

RESOLUTION 2023-QQ

A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A GRANT AGREEMENT WITH THE WASHINGTON STATE RECREATION AND CONSERVATION OFFICE FOR THE EATONVILLE PARKS, RECREATION AND TRAILS PLAN

WHEREAS, the Town of Eatonville (“Town”) applied for and was awarded \$213,000.00 in grant funds by the Washington State Recreation and Conservation Office (“RCO”); and

WHEREAS, the grant funds are to be used to develop a comprehensive parks, recreation and trails plan; and

WHEREAS, the grant will also help to assist the Town in completing construction-ready design documents for a trailhead and trail near Boxcar Canyon; and

WHEREAS, the grant is state funded at one hundred percent with no matching funds required by the Town; now therefore,

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON,
HEREBY RESOLVES AS FOLLOWS:**

THAT: The Town Council hereby approves and authorizes the Mayor to sign a grant agreement with the Washington State Recreation and Conservation Office for the completion of the Eatonville Parks, Recreation and Trails Plan, attached hereto as Exhibit A.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 13th day of November 2023.

David Baublits, Mayor

ATTEST:

Miranda Doll, Town Clerk

Project Sponsor: Town of Eatonville
Project Title: Eatonville Parks, Recreation and Trails Plan

Project Number: 22-2524P
Approval Date: 07/01/2023

PARTIES OF THE AGREEMENT

This Recreation and Conservation Office Agreement (Agreement) is entered into between the State of Washington Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917, and Town of Eatonville (Sponsor, and primary Sponsor), PO Box 309, Eatonville, WA 98328, and shall be binding on the agents and all persons acting by or through the parties.

All Sponsors are equally and independently subject to all the conditions of this Agreement except those conditions that expressly apply only to the primary Sponsor.

Prior to and during the Period of Performance, the identified Authorized Representative(s)/Agent(s) (Sponsor's signatory to this Agreement) have full authority to legally bind Sponsor(s) regarding all matters related to the project identified above, including but not limited to, full authority to: (1) sign a grant application for grant assistance, (2) enter into this Agreement on behalf of Sponsor(s), including indemnification, as provided therein, (3) enter any amendments thereto on behalf of Sponsor(s), and (4) make any decisions and submissions required with respect to the project. Agreements and amendments must be signed by the Authorized Representative/Agent(s) of all Sponsors, unless otherwise allowed in the AMENDMENTS TO AGREEMENT Section.

- A. During the Period of Performance, in order for a Sponsor to change its Authorized Representative/Agent (Sponsor signatory to this Agreement) Sponsor's governing body must provide RCO a written delegation of authority to sign in lieu of originally authorized Representative/Agency(s).
- B. Amendments After the Period of Performance. RCO reserves the right to request, and Sponsor has the obligation to provide, authorizations and documents that demonstrate any signatory to an amendment has the authority to legally bind Sponsor as described in the above Sections.

For the purposes of this Agreement, as well as for grant management purposes with RCO, only the primary Sponsor may act as a fiscal agent to obtain reimbursements (See PROJECT REIMBURSEMENTS Section).

PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the Recreation and Conservation Office (RCO) of the State of Washington. The grant is administered by RCO.

RCO seeks to fund, through this Agreement, construction predesign, general jurisdictional or regional comprehensive planning, and feasibility studies and processes in furtherance of the Planning for Recreation Access (PRA) grant program.

PUBLIC USE

Upon completion of any construction/renovation or land acquisition (the purchase of real property or the purchase of term limited property rights) the planned facilities (per this agreement) must be open to the general public.

DESCRIPTION OF PROJECT

The Town of Eatonville will use this grant to develop a comprehensive parks, recreation, and trails plan. The Town will also complete construction-ready design documents for a trailhead and trail near Boxcar Canyon. The primary recreational opportunities supported by this project are active play, hiking, and passive recreation.

PERIOD OF PERFORMANCE

The period of performance begins on July 1, 2023 (PROJECT START DATE) and ends on December 31, 2024 (PROJECT END DATE). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement, or specifically provided for by applicable RCWs, WACs, and any applicable RCO manuals as of the effective date of this Agreement.

