



# MONROE CITY COUNCIL

## Agenda Bill No. 20-033

<b>SUBJECT:</b>	<b><i>Accept the Washington State Department of Ecology Grant and Loan and Authorize Mayor to Sign Agreement with Ecology for Blueberry Infiltration Project.</i></b>
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DATE:	DEPT:	CONTACT:	PRESENTER:	ITEM:
02/25/2020	Public Works Design & Construction	Jim Gardner	Scott Peterson	Consent Agenda #4

**Discussion:** 11/01/2016; 11/15/2016; 01/16/2018; 04/10/2018; 07/23/2018

- Attachments:**
1. Ecology Grant and Loan Agreement
  2. Opinion of Legal Counsel
  3. Vicinity Map

**REQUESTED ACTION:** Move to accept the Washington State Department of Ecology Grant and Loan and authorize the Mayor to sign agreement with Ecology.

### POLICY CONSIDERATIONS

*In accordance with Section 4.2 of the Procurement Policies & Procedures, contracts costing \$100,000 or more require City Council approval.*

### DESCRIPTION/BACKGROUND

Blueberry Lane experiences flooding several times a year due to a failing stormwater infiltration system located under Children’s Park near the intersection of Blueberry Lane and King Street (see Vicinity Map). The 2015-2025 City of Monroe Comprehensive Plan capital project list identifies the Blueberry Infiltration/Conveyance project as SW1 and the Blueberry/North Kelsey – Infiltration /Conveyance project as SW2 (Page 31 of Appendix H).

On December 6, 2016, City Council passed Ordinance No. 019/2016 to authorize the use of bond revenues to complete the design and construction of a new Public Works Shop facility and stormwater system improvements. On January 16, 2018, the Council authorized the preparation of Plans and Specifications and solicitation of bids for construction for 2018 Capital Improvement Projects which included Blueberry Stormwater Improvements. On April 10, 2018, the City designated bond money left over from the shop construction be used for designing the Blueberry Lane Stormwater System Improvements.

The project design was delayed during 2018 until construction of the Public Works shop was completed and the remaining bond amount was determined and made available for this project. Meanwhile, engineering staff successfully applied for a combined grant (\$2,633,250) and low interest loan (\$877,750) from the Department of Ecology. The combined amount of \$3,155,100 provides a substantial amount of funds to complete the project. The Department of Ecology granted the City permission to begin reimbursable design work prior to signing of an agreement with Ecology. City staff began planning for the design phase by soliciting engineering design services. BHC Consultants was determined to be the most qualified to investigate the limits of the drainage basin and design the necessary infiltration features to properly handle the runoff causing the flooding problem. Services also included necessary support work such as surveying, Cultural Resource Survey and Geotechnical reports. The new system will be designed in accordance with the current stormwater management regulations.

In August of 2019 Ecology notified Staff that the site was located in a designated Cultural Resource Area. The agreement could not be signed until it was determined that excavations could occur in this area. This required review and field work by the Cultural Resource Survey firm to determine the limits of the Resource Area. It has been determined that geotechnical excavations may occur within the Cultural Resource Area with an Archaeologist on site observing the excavation work. After the geotechnical excavations are completed a determination will be made on whether or not an Archaeologist must observe excavations during construction.

Ecology has now completed the Grant and Loan Agreement process and the attached agreement has been reviewed by legal counsel and approved for signature.

**FISCAL IMPACTS**

This project was included in the six year adopted capital listing with an overall approved project budget of \$3,548,380. This figure included some design, construction and project management by a consultant originally anticipated in fiscal year 2019. Due to delays caused by the determination that the project was located in a Cultural Resource Area, the project budget in 2019 will be carried over into fiscal years 2020 and 2021. The following table represents the updated breakdown estimates for this project:

Table 1 - Design (PE) Budget

Phase	Anticipated Costs	Ecology Funded Costs
Design	\$ 549,000	\$549,000
Construction Management	\$ 219,000	\$ 219,000
Construction	\$2,743,000	\$2,743,000
Total	\$3,511,000	\$3,511,000

Ecology is providing \$2,633,250 from the SFAP Grand fund and a loan of \$877,750 from the Clean Water State Revolving Fund for a 20 year period at an interest rate of 2.0%.for a total funding of \$3,511,000.

