



**PUBLIC WORKS COMMITTEE
AGENDA**

**Online via Zoom and In Person at
Tumwater City Hall, Council Conference
Room, 555 Israel Rd. SW, Tumwater, WA
98501**

**Thursday, October 20, 2022
8:00 AM**

1. Call to Order
2. Roll Call
- [3.](#) Approval of Minutes: Public Works Committee, October 6, 2022
- [4.](#) Department of Ecology Grant Agreement OTGP -2022-Tumwat-00102 (Dan Smith)
5. Additional Items
6. Adjourn

Meeting Information

All committee members will be attending remotely. The public are welcome to attend in person, by telephone or online via Zoom.

Watch Online

<https://us02web.zoom.us/j/84942753769?pwd=aHRnaWY4aFFLZ2t6eDIPUVRKYUtaUT09>

Listen by Telephone

Call (253) 215-8782, listen for the prompts and enter the Webinar ID 849 4275 3769 and Passcode 731124.

Public Comment

The public may submit comments by sending an email to council@ci.tumwater.wa.us, no later than 5:00 p.m. the day before the meeting. Comments are submitted directly to the Committee members and will not be read individually into the record of the meeting.

Post Meeting

Audio of the meeting will be recorded and later available by request, please email CityClerk@ci.tumwater.wa.us

Accommodations

The City of Tumwater takes pride in ensuring that people with disabilities are able to take part in, and benefit from, the range of public programs, services, and activities offered by the City. To request an accommodation or alternate format of communication, please contact the City Clerk by calling (360) 252-5488 or email CityClerk@ci.tumwater.wa.us. For vision or hearing impaired services, please

contact the Washington State Relay Services at 7-1-1 or 1-(800)-833-6384. To contact the City's ADA Coordinator directly, call (360) 754-4128 or email ADACoordinator@ci.tumwater.wa.us.

TUMWATER PUBLIC WORKS COMMITTEE
MINUTES OF VIRTUAL MEETING
October 6, 2022 Page 1

CONVENE: 8:00 a.m.

PRESENT: Chair Eileen Swarthout and Councilmembers Michael Althausen and Charlie Schneider.

Staff: Water Resources & Sustainability Director Dan Smith and Administrative Assistant Cathy Nielsen.

Others: Meridith Greer, Greer Environmental Consulting.

CHANGES TO AGENDA: There were no changes to the agenda.

STORMWATER MANAGEMENT ACTION PLANNING SERVICE PROVIDER AGREEMENT: Director Smith reported Stormwater Management Action Plans (SMAPs) are plans for stormwater, water quality, and habitat projects. The proposed project aligns with the City's NPDES permit requirements. The project will be managed by Meridith Greer with Greer Environmental Consulting.

Ms. Greer reported SMAP is a watershed-focused process for stormwater management. Stormwater management action planning enables a review of each specific watershed and basin to assist the City in its planning process to improve stormwater and management of habitat. The proposed agreement is a requirement by the Department of Ecology and the NPDES permit for completion of one SMAP by March 31, 2023 to maintain compliance with permit requirements.

The SMAP process is multifaceted to complete receiving water assessments, receiving water prioritizations, and completion of SMAPs. The first element is the receiving water element is a desktop mapping exercise to document all water bodies within the City with water flows. The examination considers elevation and topography to create a map. A map was created by the City's GIS team in consultation with Herrera Environmental Consultants. The map includes 10 watersheds with water flows throughout the City. Some of the watersheds include Black Lake, Capitol Boulevard, Chambers Creek, Lower Deschutes River, Moxlie Creek, Percival Creek, and Salmon Creek.

The next step of the assessment is prioritization of the watersheds to identify areas that have the largest impact should the City pursue a project to improve for stormwater management and habitat. As staff began ranking water bodies, staff and the consultants identified project areas in the City. Some criteria included the size of the subbasin (400 to 600 acres) and receiving waters in terms of the ability to influence a source of receiving water. That process identified nine subbasins qualifying under the criteria to include within the SMAP process.