RCO reserves the right to summarily dismiss any request to amend this Agreement if not made at least 60 days before the project end date.

STANDARD TERMS AND CONDITIONS INCORPORATED

The Standard Terms and Conditions of the Recreation and Conservation Office are attached hereto and incorporated by reference as part of this Agreement.

PROJECT FUNDING

The total grant award provided for this project shall not exceed \$213,000.00. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
Office - Planning for Recreation Access	100.00%	\$213,000.00	State
Total Project Cost	100.00%	\$213,000.00	

RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved and/or amended as well as documents produced in the course of administering the Agreement, including the eligible scope activities, the milestones report, progress reports, and the final report. Provided, to the extent that information contained in such documents is irreconcilably in conflict with the Agreement, such information shall not be used to vary the terms of the Agreement, unless the terms in the Agreement are shown to be subject to an unintended error or omission. "Agreement" as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definitions of the Standard Terms and Conditions.

AMENDMENTS TO AGREEMENT

Except as provided herein, no amendment (including without limitation, deletions) of this Agreement will be effective unless set forth in writing signed by all parties. Exception: extensions of the Period of Performance and minor scope adjustments need only be signed by RCO's director or designee and consented to in writing (including email) by Sponsor's Authorized Representative/Agent or Sponsor's designated point of contact for the implementation of the Agreement (who may be a person other than the Authorized Agent/Representative), unless otherwise provided for in an amendment. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

It is the responsibility of a Sponsor to ensure that any person who signs an amendment on its behalf is duly authorized to do so.

Unless otherwise expressly stated in an amendment, any amendment to this Agreement shall be deemed to include all current federal, state, and local government laws and rules, and policies applicable and active and published in the applicable RCO manuals or on RCO website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone. However, any such amendment, unless expressly stated, shall not extend or reduce the long-term obligation term.

COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES

This Agreement is governed by, and Sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, Exhibits, and any applicable federal program and accounting rules effective as of the date of this Agreement or as of the effective date of an amendment, unless otherwise provided in the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone unless otherwise expressly stated in the amendment.

For the purpose of this Agreement, the following RCO manuals are deemed applicable and shall apply as terms of this Agreement:

- Development Projects - Manual 4
- Planning for Recreation Access Grant Guidelines
- Planning Guidelines - Manual 2
- Reimbursements - Manual 8

SPECIAL CONDITIONS

1. CULTURAL RESOURCES SURVEY REQUIRED

This agreement requires compliance with Executive Order 21-02. RCO has completed the initial consultation for this project and a cultural resources survey is required. The cultural resources survey must include documentation of any above or below ground archaeological resources as well as any possible historic structures or buildings that may be affected by the project. The Sponsor must submit the results of the cultural resources survey to RCO and receive a notice of cultural resources completion. Ground disturbance started without approval will be considered a breach of contract. If archaeological or historic materials are discovered while conducting ground disturbing activities, work in the immediate vicinity must stop and the Sponsor must ensure compliance with the provisions found in this agreement. All cultural resources work must meet reporting guidelines outlined by the Department of Archaeology and Historic Preservation.

AGREEMENT CONTACTS

The parties will provide all written communications and notices under this Agreement to either or both the mail address and/or the email address listed below:

Sponsor Project Contact

Nicholas Moore
Town Planner
PO Box 309, 201 Center St. W
Eatonville, WA 98328
planner@eatonville-wa.gov

RCO Contact

Henry Smith
Outdoor Grants Manager
PO Box 40917
Olympia, WA 98504-0917
henry.smith@rco.wa.gov

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change. Unless otherwise provided for in this Agreement, decisions relating to the Agreement must be made by the Authorized Representative/Agent, who may or may not be the Project Contact for purposes of notices and communications.

ENTIRE AGREEMENT

This Agreement, with all amendments and attachments, constitutes the entire Agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

EFFECTIVE DATE

Unless otherwise provided for in this Agreement, this Agreement, for Project 22-2524, shall become effective and binding on the date signed by both Sponsor and RCO's authorized representative, whichever is later (Effective Date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in the PERIOD OF PERFORMANCE Section are allowed only when this Agreement is fully executed and an original is received by RCO.

Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the STANDARD TERMS AND CONDITIONS OF THE RECREATION AND CONSERVATION OFFICE. The signatories listed below represent and warrant their authority to bind the parties to this Agreement.

Town of Eatonville

By: _____

Date: _____

Name (printed): _____

Title: _____

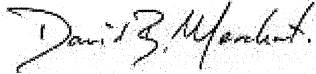
State of Washington Recreation and Conservation Office

By: _____

Date: _____

FOR Megan Duffy
Director
Recreation and Conservation Office

Pre-approved as to form:

By: 
Assistant Attorney General

Date: 05/01/2023

Project Sponsor: Town of Eatonville
Project Title: Eatonville Parks, Recreation and Trails Plan

Project Number: 22-2524P
Approval Date: 07/01/2023

Eligible Scope Activities

ELIGIBLE SCOPE ACTIVITIES

Planning Metrics

Worksite #1, Eatonville Parks, Rec, and Trails Comp plan

Recreation Facility Planning

Comprehensive plan development

Cultural Resources

Cultural resources

Project Sponsor: Town of Eatonville

Project Number: 22-2524P

Project Title: Eatonville Parks, Recreation and Trails Plan

Approval Date: 07/01/2023

Project Milestones

PROJECT MILESTONE REPORT

Complete	Milestone	Target Date	Comments/Description
	Project Start	07/01/2023	
	Data Gathering Started	07/15/2023	
	Design Initiated	07/31/2023	
	Scoping Meeting with RCO	07/31/2023	
	RFP Complete/Consultant Hired	08/15/2023	
	Annual Project Billing Due	10/31/2023	
	Draft Design to RCO	11/30/2023	
	Progress Report Due	12/31/2023	
	Applied for Permits	02/29/2024	
	60% Plans to RCO	02/29/2024	
	Cultural Resources Study	03/30/2024	See Special Condition #1.
	Progress Report Due	04/30/2024	
	Draft Plan to RCO	06/30/2024	
	SEPA/NEPA Completed	07/31/2024	
	Design & Engineering Complete	08/15/2024	
	All Bid Docs/Plans to RCO	08/30/2024	
	Permits Complete	08/30/2024	
	Progress Report Due	08/31/2024	
	Final Billing Due	12/15/2024	
	Final Plan to RCO	12/15/2024	
	Final Report Due	12/20/2024	
	Agreement End Date	12/31/2024	

Project Sponsor: Town of Eatonville
Project Title: Eatonville Parks, Recreation and Trails Plan

Project Number: 22-2524P
Approval Date: 07/01/2023

Standard Terms and Conditions of the Recreation and Conservation Office

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STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This document sets forth the Standard Terms and Conditions of the Recreation and Conservation Office as of 08/21/2023.

CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the version current as of the effective date of this Agreement or the effective date of any amendment thereto.
- B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

Agreement, terms of the Agreement, or project Agreement – This document accepted by all parties to the present project and transaction, including without limitation the Standard Terms and Conditions of this agreement, all exhibits, attachments, addendums, amendments, and applicable manuals, and any intergovernmental Agreements, and/or other documents that are incorporated into the Agreement subject to any limitations on their effect under this Agreement.

applicable manual(s), manual – A manual designated in this Agreement to apply as terms of this Agreement, subject (if applicable) to substitution of the “RCO director” for the term “board” in those manuals where the project is not approved by or funded by the referenced board, or a predecessor to the board.

applicable WAC(s) – Designated chapters or provisions of the Washington Administrative Code that apply by their terms to the type of grant in question or are deemed under this Agreement to apply as terms of the Agreement, subject to substitution of the “RCO director” for the term “board” or “agency” in those cases where RCO has contracted to or been delegated to administer the grant program in question.

applicant – Sponsor that applied for the grant(s) funding this Agreement.

application – The documents and other materials that an applicant submits to RCO to support the applicant's request for grant funds; this includes materials required for the “Application” in RCO's automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.

Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor's signature. This person has the signature authority to bind Sponsor to this Agreement, grant, and project.