**TIME CONSTRAINTS**

Chances of constructing this year are slim due to the Cultural Resource Area delays. Staff seeks to advertise during the earlier part of next year in an attempt to obtain lower pricing.

**ALTERNATIVES**

1. Do not approve. Provide direction to the Mayor and City Staff to areas of concern.
2. Approve with Council recommendations.



# Agreement No. WQC-2020-MonrDC-00056

## WATER QUALITY COMBINED FINANCIAL ASSISTANCE AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF MONROE

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 Monroe, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

### GENERAL INFORMATION

Project Title:	Blueberry Lane Infiltration/Conveyance
Total Cost:	\$3,511,000.00
Total Eligible Cost:	\$3,511,000.00
Ecology Share:	\$3,511,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2019
The Expiration Date of this Agreement is no later than:	10/31/2023
Project Type:	Stormwater Facility

#### Project Short Description:

This project will protect water quality in a highly sensitive aquifer through installation of a treatment and infiltration system that meets current design criteria. This project will provide treatment for total suspended solids (TSS), dissolved copper, dissolved zinc, and total phosphorus, and provide flow control for approximately 21 acres.

#### Project Long Description:

Around 1980, a developer installed infiltration systems along Blueberry Lane and King Street. This system was turned over to the City upon completion. The system consists of infiltration trenches along Blueberry Lane and satellite trenches along some of the side streets in the area. The trenches are designed to infiltrate water to the extent feasible and when there is more water than the satellite system can handle, water inside the catch basin will enter an overflow pipe which conveys the water to the next satellite infiltration area. This repeats until the flow eventually enters into infiltration trenches at Children’s Park. The only treatment required when the system was constructed was a

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down-turned elbow to separate floatables as they entered the satellite and park infiltration areas. The park trenches are 9 feet to the bottom of the pipe and 9.5 feet to the bottom of trench. Monitoring of the ground water in the park area indicates an ordinary high water elevation of 12 feet below ground. This provides a 2.5-foot separation between the bottom of the trench and the ordinary high water level. Current standards require a 5-foot separation unless a mounding analysis is performed indicating that the separation could be reduced to no less than 3 feet.

The soil in this area is a gravelly coarse sand below approximately 4 feet, so the soil provides no treatment of contaminants. The ground water in the area is about 12 feet below ground. In 1990, Snohomish County adopted a policy for the protection of groundwater and identified this area as a High Sensitivity Aquifer. The City feels it is necessary to retrofit the existing system due to the high ground water level, the inadequate separation between trench bottom and ordinary high water level, and the inadequate level of treatment the existing system provides. The replacement system may simply reconstruct the existing trench system, or it could use an infiltration bed depending upon what is determined to be the most cost effective while still meeting the environmental protection guidelines.

The RECIPIENT will design and install a combination of pre-settling or pre-treatment units (filter cartridges) to pretreat stormwater entering the trenches. The RECIPIENT will also replace the existing media in the trenches with clean fill, which will prevent pollutants accumulated over the years from contaminating the ground water.

Overall Goal:

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

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Recipient Name: City of Monroe

**RECIPIENT INFORMATION**

Organization Name: City of Monroe

Federal Tax ID: 91-6001464

DUNS Number: 039269899

Mailing Address: 806 W. Main St.  
Monroe, Washington 98272

Physical Address: 806 West Main St.  
Monroe, Washington 98272

**Contacts**

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 Recipient Name: City of Monroe

<p><b>Project Manager</b></p>	<p>James Gardner, P.E.                  Senior Engineer</p> <p>806 W. Main St                  Monroe, Washington 98272                  Email: <a href="mailto:jgardner@monroewa.gov">jgardner@monroewa.gov</a>                  Phone: (360) 863-4542</p>
<p><b>Billing Contact</b></p>	<p>Jammi Guion                  Contract Documents Coordinator</p> <p>806 West Main St.                  Monroe, Washington 98272                  Email: <a href="mailto:jguion@monroewa.gov">jguion@monroewa.gov</a>                  Phone: (360) 863-4514</p>
<p><b>Authorized Signatory</b></p>	<p>Brad F. Feilberg, P.E.,                  Public Works Director</p> <p>806 W Main St                  Monroe, Washington 98272                  Email: <a href="mailto:bfeilberg@monroewa.gov">bfeilberg@monroewa.gov</a>                  Phone: (360) 863-4540</p>

