



City of Tukwila
**Community Services
 and Safety Committee**

- ◆ Jovita McConnell, Chair
- ◆ De'Sean Quinn
- ◆ Hannah Hedrick

<u>Distribution:</u>	
J. McConnell	Mayor McLeod
D. Quinn	M. Wine
H. Hedrick	A. Youn
	L. Humphrey

AGENDA

MONDAY, SEPTEMBER 9, 2024 – 5:30 PM

<p>ON-SITE PRESENCE:</p> <p>TUKWILA CITY HALL HAZELNUT CONFERENCE ROOM 6200 SOUTHCENTER BOULEVARD</p>	<p>REMOTE PARTICIPATION FOR THE PUBLIC:</p> <p>1-253-292-9750, ACCESS CODE: 936039108# Click here to: Join Microsoft Teams Meeting For Technical Support: 1-206-433-7155</p>
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Item	Recommended Action	Page
1. BUSINESS AGENDA		
a. An ordinance amending TMC Chapter 9.53, "Automated Traffic Safety Cameras" <i>Eric Lund, Deputy Police Chief</i>	a. Forward to 9/23 C.O.W & 10/7 Regular Meeting Consent Agenda.	Pg.1
b. Grant acceptance for Local Parks Maintenance. <i>David Rosen, Parks and Recreation Fiscal Analyst</i>	b. Forward to 9/16 Regular Meeting Consent Agenda.	Pg.13
2. MISCELLANEOUS		

Next Scheduled Meeting: *October 14, 2024*



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 Please contact the City Clerk's Office at **206-433-1800** (TukwilaCityClerk@TukwilaWA.gov) for assistance.



INFORMATIONAL MEMORANDUM

TO: Community Services and Safety Committee

FROM: Eric Drever, Chief of Police

BY: Eric Lund, Deputy Chief of Police

CC: Thomas McLeod

DATE: September 3, 2024

SUBJECT: TMC 9.53 update – Automated Traffic Safety Cameras

ISSUE

As a result of the passage of State legislation in 2022, cities are now authorized to install automatic speed safety cameras in areas directly outside hospitals, public parks, and within a school's designated walk area. TMC 9.53 requires revision to reflect these changes and allow for enforcement.

BACKGROUND

The City of Tukwila has already installed speed safety cameras near Foster High School and Showalter Middle School. The cameras have proven effective in reducing the number of speeding violations in the School Zone, increasing safety in the area.

New legislation effective July 1, 2022 authorized cities to use a limited number of automated traffic safety cameras to detect speed violations on any roadway identified in a school walk area, public park speed zone, or hospital zone. The TMC must now be updated to reflect the changes in the state law.

DISCUSSION

The proposed changes in the TMC were reviewed and drafted by the City Attorney's Office. Also, fines for violations are limited to \$145 and can be doubled to \$290 in school zones. The fines may be adjusted for inflation every five years by the Office of Financial Management.

FINANCIAL IMPACT

There is no financial impact by making changes to this municipal code.

RECOMMENDATION

The Council is being asked to approve the ordinance, agreement and consider this item at the September 23, 2024 Committee of the Whole meeting and subsequent October 7, 2024 Regular Meeting.

ATTACHMENTS

Draft Ordinance TMC 9.53
RCW 46.63.210
RCW 46.63.220

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING ORDINANCE NOS. 2612 §2, §3, AND §6, 2616 §1, AND 2696 §2, AS CODIFIED IN VARIOUS SECTIONS OF TMC CHAPTER 9.53, "AUTOMATED TRAFFIC SAFETY CAMERAS"; TO COMPLY WITH RCW 46.63.220; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Tukwila ("City") adopted Tukwila Municipal Code ("TMC") Chapter 9.53, authorizing law enforcement to utilize automated safety cameras in school and park speed zones; and

WHEREAS, the City adopted TMC 9.53.050, which established fines for violations of school and park speed zones captured by automated traffic safety cameras; and

WHEREAS, in 2024, the Washington State Legislature passed Engrossed Substitute House Bill ("ESHB") 2384, adopting RCW 46.63.220, which limits the fines that a municipality could levy for violations of school and park speed zones captured by automated traffic safety cameras; and

WHEREAS, the current fines for violations of school and park speed zones using an automated traffic safety camera listed in TMC 9.53.050 do not comply with the maximum fines listed in RCW 46.63.220(16); and