C.F.R. – Code of Federal Regulations

completed project or project completion – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by RCO and determined that all scopes of work to implement the project have been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by Sponsor and RCO and have been delivered to RCO.
- A final reimbursement request has been delivered to and paid by RCO.
- Documents affecting property rights (including RCO's as may apply) and any applicable notice of grant, have been recorded (as may apply).

contractor – An entity that receives a contract from a Sponsor related to performance of work or another obligation under this Agreement.

cultural resources– Archaeological or historic archaeological sites, historic buildings/structures, and cultural or sacred places.

director – The chief executive officer of the Recreation and Conservation Office or that person's designee.

effective date – The date when the signatures of all parties to this Agreement are present in the Agreement.

equipment – Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by Sponsor or \$5,000 (2 C.F.R. Part 200 (as updated)).

funding board or board – The Washington State Recreation and Conservation Funding Board, or the Washington State Salmon Recovery Funding Board or both if required by context.

Funding Entity – the entity that approves the project that is the subject to this Agreement.

grant program – The source of the grant funds received. May be an account in the state treasury, or a grant category within a larger grant program, or a federal source, or a mixture of the listed sources.

long-term obligations – Sponsor's obligations after the project end date, as specified in the Agreement and manuals and other exhibits as may apply.

landowner Agreement – An Agreement that is required between a Sponsor and landowner for projects located on land not owned, or otherwise controlled, by Sponsor.

match or matching share – The portion of the total project cost provided by Sponsor.

milestone – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

Office – Means the Recreation and Conservation Office or RCO.

pass-through entity – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 CFR 200 (as updated)). If this Agreement is a federal subaward, RCO is the pass-through entity.

period of performance – The period beginning on the project start date and ending on the project end date.

planning project - A project that results in one or more of the following: 1) a study, a plan, assessment, project design, inventory, construction plans and specifications, and permits; or 2) a project that provides money to facilitate the work of an organization engaged in planning and coordination, or resource stewardship.

pre-Agreement cost – A project cost incurred before the period of performance.

primary Sponsor – Sponsor that is not a secondary Sponsor and who is specifically identified in the Agreement as the entity to which RCO grants funds to and authorizes and requires to administer the grant. Administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

project – The undertaking that is funded by this Agreement either in whole or in part with funds administered by RCO.

project area - A geographic area that delineates a grant assisted site which is subject to project Agreement requirements.

project completion or completed project – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by RCO and RCO has determined that all scopes of work to implement the project have been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by Sponsor and RCO and have been delivered to RCO.
- A final reimbursement request has been delivered to and paid by RCO.
- Documents affecting property rights (including RCO's as may apply) and any applicable notice of grant, have been recorded (as may apply).

project cost – The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (see also 2 C.F.R. Part 200 (as updated)) for federally funded projects).

project end date – The specific date identified in the Agreement on which the period of performance ends, as may be changed by amendment. This date is not the end date for any long-term obligations.

project start date – The specific date identified in the Agreement on which the period of performance starts.

RCFB – Recreation and Conservation Funding Board

RCO – Recreation and Conservation Office – The state agency that administers the grant that is the subject of this Agreement. RCO includes the director and staff.

RCW – Revised Code of Washington

reimbursement – RCO's payment of funds from eligible and allowable costs that have already been paid by Sponsor per the terms of the Agreement.

renovation project – A project intended to improve an existing site or structure in order to increase its useful service life beyond current expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

secondary Sponsor – One of two or more Sponsors who is not a primary Sponsor. Only the primary Sponsor may be the fiscal agent for the project.

Sponsor – Any signatory to this Agreement other than RCO by doing so agrees to all obligations of a Sponsor as described in this Agreement.

