the date of final payment.

At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the AGENCY, personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. If this contract exceeds \$100,000 and any portion of the funding source is federal, the federal funding agency, the Comptroller General of the United States, or any duly authorized representatives shall have access to books documents,

papers, and records of CONTRACTOR directly pertinent to this contract for purpose of making audits, examination, excerpts and transcriptions (40 CFR30.48(d)).

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.

25. RECYCLED PAPER

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchases of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40CFR 247.

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), Sub-Recipient agrees to use recycled paper and double sided printing for all reports which are prepared as part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

26. RESPONSIBILITIES OF THE PARTIES

Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any negligent act or omissions on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act, or omission of any person, agency, firm, or corporation not a part to this Agreement.

27. SEVERABILITY

If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

28. STATE GRANT CYBERSECURITY

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure.

(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange.

29. SUBCONTRACTING

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the agency for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts

30. TERMINATION DUE TO FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the AGENCY may terminate the contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the AGENCY'S discretion under those new funding limitations and conditions. Agency will reimburse CONTRACTOR for all expenses incurred, including non-cancelable expenses, up until the date of termination.

31. TERMINATION FOR CAUSE

If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

32. TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement upon 30 calendar days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for the performance rendered or costs incurred, including NON-CANCELABLE expenses, in accordance with the terms of this Agreement prior to the effective date of termination.

33. TREATMENT OF ASSETS

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

- a. Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this contract.
- b. The CONTRACTOR shall be responsible for any loss or damage to property

of the AGENCY that results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.

- c. If any AGENCY property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
- d. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY prior to settlement upon completion, termination or cancellation of this contract.
- e. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

34. 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 Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.