The final element under the proposed service provider agreement is creation of the SMAP through consultation with Herrera Environmental Consultants. The

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MINUTES OF VIRTUAL MEETING
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company has successfully completed seven SMAPs for other jurisdictions. Staff is confident the company can provide the necessary support to staff to complete the SMAP. Department of Ecology's high standards for completion of a SMAP include six elements:

- Stormwater Retrofit – Identification of areas where the City could retrofit current stormwater facilities or install new stormwater retrofits to improve water quality.
- Land Management and Development Strategies – Review of zoning and long-range planning for consideration of updates to facilitate improvements, improve service, and provide more habitat.
- Customized Stormwater Management Act – Current programs include street sweeping, public education and outreach, and the Illicit Discharge Elimination Program to prevent and reduce spills. A Customized Stormwater Management Act ensures a thorough understanding of the subbasin to tailor programs to specific subbasins to improve water quality.
- Long-Range Planning – Determine how zoning and forecasting growth affects subbasins over the next 20 years.
- Development of a Budget and Schedule for the SMAP – Enable planning in the short-term between 0 and 6 years, as well as the long-term of 7 to 20 years to identify actions, timing, and funding mechanisms for projects.
- Adaptive Management Plan – Necessary to reevaluate every five years for progress and potential changes to ensure success.

The Department of Ecology requires completion of one SMAP. The City plans to create three SMAPs for the three highest priority basins to improve stormwater quality across the City and plan for budgeting projects.

Ms. Greer reviewed the work program for the three priority subbasins over the next several years. The highest priority subbasin is the Trosper Lake Subbasin surrounded by residential and commercial uses. The focus will be on flood reduction, stormwater management, and audience outreach and education.

The second priority subbasin is the West Mottman area with many industrial and commercial uses in the area. Focus will be on source control by providing technical assistance to help businesses improve water quality and receive resources from the City. Efforts will include enhancement and protection of habitat.

The third subbasin is the Fish Pond Creek subbasin near Black Hills High School. The area is surrounded by rural uses. Staff plans to explore zoning and land use strategies in the area in conjunction with habitat protection and enhancement.

**TUMWATER PUBLIC WORKS COMMITTEE
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The City received a grant from the Department of Ecology to fund 75% of the work effective July 2022 to January 2025 of approximately \$150,000. The Stormwater Utility is funding \$50,000 for a total project cost of \$200,000. The proposed service provider agreement is with Herrera Environmental Consulting at a cost of \$180,000.

Ms. Greer invited questions from members.

Chair Swarthout asked about the requirements for completion of updated SMAPS and expiration dates. Ms. Greer advised that the current requirement is completion of one SMAP. The City anticipates that when its permit is renewed next year, the City will also be required to complete a second SMAP. The Department of Ecology is working on the requirements; however the City assumes the Department will eventually require completion of a SMAP for each subbasin. A SMAP covers a 20-year planning horizon with reviews every five years to take advantage of new technology and changing conditions.

MOTION: Councilmember Schneider moved, seconded by Councilmember Althausen, to recommend the City Council approve and authorize the Mayor to sign the Stormwater Management Action Planning Service Provider Agreement with Herrera Environmental Consultants, Inc., for \$179,811.00. A voice vote approved the motion unanimously.

OTHER BUSINESS: Discussion ensued on an object placed on a platform within a tree near the Sapp Road pump station. Ms. Greer advised that she believes the object is a telescope.

ADJOURNMENT: With there being no further business, Chair Swarthout adjourned the meeting at 8:18 a.m.

Prepared by Valerie Gow, Recording Secretary/President
Puget Sound Meeting Services, psmsoly@earthlink.net

TO: Public Works Committee
FROM: Dan Smith, Water Resources and Sustainability Director
DATE: October 20, 2022
SUBJECT: Department of Ecology Grant Agreement OTGP -2022-Tumwat-00102

1) Recommended Action:

Staff requests Public Works Committee recommend the City Council approve and authorize the Mayor to sign the Department of Ecology Grant Agreement OTGP -2022-Tumwat-00102 for the Deschutes River Flood Reduction Study.