Sponsor Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind Sponsor to this Agreement, grant, and project.

subaward – Funds allocated to RCO from another organization, which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal Agreement, including an Agreement that the pass-through entity considers a contract. Also see 2 C.F.R. Part 200 (as updated). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. Part 200 (as updated)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in the Project Funding Section.

subrecipient – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. Part 200 (as updated)). If this Agreement is a federal subaward, Sponsor is the subrecipient.

tribal consultation – Outreach, and consultation with one or more federally recognized tribes (or a partnership or coalition or consortium of such tribes, or a private tribal enterprise) whose rights will or may be significantly affected by the proposed project. This includes sharing with potentially affected tribes the scope of work in the grant and potential impacts to natural areas, natural resources, and the built environment by the project. It also includes responding to any request from such tribes and considering recommendations from such tribes for project implementation, which may include not proceeding with parts of the project, altering the project concept and design, or relocating the project or not implementing the project, provided that RCO shall retain final approval authority.

useful service life – Period during which a built asset, equipment, or fixture is expected to be useable for the purpose it was acquired, installed, developed, and/or renovated, or restored per this Agreement.

WAC – Washington Administrative Code.

PERFORMANCE BY SPONSOR

Sponsor shall undertake the project as described in this Agreement.

Sponsor's timely completion of the project and submission of required documents, including progress and final reports, is important. Sponsor's failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement.

ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred, or assigned by Sponsor without prior written approval of RCO.

RESPONSIBILITY FOR PROJECT

Although RCO administers the grant that is the subject of this Agreement, the project itself remains the sole responsibility of Sponsor. RCO and Funding Entity (if different from RCO) undertakes no responsibilities to Sponsor, or to any third party, other than as is expressly set out in this Agreement.

Sponsor is solely responsible for implementing the project and is solely responsible for any claim or suit of any nature by any third party related in any way to the project. When a project has more than one Sponsor, any and all Sponsors are equally responsible for the project and all post-completion stewardship responsibilities and long-term obligations unless otherwise

stated in this Agreement.

RCO, its employees, assigns, consultants and contractors, and members of any funding board or advisory committee or other RCO grant review individual or body, have no responsibility for reviewing, approving, overseeing or supervising design, construction, or safety of the project and leaves such review, approval, oversight and supervision exclusively to Sponsor and others with expertise or authority. In this respect, RCO, its employees, assigns, consultants and contractors, and any funding board or advisory committee or other RCO grant review individual or body will act only to confirm at a general, lay person, and nontechnical level, solely for the purpose of project eligibility and payment and not for safety or suitability, that the project apparently is proceeding or has been completed as per the Agreement.

INDEMNIFICATION

Sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement by Sponsor or Sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom Sponsor may be legally liable.

Provided that nothing herein shall require a Sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and/or agents acting within the scope of their employment or agency for whom the State is vicariously liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) Sponsor or Sponsor's agents or employees, and (b) the State, or its employees or agents the indemnity obligation shall be valid and enforceable only to the extent of Sponsor's fault or the fault of its agents, or employees.

As part of its obligations provided above, Sponsor specifically assumes potential liability for actions brought by Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, Sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51. Sponsor's waiver of immunity under this provision extends only to claims against Sponsor by Indemnitee RCO, and does not include, or extend to, any claims by Sponsor's employees directly against Sponsor.

Sponsor shall ensure that any Agreement relating to this project involving any contractors, subcontractors and/or vendors of any tier shall require that the contracting entity indemnify, defend, waive RCW 51 immunity, and otherwise protect the State as provided herein as if it were Sponsor. This shall not apply to a contractor or subcontractor donating its services to the project without compensation or other substantial consideration.

Sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by Sponsor or Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom Sponsor may be legally liable, in performance of the work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to the State, its agents, officers and employees pursuant to the Agreement. Provided, this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from the State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the State, its agents, officers and employees by Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom Sponsor may be legally liable.

The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

INDEPENDENT STATUS OF SPONSOR

Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of RCO or Funding Entity and are not authorized to obligate or speak on behalf of RCO or Funding Entity. Sponsor will not hold itself out as nor claim to be an officer, employee or agent of RCO or the Funding Entity, or of the state of Washington, nor will Sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06.

Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to Sponsor terminate this Agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, RCW 42.52; or any similar statute involving Sponsor in the procurement of, or performance under, this Agreement.

