

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: December 14, 2020**

<b>AGENDA ITEM:</b>	
Dept. of Ecology Grant – Publicly available Electric Vehicle Supply Equipment along high-traffic transportation corridors in WA	
<b>PREPARED BY:</b> Bryan Milligan	<b>DIRECTOR APPROVAL:</b>
<b>DEPARTMENT:</b> Executive - Public Works	
<b>ATTACHMENTS:</b> Agreement No. AQVCC-1921-MaryPW-00046	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
	(\$190,000.00)
	\$63,898.44
<b>SUMMARY:</b>	

Ecology is awarding this grant to support the City of Marysville with the purchase and installation of two publicly accessible DC Fast Chargers for electric vehicles along high traffic corridors in Washington. This grant requires a minimum 25% recipient match of funds totaling \$63,898.44.

The location of this project is at 1404 5<sup>th</sup> St, adjacent to Comeford Park and the new Civic Center. This location has been selected to be repurposed as a public parking lot to help alleviate parking needs for downtown businesses and visitors. It is believed the installation of the DC Fast Chargers with their signage and notoriety will bring more of the traditional pass through travelers to our downtown area as electric vehicle usage increases. In turn increasing the potential of more business for and use of amenities in the downtown area.

It should be noted that the DC Fast Chargers will be a pay per use operation and it is assumed that the income could be used to cover their operating cost. The purchase of the EV Chargers also would include a comprehensive maintenance and management program that covers everything needed to keep EV charging stations up and running for a minimum of 5 years, with the option to extend.

**RECOMMENDED ACTION:**

Staff recommends that Council authorize the Mayor to sign and execute the agreement with the Department of Ecology, accepting the grant for \$190,000.00.

**RECOMMENDED MOTION:**

I move to authorize the Mayor to sign and execute the attached Department of Ecology Agreement.



## Agreement No. AQVWCC-1921-MaryPW-00046

### AIR QUALITY VOLKSWAGEN EV CHARGING INFRASTRUCTURE ALONG HIGH-TRAFFIC TRANSPORTATION CORRIDORS AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF MARYSVILLE PUBLIC WORKS DEPARTMENT

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and CITY OF MARYSVILLE PUBLIC WORKS DEPARTMENT, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

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#### GENERAL INFORMATION

Project Title:	Publicly available EVSE along high-traffic transportation corridors in WA
Total Cost:	\$253,898.44
Total Eligible Cost:	\$253,333.33
Ecology Share:	\$190,000.00
Recipient Share:	\$63,333.33
The Effective Date of this Agreement is:	09/01/2020
The Expiration Date of this Agreement is no later than:	06/30/2027
Project Type:	Volkswagen

#### Project Short Description:

This project will install two (2) 62 kW dual-head DC fast chargers at 1404 5th St, Marysville, WA 98270. Ecology is awarding this grant to support City of Marysville Public Works Department with their purchase and installation of publicly accessible DC fast chargers along high-traffic transportation corridors in Washington. This grant is made possible through Washington’s allocation of federal Volkswagen (VW) settlement mitigation trust funds.

#### Project Long Description:

We are working to reduce greenhouse gas emissions to protect Washington's economy and environment from the effects of climate change. Transportation is the largest source of air pollution in Washington, accounting for about 45 percent of total greenhouse gas emissions in 2017. On-road gasoline and diesel vehicles account for about 72 percent of the transportation sector’s greenhouse gas emissions.

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Investing in electric vehicle (EV) charging infrastructure promotes greater use of zero emission vehicles, which, in turn, improves air quality and leads to a general reduction in all air pollution, including greenhouses gases, from mobile sources. The availability of publicly accessible DC fast chargers along high-traffic transportations corridors reduces range-anxiety, and improves public awareness of electric vehicles and electric vehicle charging infrastructure.

Governor Inslee appointed Washington Department of Ecology (Ecology) as Lead Agency for Washington as a beneficiary of the Volkswagen trust funds.

Funds from this grant will install DC fast chargers, making charging more available and increasing public exposure to zero emission transportation. This will help accelerate the transition to zero emission vehicles.