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 Recipient Name: City of Monroe

**ECOLOGY INFORMATION**

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

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

**Contacts**

<p><b>Project Manager</b></p>	<p>Melisa Snoeberger</p> <p>3190 - 160th Ave SE                  Bellevue, Washington 98008-5452                  Email: msno461@ecy.wa.gov                  Phone: (425) 649-7047</p>
<p><b>Financial Manager</b></p>	<p>Sarah Zehner                  Water Quality Financial Manager</p> <p>PO Box 47600                  Olympia, Washington 98504-7600                  Email: szez461@ecy.wa.gov                  Phone: (360) 407-7196</p>
<p><b>Technical Advisor</b></p>	<p>Ryan Gardiner</p> <p>PO Box 47600                  Olympia, Washington 98504-7600                  Email: ryga461@ecy.wa.gov                  Phone: (360) 407-6470</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 Monroe

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

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

David Giglio  
Water Quality  
Acting Program Manager  
Date

Brad F. Feilberg, P.E.,  
Public Works Director  
Date

Template Approved to Form by  
Attorney General's Office

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Geoffrey Thomas

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Mayor

Date

**SCOPE OF WORK**

Task Number: 1 **Task Cost:** \$110,000.00

Task Title: Grant and Loan Administration

Task Description:

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

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

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

Task Goal Statement:

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

Task Expected Outcome:

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

\* Properly maintained project documentation.

**Grant and Loan Administration**

**Deliverables**

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

## SCOPE OF WORK

Task Number: 2 **Task Cost:** \$548,500.00

Task Title: Design Plans and Specs, Environmental Review

### Task Description:

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

A. RECIPIENT will prepare a State Environmental Review Process (SERP) packet, including a cost effectiveness analysis.

B. RECIPIENT will develop a fiscal sustainability plan. If professional services are procured, RECIPIENT will procure in accordance with federal law. RECIPIENT must submit contracts for professional services prior to ECOLOGY reimbursement. RECIPIENT will certify that the plan contains the required elements listed below and is implemented.

1. An inventory of critical assets that belong to the utility.
2. An evaluation of condition and performance of critical assets.
3. A plan to maintain, repair, and replace critical assets and fund those activities.
4. A process to evaluate and implement water and energy conservation efforts as part of the plan.

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

D. RECIPIENT will comply with Executive Order (05-05) cultural resources review requirements. To initiate cultural resources review, RECIPIENT will:

1. Submit to ECOLOGY the 05-05/106 Form. All submitted materials must conform to the Department of Archeology and Historic Preservation's Washington State Standards for Cultural Resource Reporting.
2. Develop and submit to ECOLOGY an Inadvertent Discovery Plan (IDP), using ECOLOGY template. RECIPIENT will ensure contractors and subcontractors have a copy of the completed IDP prior and while working on-site. The template is on the ECOLOGY website.

Ground disturbing work (including geotechnical investigations) completed prior to written notice to proceed from ECOLOGY are not eligible for reimbursement.

E. RECIPIENT will develop a project Design Report. Projects must be designed in accordance with the Stormwater Management Manual for Eastern Washington, Stormwater Management Manual for Western Washington, or equivalent manual. Project must be reviewed and accepted in writing by ECOLOGY to be eligible for reimbursement.

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

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1. Design Report. Design Report must conform to the Stormwater Project Deliverables Guidance. Refer to the Ecology website for specific guidance.

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

2. 90 Percent Design Package. At a minimum, this package must include 90 percent plans, specifications, engineer's opinion of cost, which includes a schedule of eligible costs, and project construction schedule. For current bid inserts and specifications refer to the ECOLOGY website.