In the event this Agreement is terminated pursuant to this section, RCO shall be entitled to pursue the same remedies against Sponsor as it could pursue in the event of a breach of the Agreement by Sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

COMPLIANCE WITH APPLICABLE LAW

In implementing the Agreement, Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations). Such compliance includes, without any limitation as to other applicable laws, the following laws:

- A. **Nondiscrimination Laws.** Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Employment Act (if applicable). In the event of Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and Sponsor may be declared ineligible for further grant awards from RCO or Funding Entity. Sponsor is responsible for any and all costs or liability arising from Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project: "During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."
- B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- C. **Wages and Job Safety.** Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.40. Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.
 - 1) Pursuant to RCW 39.12.040(1)(a), all contractors and subcontractors shall submit to Sponsor a statement of intent to pay prevailing wages if the need to pay prevailing wages is required by law. If a contractor or subcontractor intends to pay other than prevailing wages, it must provide Sponsor with an affirmative statement of the contractor's or subcontractor's intent. Unless required by law, Sponsor is not required to investigate a statement regarding prevailing wage provided by a contractor or subcontractor.
- D. **Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature. No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.
- E. **Debarment and Certification.** By signing the Agreement with RCO, Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

ARCHAEOLOGICAL AND CULTURAL RESOURCES

- A. **Project Review.** RCO facilitates the review of projects for potential impacts to archaeology and cultural resources, except as those listed below. Sponsor shall follow RCO guidance and directives to assist it with such review as may apply.
 - 1) **Projects occurring on State/Federal Lands:** Archaeological and cultural resources compliance for projects occurring on State or Federal Agency owned or managed lands, will be the responsibility of the respective owning or managing agency, regardless of sponsoring entity type. Prior to ground disturbing work or alteration of a potentially historic or culturally significant structure, or release of final payments on an acquisition, Sponsor must provide RCO all documentation acknowledging and demonstrating that applicable archaeological and cultural resources responsibilities of such state or federal landowner or manager has been conducted.

- B. **Termination.** RCO retains the right to terminate a project due to anticipated or actual impacts to archaeological and/or cultural resources.
- C. **Notice To Proceed.** No work shall commence in the project area until RCO has provided a notice of cultural resources completion. RCO may require on-site monitoring for impacts to archaeology and cultural resources during any demolition, construction, land clearing, restoration, repair work, or any other ground-disturbing activity, and may direct that work stop to minimize, mitigate, or avoid impacts to archaeology and cultural resource impacts or concerns. All cultural resources requirements for non-ground disturbing projects (such as acquisition or planning projects) must be met prior to final reimbursement.
- D. **Compliance and Indemnification.** At all times, Sponsor shall take reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic resources in the project area, and comply with any RCO direction for such minimization and mitigation. All federal or state cultural resources requirements under Governor's Executive Order 21-02 and the National Historic Preservation Act, and the State Environmental Policy Act and the National Environmental Policy Act, and any local laws that may apply, must be completed prior to the start of any work on the project site. Sponsor shall indemnify and hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the project funded under this Agreement. Sponsor shall 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.
- E. **Costs associated with project review and evaluation of archeology and cultural resources are eligible for reimbursement under this Agreement.** Costs that exceed the grant amount shall be the responsibility of Sponsor as set forth in RCO's Inadvertent Discovery Plan (IDP). Sponsor shall request, review, and is bound by RCORCOLDP, and shall:
- 1) Keep the IDP at the project site.
 - 2) Make the IDP readily available to anyone working at the project site.
 - 3) Discuss the IDP with staff and contractors working at the project site.
 - 4) Implement the IDP when cultural resources or human remains are found at the project site.
- F. **Discovery**
- 1) If any archaeological or historic resources are found while conducting work under this Agreement, Sponsor shall immediately stop work and notify RCO, the Department of Archaeology and Historic Preservation at (360) 586-3064, and any affected Tribe, and stop any activity that may cause further disturbance to the archeological or historic resources.
 - 2) If any human remains are found while conducting work under this Agreement, Sponsor shall immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then RCO, all in the most expeditious manner, and stop any activity that may cause disturbance to the remains. Sponsor shall secure the area of the find will and protect the remains from further disturbance until the State provides a new notice to proceed.
 - a) Any human remains discovered shall not be touched, moved, or further disturbed unless directed by the Department of Archaeology and Historic Preservation (DAHP).
 - b) The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