Overall Goal:

Improve air quality by funding the Installation of new direct current (DC) fast charging equipment and/or upgrading existing DC fast charging equipment along high-traffic transportation corridors in Washington State. Investing in EV charging infrastructure will increase public exposure and availability of charging stations. This will increase EV usage which will reduce petroleum-based fuel consumption.

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Recipient Name: CITY OF MARYSVILLE PUBLIC WORKS DEPARTMENT

**RECIPIENT INFORMATION**

Organization Name: CITY OF MARYSVILLE PUBLIC WORKS DEPARTMENT

Federal Tax ID: 91-6001459

DUNS Number: 076658673

Mailing Address: 80 Columbia Ave.  
Marysville, WA 98270

Physical Address: 80 Columbia Ave.  
Marysville, Washington 98270

**Contacts**

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<b>Project Manager</b>	Bryan Milligan Project Manager  80 Columbia Ave. Marysville, Washington 98270 Email: bmilligan@marysvillewa.gov Phone: (360) 363-8100
<b>Billing Contact</b>	Suzanne Soule Financial Analyst  80 Columbia Ave. Marysville, Washington 98270 Email: ssoule@marysvillewa.gov Phone: (360) 363-8100
<b>Authorized Signatory</b>	Kari N Chennault Assistant Public Works Director  80 Columbia Avenue Marysville, Washington 98270 Email: kchennault@marysvillewa.gov Phone: (360) 363-8277

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Recipient Name: CITY OF MARYSVILLE PUBLIC WORKS DEPARTMENT

**ECOLOGY INFORMATION**

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

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

**Contacts**

<b>Project Manager</b>	<p>Brett Rude</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: brud461@ecy.wa.gov Phone: (360) 407-6847</p>
<b>Financial Manager</b>	<p>Carrol Johnston</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: carr461@ecy.wa.gov Phone: (360) 407-6805</p>
<b>Technical Advisor</b>	<p>Brett Rude</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: brud461@ecy.wa.gov Phone: (360) 407-6847</p>

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**AUTHORIZING SIGNATURES**

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

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

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

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

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

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

Washington State  
Department of Ecology

CITY OF MARYSVILLE PUBLIC WORKS DEPARTMEN

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

By:  11/19/2020

Kathy Taylor  
AQVW  
Program Manager  
Date

Kari N Chennault  
Assistant Public Works Director  
Date

Template Approved to Form by  
Attorney General's Office

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**Jon Nehring**

\_\_\_\_\_  
**Mayor**

**Date**



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Project Title: Publicly available EVSE along high-traffic transportation corridors in WA  
Recipient Name: CITY OF MARYSVILLE PUBLIC WORKS DEPARTMENT

**SCOPE OF WORK**

Task Number: 1 Task Cost: \$228,000.00

Task Title: Purchase and install EV charging infrastructure

Task Description:

Under this project the RECIPIENT will purchase and install two (2) 62 kW DC fast chargers at 1404 5th St, Marysville, WA 98270.

The RECIPIENT will provide at least 25% of the eligible costs of the project, as stated in the funding opportunity application.

In the event the site owner sells the property on which the project is located within the 5 year project timeframe, upon negotiation and agreement with ECOLOGY the RECIPIENT may:

- Transfer no less than the remaining term of the host-operator agreement to the new owner;
- Reimburse ECOLOGY the full value of grant funds provided for the project;
- Invest in electric vehicle charging infrastructure at an alternate location, the value of which shall be no less than the amount ECOLOGY provided the RECIPIENT in grant funds; or
- Propose an alternative to the above that recognizes and offsets the loss of the monetary value of ECOLOGY’S grant to RECIPIENT and the loss of publicly available electric vehicle charging infrastructure.

The RECIPIENT will ensure the DC fast chargers are operational at least 95% of the time on an annual basis, for a minimum five (5) years from the date the equipment is operational and open to the public.

In the event the equipment is not in place and functional for the full 5 years from the date the equipment is operational and open to the public, upon negotiation and agreement with Ecology, RECIPIENT will:

- Reimburse ECOLOGY the full value of grant funds provided for the project;
- Invest in electric vehicle charging infrastructure at an alternate location, the value of which shall be no less than the amount ECOLOGY provided the RECIPIENT in grant funds; or
- Propose an alternative to the above that recognizes and offsets the loss of the monetary value of ECOLOGY’S grant to RECIPIENT and the loss of publicly available electric vehicle charging infrastructure.