WHEREAS, TMC Sections 9.53.010 and 9.53.020 reference state statutes repealed by ESHB 2384 and replaced with RCW 46.63.210 and RCW 46.63.220, respectively; and

WHEREAS, the City desires to amend the fines listed in TMC Section 9.53.050 to be consistent with RCW 46.23.220(16) as now enacted and hereafter amended, as well as amend TMC 9.53.010 and 9.53.020 to be consistent with RCW 46.63.210 and RCW 46.63.220, respectively;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. TMC Section 9.53.010 Amended. Ordinance Nos. 2612 §2 and 2696 §2, as codified at TMC Section 9.53.010, “Automated traffic safety cameras – Detection of violations- Restrictions,” **subparagraph A**, are hereby amended to read as follows:

9.53.010 Automated traffic safety cameras – Detection of violations – Restrictions

A. City law enforcement officers and persons commissioned by the Tukwila Police Chief are authorized to use automated traffic safety cameras and related automated systems to detect and record the image of vehicles engaged in violations in school speed zones and public park speed zones, as defined by defined by [RCW 46.63.210\(3\)](#)~~RCW 46.63.170(B)(ii)(A)~~; provided, however, pictures of the vehicle and the vehicle license plate may be taken only while an infraction is occurring, and the picture shall not reveal the face of the driver or of any passengers in the vehicle.

Section 2. TMC Section 9.53.020 Amended. Ordinance No. 2612 §3, as codified at TMC Section 9.53.020, “Notice of Infraction,” **subparagraph E**, is hereby amended to read as follows:

9.53.020 Notice of Infraction

E. All photographs, microphotographs or electronic images prepared under this chapter are for the exclusive use of law enforcement in the discharge of duties under this chapter and, as provided in [RCW 46.63.220\(11\)](#)~~RCW 46.63.170(1)(g)~~, they are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this chapter. No photograph, microphotograph or electronic image may be used for any purpose other than enforcement of violations under this chapter nor retained longer than necessary to enforce this chapter.

Section 3. TMC Section 9.53.050 Amended. Ordinance Nos. 2612 §6 and 2616 §1, as codified at TMC Section 9.53.050, “Fines,” are hereby amended to read as follows:

9.53.050 Fine

A. The fine for an infraction detected under the authority of this chapter shall be ~~as follows:~~no more than the fines established in RCW 46.63.220(16), as now enacted or hereafter amended. Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, the amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall be \$145, as adjusted for inflation by the office of financial management every five years, beginning January 1, 2029, based upon changes in the consumer price index during that time period, and is doubled to \$290 for a school speed zone infraction generated through the use of an automated traffic safety camera.

~~1. \$210.00 for travelling at a speed greater than, but less than 11 miles per hour more than, the posted speed limit; and~~

~~2. \$240.00 for travelling at a speed at least 11 miles per hour more than the posted speed limit.~~

B. The maximum penalty for infractions detected pursuant to the provisions of this chapter shall not exceed the maximum amount of fine issued for parking infractions within the City.

Section 4. Corrections by City Clerk or Code Reviser Authorized. Upon approval of the City Attorney, the City Clerk, and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 5. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 6. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this _____ day of _____, 2024.

ATTEST/AUTHENTICATED:

Andy Youn, City Clerk

Thomas McLeod, Mayor

APPROVED AS TO FORM BY:

Filed with the City Clerk: _____

Passed by the City Council: _____

Published: _____

Effective Date: _____

Ordinance Number: _____

Office of the City Attorney

RCW 46.63.210 Definitions. The definitions in this section apply throughout this section and RCW 46.63.220 through 46.63.260 unless the context clearly requires otherwise.

(1) "Automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the front or rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit as detected by a speed measuring device. "Automated traffic safety camera" also includes a device used to detect stopping at intersection or crosswalk violations; stopping when traffic obstructed violations; public transportation only lane violations; stopping or traveling in restricted lane violations; and public transportation bus stop zone violations detected by a public transportation vehicle-mounted system.

(2) "Hospital speed zone" means the marked area within hospital property and extending 300 feet from the border of the hospital property (a) consistent with hospital use; and (b) where signs are posted to indicate the location is within a hospital speed zone, where "hospital" has the same meaning as in RCW 70.41.020.