2) Background:

The City received a Washington State Legislature budget proviso for Fiscal Year 2023. Staff will coordinate with consulting firms Greer Environmental and Stantec to better understand recommendations to reduce flooding and erosion along the lower Deschutes River, from Henderson Blvd to Brewery Park at Tumwater Falls. The flood reduction study also includes work to describe existing conditions and factors adding to flooding and erosion problems, development feasibility, necessary permit requirements for potential development efforts, and outlining considerations for mitigation.

3) Policy Support:

Strategic Priority A – Pursue Targeted Community Development Opportunities, specifically

- Facilitate brewery redevelopment

Strategic Priority F – Be a Leader in Environmental Sustainability, specifically

- Enhance salmon runs

4) Alternatives:

☐ Request changes to the proposed grant agreement.

5) Fiscal Notes:

Tumwater received a \$250,000 Washington State Legislature budget proviso for Fiscal Year 2023 for this study. The City negotiated a scope of services with Stantec to assist in the completion of this work, estimated to cost \$277,361. \$75,000 has been allocated to this project in the 2022-2027 Capital Facilities Plan, identified as SD-21 Deschutes River Flood Reduction and Erosion Study. This project is funded by the Storm Drain Fund.

6) Attachments:

A. Department of Ecology Grant Agreement OTGP -2022-Tumwat-00102



Agreement No. OTGP-2022-Tumwat-00102

ONE TIME GRANT PROGRAM AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF TUMWATER

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

GENERAL INFORMATION

| | |
|---|---|
| Project Title: | Deschutes River Flood and Erosion Reduction Study |
| Total Cost: | \$300,000.00 |
| Total Eligible Cost: | \$250,000.00 |
| Ecology Share: | \$250,000.00 |
| Recipient Share: | \$0.00 |
| The Effective Date of this Agreement is: | 07/01/2022 |
| The Expiration Date of this Agreement is no later than: | 06/30/2023 |
| Project Type: | Ecology Grant |

Project Short Description:

The City of Tumwater (RECIPIENT) received a Washington State Legislature (ESSB 5693) budget proviso for Fiscal Year 2023 to study flooding and erosion along the lower Deschutes River in Tumwater. The study includes describing existing conditions and factors adding to flooding and erosion problems; identifying alternatives to reduce/eliminate flooding and erosion, permit actions; development feasibility; and preliminary designs for flood mitigation and riparian area/habitat improvement.

Project Long Description:

The Deschutes River watershed is made up of 143 streams totaling 256 linear miles. The main stem of the Deschutes flows 52 miles from its headwaters before reaching Capitol Lake and eventually the Puget Sound. The lower ten miles of the Deschutes River runs through the middle of the city of Tumwater and its highly urbanized area. This area serves as a centerpiece for much of Tumwater’s past and present, necessitating strategic planning to manage economic and

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Project Title: Deschutes River Flood and Erosion Reduction Study
Recipient Name: City of Tumwater

environmental interests in the area.

The Deschutes River is the most flood-prone in Thurston county, which has declared a state of emergency due to flooding 17 times between 1965 and 2017. This project will seek to learn more about the present state of the river, development potential, and mitigation needed to continue to create a balance between environmental and urban needs in this area.

This project will focus on the Deschutes River between Brewery Park at Tumwater Falls and Henderson Boulevard. This project will build off of other habitat restoration and enhancement projects within the watershed to reduce erosion and manage flooding, including the Pioneer Park Riparian Restoration Project currently underway. In addition, Tumwater has been growing and expanding economically within the area with the development of the Craft Brewing and Distilling District and transportation improvements planned for the coming years, including the E Street Connection.

The RECIPIENT is seeking to learn more about current flood conditions and what possibilities the area holds for future development and flood mitigation. This project will develop solutions to flooding and erosion along the lower Deschutes River. The study includes work to describe existing conditions and critical factors contributing to flooding and erosion problems; identification, evaluation, and comparison of conceptual alternatives to reduce/eliminate flooding and erosion; identification of required permit actions; development feasibility; and preliminary designs for flood mitigation and riparian area/habitat improvement.

This project will help the RECIPIENT to balance the urban and environmental needs along the Deschutes River area and create a thriving area for residents, tourists, businesses, and wildlife alike.