At the end of the project period, ECOLOGY and RECIPIENT understand and agree that RECIPIENT will retain equipment with no further compensation to the DEPARTMENT, provided that the RECIPIENT will continue to operate and maintain the equipment for the intended purpose or for a project compatible with the original intended use, unless otherwise agreed upon.

If the RECIPIENT decides to purchase charging equipment and/or maintenance plan or program other than that specified in the grant application, the RECIPIENT will complete a competitive procurement process for charging equipment and maintenance. The grant application will be amended to include an appropriate deliverable.

The RECIPIENT will make full payment for the costs of this project and submit all invoices and documents in order to receive reimbursement. See further details on when the first and final reimbursement requests can be made in Deliverable 1.2 and Task 2.

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ECOLOGY may grant a one-time extension of this grant for a period of up to one year.

Task Goal Statement:

City of Marysville Public Works Department installs two (2) 62 kW publicly available DC fast chargers for electric vehicles at 1404 5th St, Marysville, WA 98270.

Task Expected Outcome:

The objectives of this grant are to:

- Reduce harmful air pollution and greenhouse gas emissions associated with gasoline and diesel vehicles.
- Help accelerate the transition to new and used zero emission vehicles by enhancing public access and increasing public exposure to EV charging along high traffic roadways in Washington.

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### Purchase and install EV charging infrastructure

#### Deliverables

Number	Description	Due Date
1.1	<p>Quarterly Payment Requests/Progress Reports (PRPRs). RECIPIENT is required to submit a quarterly PRPR throughout the term of this agreement. Each PRPR should include an update on the current status of the project and should be submitted even if no funds are being requested.</p> <p>Due dates are as follows:</p> <ul style="list-style-type: none"> <li>- January 31: for the period October - December</li> <li>- April 30: for the period January - March</li> <li>- July 31: for the period April - June</li> <li>- October 31: for the period July - September</li> </ul>	
1.2	<p>Written notification that all necessary approvals and permits, as required by the appropriate jurisdiction, have been obtained. A copy of the electrical permit must be submitted to Ecology. The first reimbursement will not be approved until such written notification and required upload are uploaded to the Progress Report Form of the PRPR.</p>	03/30/2022
1.3	<p>For construction and installation procurement process, provide Ecology:</p> <ul style="list-style-type: none"> <li>- method of vendor notification of bid opportunity and how many bidders were notified</li> <li>- evaluation summary of bids received</li> <li>- award letter or notice of contract award</li> <li>- awarded contractor name, contract number, date contract was executed</li> </ul>	03/30/2022
1.4	<p>Written, completed cultural resources plan (Inadvertent Discovery Plan). Template will be provided by ECY. Must be submitted in the Uploads section under the Application Menu Must be submitted prior to beginning construction.</p>	03/30/2022
1.5	<p>Executed final maintenance agreement, if applicable. Copy must be submitted in the Uploads section under the Application Menu.</p>	06/30/2022
1.6	<p>Written notification of construction beginning, may be included in quarterly reporting as appropriate.</p>	03/30/2022
1.7	<p>Equipment Purchase Report (EPR) for each charging station. EPRs must be submitted when payment is requested.</p>	06/30/2022
1.8	<p>Ecology's Project Report Supplement submitted electronically with each Payment Request/Progress Report (PRPR). Must be submitted in the Uploads section on the Progress Report page for each PRPR.</p>	06/30/2027

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1.9	Final Payment Request/Progress Report (PRPR). Please ensure both the Payment Request Form and the Progress Report Form are marked final. If RECIPIENT's five year operational period is complete prior to this date, final PRPR may be submitted early.	06/30/2027
1.10	Recipient Close Out report. If RECIPIENT's five year operational period is complete prior to this date, Close-Out Report may be submitted early.	06/30/2027

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**SCOPE OF WORK**

Task Number: 2 **Task Cost: \$25,333.33**

Task Title: Proof of Final Signage and Activated EVSE

Task Description:

Proof of installed final signage, final inspection and written notification of networking and charger activation must be submitted to Ecology before release of final 10% of awarded funds is authorized.