(3) "Public park speed zone" means the marked area within public park property and extending 300 feet from the border of the public park property (a) consistent with active park use; and (b) where signs are posted to indicate the location is within a public park speed zone.

(4) "Public transportation vehicle" means any motor vehicle, streetcar, train, trolley vehicle, ferry boat, or any other device, vessel, or vehicle that is owned or operated by a transit authority or an entity providing service on behalf of a transit authority that is used for the purpose of carrying passengers and that operates on established routes. "Transit authority" has the same meaning as provided in RCW 9.91.025.

(5) "Roadway work zone" means an area of any city roadway, including state highways that are also classified as city streets under chapter 47.24 RCW, or county road as defined in RCW 46.04.150, with construction, maintenance, or utility work with a duration of 30 calendar days or more. A roadway work zone is identified by the placement of temporary traffic control devices that may include signs, channelizing devices, barriers, pavement markings, and/or work vehicles with warning lights. A roadway work zone extends from the first warning sign or high intensity rotating, flashing, oscillating, or strobe lights on a vehicle to the end road work sign or the last temporary traffic control device or vehicle.

(6) "School speed zone" has the same meaning as described in RCW 46.61.440 (1) and (2).

(7) "School walk zone" means a roadway identified under RCW 28A.160.160 or roadways within a one-mile radius of a school that students use to travel to school by foot, bicycle, or other means of active transportation. [2024 c 307 s 1.]

RCW 46.63.220 Automated traffic safety cameras—City or county may authorize use—Local legislative authority analysis—Traffic ordinances—Annual reports—Signage—Images—Notice of infraction—Compensation for equipment—Revenue. (1) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(2) Any city or county may authorize the use of automated traffic safety cameras and must adopt an ordinance authorizing such use through its local legislative authority.

(3) The local legislative authority must prepare an analysis of the locations within the jurisdiction where automated traffic safety cameras are proposed to be located before adding traffic safety cameras to a new location or relocating any existing camera to a new location within the jurisdiction. The analysis must include equity considerations including the impact of the camera placement on livability, accessibility, economics, education, and environmental health when identifying where to locate an automated traffic safety camera. The analysis must also show a demonstrated need for traffic cameras based on one or more of the following in the vicinity of the proposed camera location: Travel by vulnerable road users, evidence of vehicles speeding, rates of collision, reports showing near collisions, and anticipated or actual ineffectiveness or infeasibility of other mitigation measures.

(4) Automated traffic safety cameras may not be used on an on-ramp to a limited access facility as defined in RCW 47.52.010.

(5) A city may use automated traffic safety cameras to enforce traffic ordinances in this section on state highways that are also classified as city streets under chapter 47.24 RCW. A city government must notify the department of transportation when it installs an automated traffic safety camera to enforce traffic ordinances as authorized in this subsection.

(6) (a) At a minimum, a local ordinance adopted pursuant to this section must contain the restrictions described in this section and provisions for public notice and signage. Cities and counties must also post such restrictions and other automated traffic safety camera policies on the city's or county's website. Cities and counties using automated traffic safety cameras before July 24, 2005, are subject to the restrictions described in this section, but are not required to adopt an authorizing ordinance.

(b) (i) Cities and counties using automated traffic safety cameras must post an annual report on the city's or county's website of the number of traffic crashes that occurred at each location where an automated traffic safety camera is located, as well as the number of notices of infraction issued for each camera. Beginning January 1, 2026, the annual report must include the percentage of revenues received from fines issued from automated traffic safety camera infractions that were used to pay for the costs of the automated traffic safety camera program and must describe the uses of revenues that exceeded the costs of operation and administration of the automated traffic safety camera program by the city or county.

(ii) The Washington traffic safety commission must provide an annual report to the transportation committees of the legislature, and post the report to its website for public access, beginning July 1, 2026, that includes aggregated information on the use of automated traffic safety cameras in the state that includes an assessment of the

impact of their use, information required in city and county annual reports under (b) (i) of this subsection, and information on the number of automated traffic safety cameras in use by type and location, with an analysis of camera placement in the context of area demographics and household incomes. To the extent practicable, the commission must also provide in its annual report the number of traffic accidents, speeding violations, single vehicle accidents, pedestrian accidents, and driving under the influence violations that occurred at each location where an automated traffic safety camera is located in the five years before each camera's authorization and after each camera's authorization. Cities and counties using automated traffic safety cameras must provide the commission with the data it requests for the report required under this subsection in a form and manner specified by the commission.