Overall Goal:

The goal of this project is threefold. First, to better understand the current flood and erosion risks within the project area, between Brewery Park at Tumwater Falls and Henderson Boulevard. Second, to determine required mitigation needs to provide development interests a clearer understanding of impacts within the project area, including current regulations, necessary permits, and costs related to necessary mitigation of flooding impacts. And lastly, to determine alternatives and options to mitigate flooding and erosion and improve riparian conditions and habitat within the project area.

Agreement No: OTGP-2022-Tumwat-00102
Project Title: Deschutes River Flood and Erosion Reduction Study
Recipient Name: City of Tumwater

RECIPIENT INFORMATION

Organization Name: City of Tumwater

Federal Tax ID: 91-6001520
UEI Number: LLLDHHS4E5G1

Mailing Address: 555 Israel Road SW
Tumwater, WA 98501

Physical Address: 555 Israel Road SW
Tumwater, Washington 98501

Contacts

Agreement No: OTGP-2022-Tumwat-00102
Project Title: Deschutes River Flood and Erosion Reduction Study
Recipient Name: City of Tumwater

| | |
|-----------------------------|--|
| Project Manager | Dan Smith Director 555 Israel Road SW Tumwater, Washington 98501 Email: desmith@ci.tumwater.wa.us Phone: (360) 754-4140 |
| Billing Contact | Christina Choate Accountant 555 Israel Road SW Tumwater, Washington 98501 Email: cchoate@ci.tumwater.wa.us Phone: (360) 754-4180 |
| Authorized Signatory | Dan Smith Director 555 Israel Road SW Tumwater, Washington 98501 Email: desmith@ci.tumwater.wa.us Phone: (360) 754-4140 |

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Project Title: Deschutes River Flood and Erosion Reduction Study
Recipient Name: City of Tumwater

ECOLOGY INFORMATION

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

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

Contacts

| | |
|--------------------------|--|
| Project Manager | Alex Rosen PO Box 47775 Olympia, Washington 98504-7775 Email: ALER461@ecy.wa.gov Phone: (360) 810-0027 |
| Financial Manager | Layne Slone Financial Manager PO Box 47600 Olympia, Washington 98504-7600 Email: lnak461@ecy.wa.gov Phone: (360) 867-8171 |

Agreement No: OTGP-2022-Tumwat-00102
Project Title: Deschutes River Flood and Erosion Reduction Study
Recipient Name: City of Tumwater

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 Tumwater

By: _____

By: _____

Joenne McGerr
Shorelands
Program Manager

Date

Dan Smith
Director

Date

Template Approved to Form by
Attorney General's Office

Agreement No: OTGP-2022-Tumwat-00102
Project Title: Deschutes River Flood and Erosion Reduction Study
Recipient Name: City of Tumwater

Debbie Sullivan

Mayor Date

Agreement No: OTGP-2022-Tumwat-00102
Project Title: Deschutes River Flood and Erosion Reduction Study
Recipient Name: City of Tumwater

SCOPE OF WORK

Task Number: 1 **Task Cost:** \$15,000.00

Task Title: 1. Project Administration/Management

Task Description:

A. The RECIPIENT will administer the project. Responsibilities will include, but not be limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports and recipient closeout report (including photos); compliance with applicable procurement, contracting, and inter-local agreement requirements; application of, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

B. The RECIPIENT must manage the project. Efforts will include: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designee; the department; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The recipient must carry out this project in accordance with any completion dates outlined in this agreement. Budget deviations are allowed between budget objects, e.g., the RECIPIENT may spend less money on one task and more on another, but under no circumstances may the RECIPIENT exceed the total project cost. The approval of the ECOLOGY Project Manager is required for this deviation.

Task Goal Statement:

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

Task Expected Outcome:

Timely and complete submittal of requests for reimbursement, quarterly Payment Requests/Progress Reports (PRPRs), and a Recipient Close Out Report. Properly maintained project documentation.