Task Goal Statement:

Ensure final signage is in place, final inspection is complete and publicly available DC fast chargers are networked, activated and ready for public use.

Task Expected Outcome:

The objectives of this grant are to:

- Reduce harmful air pollution and greenhouse gas emissions associated with gasoline and diesel vehicles.
- Help accelerate the transition to new and used zero emission vehicles by enhancing public access and increasing public exposure to EV charging along high traffic roadways in Washington.

**Proof of Final Signage and Activated EVSE**

**Deliverables**

Number	Description	Due Date
2.1	Final inspection must be submitted to Ecology. Reimbursement of remaining 10% will not be approved until final inspection has been uploaded to the Progress Report of the PRPR.	06/30/2022
2.2	Written confirmation, including photos, that all final signage is in place and that EVSE is networked, activated and ready for use by the public, may be included in quarterly reporting.	06/30/2022

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**BUDGET**

**Funding Distribution EG210057**

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

Funding Title: VW Settlement Funds Funding Type: Grant  
 Funding Effective Date: 09/01/2020 Funding Expiration Date: 06/30/2027

Funding Source:

Title: General Fund Private Local Volkswagen Settlement  
 Type: State  
 Funding Source %: 100%  
 Description: Volkswagen Settlement

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

VW Settlement Funds	Task Total
Purchase and install EV charging infrastructure	\$ 228,000.00
Proof of Final Signage and Activated EVSE	\$ 25,333.33

**Total: \$ 253,333.33**

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**Funding Distribution Summary**

**Recipient / Ecology Share**

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
VW Settlement Funds	25.00 %	\$ 63,333.33	\$ 190,000.00	\$ 253,333.33
<b>Total</b>		<b>\$ 63,333.33</b>	<b>\$ 190,000.00</b>	<b>\$ 253,333.33</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS**

**GENERAL FEDERAL CONDITIONS**

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

**A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY**

**EXCLUSION:**

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

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Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.

8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

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

##### **REQUIREMENTS:**

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

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

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

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

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



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## GENERAL TERMS AND CONDITIONS

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

#### GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 7-1-2019 VERSION

##### 1. ADMINISTRATIVE REQUIREMENTS

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

##### 2. AMENDMENTS AND MODIFICATIONS

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

##### 3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

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

##### 4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
  - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
  - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
  - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.

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- Make the IDP readily available to anyone working at the project site.
- Discuss the IDP with staff and contractors working at the project site.
- Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
  - Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement:
  - Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

#### 5. ASSIGNMENT

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

#### 6. COMMUNICATION

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

#### 7. COMPENSATION

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

#### 8. COMPLIANCE WITH ALL LAWS

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

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of

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Washington which affect wages and job safety.

- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.

d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

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

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

#### 9. CONFLICT OF INTEREST

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

#### 10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

#### 11. DISPUTES

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

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review. The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

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

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

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

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accordance with the decision rendered.

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

## 12. ENVIRONMENTAL DATA STANDARDS

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

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

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

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

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

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

## 13. GOVERNING LAW

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

## 14. INDEMNIFICATION

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

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

## 15. INDEPENDENT STATUS

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

## 16. KICKBACKS

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

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

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

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

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

#### 18. ORDER OF PRECEDENCE

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

#### 19. PRESENTATION AND PROMOTIONAL MATERIALS

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

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

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

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

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

#### 20. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through

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September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.

e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

## 21. PROPERTY RIGHTS

a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.

b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.

c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.

d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.

e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:

1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.

2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.

g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

## 22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

a) Be kept in a manner which provides an audit trail for all expenditures.

b) Be kept in a common file to facilitate audits and inspections.

c) Clearly indicate total receipts and expenditures related to this Agreement.

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d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder. RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination. All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder. RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

**23. RECOVERY OF FUNDS**

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

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

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

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

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

**24. SEVERABILITY**

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

**25. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

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

**26. SUSPENSION**

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

**27. SUSTAINABLE PRACTICES**

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

a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and

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imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

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

## 28. TERMINATION

### a) For Cause

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

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

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

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

### b) For Convenience

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

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

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

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

### c) By Mutual Agreement

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

**d) In Event of Termination**

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

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

**29. THIRD PARTY BENEFICIARY**

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

**30. WAIVER**

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