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

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

Task Goal Statement:

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

Task Expected Outcome:

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

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## Design Plans and Specs, Environmental Review

### Deliverables

Number	Description	Due Date
2.1	SERP packet and cost effectiveness analysis. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.2	Certification that the Fiscal Sustainability Plan has been developed and is being implemented.	
2.3	List of permits acquired, and environmental review documents. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.4	Submit the ECOLOGY 05-05/106 Form and any supplemental cultural resources documentation including Cultural Resource surveys directly to the Ecology Project Manager. Upload the Final Determination Letter to EAGL.	
2.5	Inadvertent Discovery Plan. Ecology template. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.6	Contract documents (if contracting out for design). Upload to EAGL and notify ECOLOGY when upload is complete.	
2.7	Design Report. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.8	Responses to ECOLOGY Design Report comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.9	Ecology Design Report Acceptance Letter. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.10	90 Percent Design Package. Upload to EAGL and notify ECOLOGY when complete.	
2.11	Responses to ECOLOGY 90 Percent Design Package comments. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.12	Ecology 90 Percent Design Acceptance Letter. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.13	Final Bid Package. Upload to EAGL and notify ECOLOGY when upload is complete.	
2.14	Responses to ECOLOGY Final Bid Package comments. Upload to EAGL and notify ECOLOGY when upload is complete.	

## SCOPE OF WORK

Task Number: 3 **Task Cost:** \$109,500.00

Task Title: Construction Management

### Task Description:

A. The RECIPIENT will provide construction oversight and management of the project.

B. The RECIPIENT will submit a detailed Construction Quality Assurance Plan (CQAP) to ECOLOGY for review and acceptance before the start of construction. This plan must describe how the RECIPIENT will perform adequate and competent construction oversight. Once accepted by Ecology, upload to EAGL. CQAP development guidance is available on the ECOLOGY website.

C. The RECIPIENT will conduct a pre-construction conference meeting and invite ECOLOGY to attend.

D. The RECIPIENT will submit an updated project schedule with projected cash flow to ECOLOGY within 30 days of the start of construction. The RECIPIENT will revise and/or update the project schedule whenever major changes occur and at a minimum of every three months. The RECIPIENT will submit the updated schedule to ECOLOGY with the quarterly report. When changes in the construction schedule affect previous cash flow estimates, The RECIPIENT must submit revised cash flow projections to ECOLOGY.

E. Prior to execution, the RECIPIENT will submit in writing any eligible change orders that deviate from ECOLOGY-accepted plans and specifications for ECOLOGY review and acceptance. ECOLOGY must review and accept all change orders that affect grant eligible activities prior to implementation, and all other change orders for technical merit. Change orders are to be signed by the contractor, the engineer (if appropriate), and the RECIPIENT prior to submittal to ECOLOGY for acceptance.

F. The RECIPIENT will operate and maintain the constructed facility for the design life of the facility. Additionally, the RECIPIENT will develop and submit an Operations and Maintenance (O&M) plan for all Water Quality Best Management Practices to ECOLOGY for review. The O&M plan will describe how the RECIPIENT will ensure project success consistent with the design manual used. The O&M plan must also address long-term activities to assure ongoing pollutant removal and flow-control capability of the project in accordance with the design manual. O&M plan development guidance is available on the ECOLOGY website.

G. Upon completion of construction, the RECIPIENT will provide to ECOLOGY:

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

2. GIS compatible project area in Shapefile, Geodatabase file, or ECOLOGY-approved equivalent. The project area should include features for treatment facilities and contributing areas.

### Task Goal Statement:

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

Task Expected Outcome:

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

**Construction Management**

**Deliverables**

Number	Description	Due Date
3.1	Construction Quality Assurance Plan. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.2	Pre-construction conference meeting minutes. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.3	Project Schedule. Upload and notify ECOLOGY when upload is complete.	
3.4	Revised construction cost estimates when changes in construction schedule occur. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.5	Change Order(s). Upload to EAGL and notify ECOLOGY when upload is complete.	
3.6	Copy of Facility Operation and Maintenance Plan. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.7	Stormwater Construction Completion Form. Ecology template. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.8	Project Area Shapefile, Geodatabase file, or ECOLOGY-approved equivalent. The project area should include as-built features for treatment facilities and contributing areas. Upload to EAGL and notify ECOLOGY when upload is complete.	

**SCOPE OF WORK**

Task Number: 4 **Task Cost:** \$2,743,000.00

Task Title: Construction

Task Description:

A. The RECIPIENT will complete construction of the project in accordance with ECOLOGY-accepted plans and specifications. The construction project will include a combination of pre-settling or pre-treatment units (filter cartridges) to pretreat stormwater entering the trenches. The RECIPIENT will also replace the existing media in the trenches to mitigate runoff from 21 acres of pollution generating impervious surfaces.