Recipient Task Coordinator: Dan Smith

1. Project Administration/Management

Deliverables

| Number | Description | Due Date |
|--------|--|------------|
| 1.1 | Quarterly Payment Requests / Progress Reports (PRPRs) submitted in EAGL. | |
| 1.2 | Recipient Close Out Report (RCOR) submitted in EAGL. | 06/30/2023 |

Agreement No: OTGP-2022-Tumwat-00102
Project Title: Deschutes River Flood and Erosion Reduction Study
Recipient Name: City of Tumwater

SCOPE OF WORK

Task Number: 2 **Task Cost:** \$29,000.00

Task Title: 2. Literature Review & Project Conceptualization

Task Description:

A. The RECIPIENT's hired consultant, Stantec, will be responsible for reviewing existing and available reports covering the study area focused on redevelopment, flooding, water quality, erosion, and aquatic habitat. The scope for this task includes:

1. Review and summarize previously completed H/H reports, studies, and design packages completed within the study area, to be included in the Flood Reduction and Redevelopment Report in Task 5.

i. Deschutes Valley Master Plan studies/reports/plans

a. Deschutes Valley Master Plan, Geomorphic and Hydrologic Analysis (June 18, 2014, Revision)

b. Deschutes Valley Master Plan, Existing Conditions Hydraulic Modeling (June 18, 2015, Revision)

c. Deschutes Valley Property Master Plan, Hydraulic Modeling Interim Project Summary (August 17, 2016)

ii. As-built and/or design plans for Henderson Blvd Bridge and Tumwater Falls Dam

2. Review and summary of land use options and zoning within the project area based on current local, regional, state, and federal regulations; and a comprehensive review and summarization of necessary permits to develop in the project area, to be included in the Flood Reduction and Redevelopment Report in Task 5 (Deliverable 5.2).

3. GIS Mapping of land ownership for flood mitigation and redevelopment.

Task Goal Statement:

To gain a thorough understanding of past and current conditions within the study area to help inform next steps as the RECIPIENT works towards reducing flooding and erosion along this stretch of the Deschutes River. In addition, the goal is to determine the current development feasibility within the project area.

Task Expected Outcome:

Summarization of previous studies on flooding and erosion along with a comprehensive understanding of land use and zoning options within the study area.

GIS Map of land ownership for flood mitigation and redevelopment.

Agreement No: OTGP-2022-Tumwat-00102

Project Title: Deschutes River Flood and Erosion Reduction Study

Recipient Name: City of Tumwater

Recipient Task Coordinator: Dan Smith**2. Literature Review & Project Conceptualization****Deliverables**

| Number | Description | Due Date |
|--------|--|----------|
| 2.1 | Copy of signed consultant contract. Upload to EAGL and notify ECOLOGY Project Manager. | |
| 2.2 | GIS Map. Upload to EAGL and notify ECOLOGY Project Manager. | |

Agreement No: OTGP-2022-Tumwat-00102
Project Title: Deschutes River Flood and Erosion Reduction Study
Recipient Name: City of Tumwater

SCOPE OF WORK

Task Number: 3 **Task Cost:** \$18,000.00

Task Title: 3. Data Gathering & Gap Analysis

Task Description:

A. The RECIPIENT will meet requirements in section 12. Environmental Data Standards of the Agreement General Terms and Conditions for a Quality Assurance Project Plan (QAPP) or QAPP waiver; Environmental Information Management (EIM) database; and GIS data.

B. The RECIPIENT will complete data gathering and a gap analysis to support the overall project effort as described below:

1. Review Available Data and Complete Gap Analysis

a. Best-available LiDAR

b. All other hydraulic related data including but not limited to FEMA approved hydraulic models of the Deschutes River, the previous River2D model, and land cover classification datasets.

c. Scope Development for Acquisition of Additional Data as identified.

d. As-built and/or design plans for Henderson Blvd Bridge and Tumwater Falls Dam.

2. Complete Study Area field survey

a. The survey will consist of 10 transects. Transects will be taken at approximately every 1,000 feet outside of the area not part of the existing River2D model. The survey will cover the channel area below top of bank only and LiDAR data will be used in overbank areas.

b. Taking field measurements of the Henderson Blvd Bridge as needed. Field measurements include but are not limited to pier widths, pier spacing, and abutment spacing.

c. Formatting survey data to be GIS-compatible.

Task Goal Statement:

To review and collect all necessary data to create accurate hydraulic modeling for the project area.