RECORDS

- A. **Digital Records.** If requested by RCO, Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by RCO.
- B. **Maintenance and Retention.** Sponsor shall maintain books, records, documents, data and other records relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of nine years from the date RCO deems the project complete, as defined in the PROJECT REIMBURSEMENTS Section. If any litigation, claim or audit

is started before the expiration of the nine (9) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

- C. **Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or Agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of Sponsor's reports, including computer models and methodology for those models.
- D. **Public Records.** Sponsor acknowledges that RCO is subject to RCW 42.56 and that this Agreement and records associated with this project may be public records as defined in RCW 42.56, including records submitted to, reviewed by, or used by RCO. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. Sponsor understands that under the state public records law, currently codified at RCW 42.56, the State may be requested to disclose or copy records associated with this Project, to include in certain circumstances records retained by Sponsor. Sponsor agrees to cooperate with RCO in responding to public records requests, and acknowledges that it may be responsible for objecting or responding to such requests. Sponsor warrants that it possesses such legal rights as are necessary to permit the State to comply with state public records laws. Sponsor hereby agrees to release the State from any claims arising out of a public records act request related to project-related records in Sponsor's possession or control, and to indemnify the State against any claims arising from such request and pay the reasonable cost of state's defense of such claims.

PROJECT FUNDING

- A. **Authority.** This Agreement and funding is made available to Sponsor through RCO.
- B. **Additional Amounts.** RCO or Funding Entity shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the RCO director and incorporated by written amendment into this Agreement.
- C. **Before the Agreement.** No expenditure made, or obligation incurred, by Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by the RCO director, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- D. **After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy RCO or Funding Entity may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

PROJECT REIMBURSEMENTS

- A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12, whichever has been designated to apply. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may request reimbursement only after (1) this Agreement has been fully executed and (2) Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in the PROJECT FUNDING Section. Reimbursement shall not be approved for any expenditure not incurred by Sponsor, or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- B. **Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recent applicable RCO manuals and this Agreement regarding reimbursement requirements.
- C. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other Agreements between RCO and the Sponsor.
- D. **Conditions for Payment of Retainage.** RCO reserves the right to withhold disbursement of the total amount of the grant to Sponsor until the following has occurred:
 - 1) RCO has accepted the project as a completed project, which acceptance shall not be unreasonably withheld.

- 2) On-site signs are in place (if applicable); Any other required documents and media are complete and submitted to RCO; Grant related fiscal transactions are complete.

RECOVERY OF PAYMENTS

- A. **Recovery for Noncompliance.** If Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, fails to meet its percentage of the project total, and/or fails to comply with any of the terms and conditions of the Agreement, RCO has the right to recover grant award funds in the amount equivalent to the extent of noncompliance, in addition to any other remedies available at law or in equity.
- B. **Return of Overpayments.** Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time Sponsor received such overpayment. Unless the overpayment is due to an error of RCO, the payment shall be due and owing on the date that Sponsor receives the overpayment from RCO. If the payment is due to an error of RCO, it shall be due and owing 30 days after demand by RCO for refund.

COVENANT AGAINST CONTINGENT FEES

Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an Agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by Sponsor, to terminate this Agreement and to be reimbursed by Sponsor for any grant funds paid to Sponsor (even if such funds have been subsequently paid to an agent), without liability to RCO or, in RCO's discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

PROCUREMENT REQUIREMENTS

- A. **Procurement Requirements.** If Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists, Sponsor must follow these minimum procedures:
 - 1) Publish a notice to the public requesting bids/proposals for the project;
 - 2) Specify in the notice the date for submittal of bids/proposals;
 - 3) Specify in the notice the general procedure and criteria for selection;
 - 4) Contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected; and
 - 5) Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

Alternatively, Sponsor may choose a bid from a bidding cooperative if authorized to do so.

This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any entity other than RCO. Sponsors may be required to certify to RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

RIGHT OF INSPECTION

Sponsor shall provide all RCO requested materials, plans, and documents produced in furtherance of the project, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in the applicable WACs and manuals, this Agreement, or as otherwise directed by RCO, to properties where ground disturbing or land clearing activities occur in furtherance of the project. However, RCO does not represent that any monitoring it may recommend will be adequate to reasonably assure project performance or safety. It is the sole responsibility of Sponsor to perform any such stewardship and monitoring as may be adequate for such purposes.