B. Calculate and submit an equivalent new/re-development area for the completed retrofit project(s) using the methods outlined in the Stormwater Project Deliverables Guidance; Section D.

Task Goal Statement:

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

Task Expected Outcome:

Constructed project will provide water quality benefits including reductions in total suspended solids (TSS) and provide runoff and flow control benefits.

**Construction**

**Deliverables**

Number	Description	Due Date
4.1	Contract documents (e.g. bid announcement, bid award, and bid tabulations). Upload to EAGL and notify ECOLOGY when upload is complete.	
4.2	Signed and dated construction contract. Upload to EAGL and notify ECOLOGY when upload is complete.	
4.3	Completed equivalent new/redevelopment area determination. Upload to EAGL and notify ECOLOGY when upload is complete.	

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**BUDGET**

**Funding Distribution EG200462**

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

Funding Title: SFAP Funding Type: Grant  
 Funding Effective Date: 07/01/2019 Funding Expiration Date: 10/31/2023  
 Funding Source:

Title: SFAP - SFY20  
 Type: State  
 Funding Source %: 100%  
 Description: Environmental Legacy Stewardship Account (ELSA) - State

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

SFAP	Task Total
Grant and Loan Administration	\$ 82,500.00
Design Plans and Specs, Environmental Review	\$ 411,375.00
Construction Management	\$ 82,125.00
Construction	\$ 2,057,250.00

**Total: \$ 2,633,250.00**



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<b>CWSRF Loan</b>	<b>Task Total</b>
Grant and Loan Administration	\$ 27,500.00
Design Plans and Specs, Environmental Review	\$ 137,125.00
Construction Management	\$ 27,375.00
Construction	\$ 685,750.00

**Total: \$ 877,750.00**

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**Funding Distribution Summary**

**Recipient / Ecology Share**

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
CWSRF Loan	0.00 %	\$ 0.00	\$ 877,750.00	\$ 877,750.00
SFAP	0.00 %	\$ 0.00	\$ 2,633,250.00	\$ 2,633,250.00
<b>Total</b>		<b>\$ 0.00</b>	<b>\$ 3,511,000.00</b>	<b>\$ 3,511,000.00</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

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transaction complies with certification of suspension and debarment requirements.

7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

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

### REQUIREMENTS:

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

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

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

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at [www.fsr.gov](http://www.fsr.gov) <http://www.fsr.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.fsr.gov](http://www.fsr.gov) <http://www.fsr.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.

**ATTACHMENT 1: OPINION OF RECIPIENT'S LEGAL COUNSEL**

I am an attorney at law admitted to practice in the state of Washington and the duly appointed attorney of The City of Monroe [the RECIPIENT], and I have examined any and all documents and records pertinent to the LOAN agreement.

Based on the foregoing, it is my opinion that:

- A. The RECIPIENT is a duly organized and legally existing municipal corporation or political subdivision under the laws of the state of Washington or a federally recognized Indian tribe;
- B. The RECIPIENT has the power and authority to execute and deliver and to perform its obligations under the LOAN agreement;
- C. The LOAN agreement has been duly authorized and executed by RECIPIENT's authorized representatives and, to my best knowledge and after reasonable investigation, all other necessary actions have been taken to make the LOAN agreement valid, binding, and enforceable against the RECIPIENT in accordance with its terms, except as such enforcement is affected by bankruptcy, insolvency, moratorium, or other laws affecting creditors' rights and principles of equity if equitable remedies are sought;
- D. To my best knowledge and after reasonable investigation, the LOAN agreement does not violate any other agreement, statute, court order, or law to which the RECIPIENT is a party or by which it or its properties are bound;
- E. There is currently no litigation seeking to enjoin the commencement or completion of the PROJECT or to enjoin the RECIPIENT from entering into the LOAN agreement or from accepting or repaying the LOAN. The RECIPIENT is not a party to litigation which will materially affect its ability to repay such LOAN on the terms contained in the LOAN agreement; and
- F. The LOAN agreement constitutes a valid obligation of the RECIPIENT payable from the Net Revenues of the Utility.

Capitalized terms used herein will have the meanings ascribed thereto in the LOAN agreement between the RECIPIENT and the DEPARTMENT.

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RECIPIENT's Legal Counsel



**APPROXIMATE PROJECT AREA**