Task Expected Outcome:

Interim information can be provided including sketches of survey results, GIS-compatible data of the survey results, and XYZ information for the 10 transects.

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 Project Title: Deschutes River Flood and Erosion Reduction Study
 Recipient Name: City of Tumwater

Recipient Task Coordinator: Dan Smith

3. Data Gathering & Gap Analysis

Deliverables

| Number | Description | Due Date |
|--------|---|----------|
| 3.1 | QAPP, mini QAPP, or QAPP waiver. Submit to ECOLOGY per Section 12. Environmental Data Standards of the Agreement General Terms and Conditions. Upload to EAGL and notify ECOLOGY Project Manager. | |
| 3.2 | Digital delivery of all data including GIS-compatible data. Upload to EAGL and notify ECOLOGY Project Manager. | |

Washington Department of Ecology

Agreement No: OTGP-2022-Tumwat-00102

Project Title: Deschutes River Flood and Erosion Reduction Study

Recipient Name: City of Tumwater

SCOPE OF WORK

Task Number: 4

Task Cost: \$90,000.00

Task Title: 4. Hydraulic Modeling & Reporting

Task Description:

A. The RECIPIENT will create a HEC-RAS 2D model of the existing conditions in the project area.

B. The RECIPIENT will then modify the existing conditions model as an initial step to evaluate reduction in flooding in the project area.

C. The RECIPIENT will then complete a Flood Reduction Modeling Technical Memorandum summarizing the results for the HEC-RAS 2D modeling (existing conditions and flood reduction conditions), as well as the feasibility of development within the project area.

Task Goal Statement:

To model the current state of the Deschutes River through the project area and to provide modeling of potential flood mitigation efforts and the affect if could have on flooding in the study area.

Task Expected Outcome:

The expected outcomes of this task include multiple HEC-RAS 2D models, for current conditions, as well as potential mitigation conditions and a Flood Reduction Modeling Technical Memorandum explaining results and recommending next steps in the project area.

Recipient Task Coordinator: Dan Smith**4. Hydraulic Modeling & Reporting****Deliverables**

| Number | Description | Due Date |
|--------|--|----------|
| 4.1 | Input and output files for all HEC-RAS modeling. Save in EAGL-compatible format, and upload to EAGL. Notify ECOLOGY Project Manager. | |
| 4.2 | Flood Reduction Modeling Technical Memorandum. Upload to EAGL and notify ECOLOGY Project Manager. | |

Agreement No: OTGP-2022-Tumwat-00102
Project Title: Deschutes River Flood and Erosion Reduction Study
Recipient Name: City of Tumwater

SCOPE OF WORK

Task Number: 5 **Task Cost: \$98,000.00**

Task Title: 5. Conceptual Design Packages

Task Description:

A. The RECIPIENT and consultant will develop conceptual plans for up to (3) feasible flood reduction and habitat improvement concepts, rank the concepts based on opportunities and costs, select an alternative and further refine it for presentation purposes, and complete reporting for the project. The following work will be included in Deliverable 5.2.

1. Complete up to (3) feasible conceptual alternative plans based on the results of hydraulic modeling under Task 4. This work will be focused on City Parks Property (Pioneer Park and the Golf Course) and specific parcels controlled by the city as listed below for redevelopment activities:

a. 09470021000, 09470045000, 09470003000, 09470046000, 09470051001

2. Complete Alternative Ranking Matrix based on the Costs and Benefits of the Alternatives and Select a Preferred Alternative.

3. Develop Conceptual Plan of the Preferred Alternative for Presentation Purposes

a. Identify required permits and complete preliminary planning level cost estimate for the preferred alternative.

4. Complete Flood Reduction and Redevelopment Report to present the results of the effort as described under Tasks 2 through 5.

Task Goal Statement:

The goal of this task is to create three conceptual plans to reduce flooding for redevelopment of downstream parcels.

Task Expected Outcome:

The expected outcome for this task is a Flood Reduction and Redevelopment Report that would allow future potential developers to understand the scope and cost of completing mitigation work before being able to build within the project area.