PREFERENCES FOR RESIDENTS

Sponsors shall not express a preference for users of the grant assisted project on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities. The foregoing shall only apply to projects constructed, or properties purchased including term-limited property rights, under the planning project funded in this Agreement.

ORDER OF PRECEDENCE

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order:

- A. Federal law and binding executive orders;
- B. Code of federal regulations;
- C. Terms and conditions of a grant award to the state from the federal government;
- D. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
- E. State Constitution, RCW, and WAC;
- F. Agreement Terms and Conditions and Applicable Manuals;
- G. Applicable deed restrictions, and/or governing documents.

LIMITATION OF AUTHORITY

Only RCO's Director or RCO's delegate authorized in writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached as an amendment to the original Agreement.

APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH

The Funding Entity (if different from RCO) and RCO rely on Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may, at RCO's discretion, be deemed a breach of this Agreement.

SPECIFIC PERFORMANCE

RCO may, at its discretion, enforce this Agreement by the remedy of specific performance, defined as Sponsor's completion of the project and/or Sponsor's completion of long-term obligations as described in this Agreement. However, the remedy of specific performance is not the sole or exclusive remedy available to RCO. No remedy available to RCO is exclusive, and RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

TERMINATION AND SUSPENSION

RCO requires strict compliance by Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules, and RCO policies, and with the representations of Sponsor in its application for a grant as finally approved by RCO. If Sponsor fails to comply as required, RCO may terminate the Agreement in accordance with this section. For federal awards, notification of termination will comply with 2 C.F.R. § 200 (as updated).

A. For Cause.

- 1) The RCO director may suspend or terminate the obligation to provide funding to Sponsor under this Agreement:
 - a) If Sponsor breaches any of Sponsor's obligations under this Agreement;
 - b) If Sponsor fails to make progress satisfactory to the RCO director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or
 - c) If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project;
- 2) Prior to termination, RCO shall notify Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director approves in writing, the Agreement may be terminated. In the event of termination, Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.
- 3) RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by Sponsor, or a decision by RCO to terminate the Contract.

B. For Convenience. Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when RCO determines such termination is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:

- 1) Sponsor was not in default; or
- 2) Failure to perform was outside Sponsor's control, fault or negligence.

C. Rights and Remedies of the RCO

- 1) The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
- 2) If, after any portion of the grant amount has been paid to Sponsor under this Agreement, the Agreement is terminated by the director due to Sponsor's breach of the Agreement or other violation of law, the director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent repayment would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

D. Non-Availability of Funds. The obligation of RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by Sponsor.

- 1) **Suspension:** The obligation of RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and RCO provides notice to continue work.
- 2) **No Waiver.** The failure or neglect of RCO to require strict compliance with any term of this Agreement or to pursue a remedy provided by this Agreement or by law shall not act as or be construed as a waiver of any right to fully enforce all rights and obligations set forth in this Agreement and in applicable state or federal law and regulations.

DISPUTE HEARING

Except as may otherwise be provided in this Agreement, when a dispute arises between Sponsor and RCO, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for

a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. Sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by Sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the persons chosen by Sponsor and director shall be dismissed and one alternate person chosen by Sponsor, and one alternate person chosen by the director shall be appointed and they shall agree on a third person. This process shall be repeated until a three-person panel is established.

Any hearing under this section shall be informal, with the specific processes to be determined by the dispute panel according to the nature and complexity of the issues involved. The process may be solely based on written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the majority decision of the dispute panelists, unless the remedy directed by that panel is beyond the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a dispute hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written Agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own costs and attorneys' fees.

GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be exclusively in Thurston County Superior Court if legally proper; otherwise venue shall be in the Superior Court of a county where the project is situated, if venue there is legally proper, and if not, in a county where venue is legally proper. Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington and agrees to venue as set forth above.

SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

END OF STANDARD TERMS AND CONDITIONS

This is the end of the Standard Terms and Conditions of the Agreement.