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Project Title: Deschutes River Flood and Erosion Reduction Study
Recipient Name: City of Tumwater

Recipient Task Coordinator: Dan Smith

5. Conceptual Design Packages

Deliverables

| Number | Description | Due Date |
|--------|---|----------|
| 5.1 | Meeting agendas and attendance log(s) for the stakeholder engagement sessions. Upload to EAGL and notify ECOLOGY Project Manager. | |
| 5.2 | Flood Reduction and Redevelopment Report. Upload to EAGL and notify ECOLOGY Project Manager. | |

Washington Department of Ecology
 Agreement No: OTGP-2022-Tumwat-00102
 Project Title: Deschutes River Flood and Erosion Reduction Study
 Recipient Name: City of Tumwater

BUDGET

Funding Distribution EG230036

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: FY2023 Flood Proviso Funding Type: Grant
 Funding Effective Date: 07/01/2022 Funding Expiration Date: 06/30/2023
 Funding Source:

Title: General Fund - State (SEA)
 Fund: FD
 Type: State
 Funding Source %: 100%
 Description: FY2023 Flood Provisos; MIC: E42041H2; PIC: E4204; Fund: General Fund 001 ;
 EAI: 1H2

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

| FY2023 Flood Proviso | Task Total |
|--|--------------|
| 1. Project Administration/Management | \$ 15,000.00 |
| 2. Literature Review & Project Conceptualization | \$ 29,000.00 |
| 3. Data Gathering & Gap Analysis | \$ 18,000.00 |
| 4. Hydraulic Modeling & Reporting | \$ 90,000.00 |
| 5. Conceptual Design Packages | \$ 98,000.00 |

Total: \$ 250,000.00

Agreement No: OTGP-2022-Tumwat-00102
 Project Title: Deschutes River Flood and Erosion Reduction Study
 Recipient Name: City of Tumwater

Funding Distribution Summary

Recipient / Ecology Share

| Funding Distribution Name | Recipient Match % | Recipient Share | Ecology Share | Total |
|----------------------------------|--------------------------|------------------------|----------------------|----------------------|
| FY2023 Flood Proviso | 0.00 % | \$ 0.00 | \$ 250,000.00 | \$ 250,000.00 |
| Total | | \$ 0.00 | \$ 250,000.00 | \$ 250,000.00 |

AGREEMENT SPECIFIC TERMS AND CONDITIONS

See Attachment A. FY2023 Flood Provisos - Special Terms and Conditions.

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 \$30,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

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

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

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf) <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](https://sam.gov/SAM) <https://sam.gov/SAM> exclusion list.

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GENERAL TERMS AND CONDITIONS

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

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

06/24/2021 Version

1. ADMINISTRATIVE REQUIREMENTS

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

2. AMENDMENTS AND MODIFICATIONS

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

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

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

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

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

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

RECIPIENT shall:

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

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

RECIPIENT shall:

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

5. ASSIGNMENT

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

6. COMMUNICATION

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

7. COMPENSATION

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

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

8. COMPLIANCE WITH ALL LAWS

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

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

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

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

9. CONFLICT OF INTEREST

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

10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

11. DISPUTES

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

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

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

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

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

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

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

12. ENVIRONMENTAL DATA STANDARDS

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

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

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

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

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

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

13. GOVERNING LAW

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

14. INDEMNIFICATION

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

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

15. INDEPENDENT STATUS

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

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16. KICKBACKS

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

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

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

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

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

18. ORDER OF PRECEDENCE

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

19. PRESENTATION AND PROMOTIONAL MATERIALS

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

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

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

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

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

20. PROGRESS REPORTING

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

21. PROPERTY RIGHTS

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

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22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

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

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced.

Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

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

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

23. RECOVERY OF FUNDS

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

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

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

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

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

24. SEVERABILITY

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

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

26. SUSPENSION

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

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27. SUSTAINABLE PRACTICES

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

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

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

28. TERMINATION

a) For Cause

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

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

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

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

b) For Convenience

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

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

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

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

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

c) By Mutual Agreement

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

d) In Event of Termination

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

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

29. THIRD PARTY BENEFICIARY

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

30. WAIVER

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

End of General Terms and Conditions