(7) All locations where an automated traffic safety camera is used on roadways or intersections must be clearly marked by placing signs at least 30 days prior to activation of the camera in locations that clearly indicate to a driver either that: (a) The driver is within an area where automated traffic safety cameras are authorized; or (b) the driver is entering an area where violations are enforced by an automated traffic safety camera. The signs must be readily visible to a driver approaching an automated traffic safety camera. Signs placed in automated traffic safety camera locations after June 7, 2012, must follow the specifications and guidelines under the manual of uniform traffic control devices for streets and highways as adopted by the department of transportation under chapter 47.36 RCW. All public transportation vehicles utilizing a vehicle-mounted system must post a sign on the rear of the vehicle indicating to drivers that the vehicle is equipped with an automated traffic safety camera to enforce bus stop zone violations.

(8) Automated traffic safety cameras may only record images of the vehicle and vehicle license plate and only while an infraction is occurring. The image must not reveal the face of the driver or of passengers in the vehicle. The primary purpose of camera placement is to record images of the vehicle and vehicle license plate when an infraction is occurring. Cities and counties must consider installing automated traffic safety cameras in a manner that minimizes the impact of camera flash on drivers.

(9) A notice of infraction must be mailed to the registered owner of the vehicle within 14 days of the violation, or to the renter of a vehicle within 14 days of establishing the renter's name and address under subsection (17) of this section. The notice of infraction must include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail.

(10) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(d) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (17) of

this section. If appropriate under the circumstances, a renter identified under subsection (17)(a) of this section is responsible for an infraction.

(11) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images, or any other personally identifying data prepared under this section are for the exclusive use of authorized city or county employees, as specified in RCW 46.63.030(1)(d), in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image, or any other personally identifying data may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section. Transit authorities must provide to the appropriate local jurisdiction that has authorized traffic safety camera use under RCW 46.63.260(2) any images or evidence collected establishing that a violation of stopping, standing, or parking in a bus stop zone has occurred for infraction processing purposes consistent with this section.

(12) If a county or city has established an automated traffic safety camera program as authorized under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment. If the contract between the city or county and manufacturer or vendor of the equipment does not provide for performance or quality control measures regarding camera images, the city or county must perform a performance audit of the manufacturer or vendor of the equipment every three years to review and ensure that images produced from automated traffic safety cameras are sufficient for evidentiary purposes as described in subsection (9) of this section.

(13)(a) Except as provided in (d) of this subsection, a county or a city may only use revenue generated by an automated traffic safety camera program as authorized under this section for:

(i) Traffic safety activities related to construction and preservation projects and maintenance and operations purposes including, but not limited to, projects designed to implement the complete streets approach as defined in RCW 47.04.010, changes in physical infrastructure to reduce speeds through road design, and changes to improve safety for active transportation users, including improvements to access and safety for road users with mobility, sight, or other disabilities; and

(ii) The cost to administer, install, operate, and maintain the automated traffic safety cameras, including the cost of processing infractions.

(b) Except as provided in (d) of this subsection:

(i) The automated traffic safety camera program revenue used by a county or city with a population of 10,000 or more for purposes described in (a)(i) of this subsection must include the use of revenue in census tracts of the city or county that have household incomes in the lowest quartile determined by the most currently available census data and areas that experience rates of injury crashes that are above average for the city or county. Funding contributed from traffic safety program revenue must be, at a minimum, proportionate to the share of the population of the county or city who are residents of

these low-income communities and communities experiencing high injury crash rates. This share must be directed to investments that provide direct and meaningful traffic safety benefits to these communities. Revenue used to administer, install, operate, and maintain automated traffic safety cameras, including the cost of processing infractions, are excluded from determination of the proportionate share of revenues under this subsection (13)(b); and

(ii) The automated traffic safety camera program revenue used by a city or county with a population under 10,000 for traffic safety activities under (a)(i) of this subsection must be informed by the department of health's environmental health disparities map.

(c) Except as provided in (d) of this subsection, beginning four years after an automated traffic safety camera authorized under this section is initially placed and in use after June 6, 2024, 25 percent of the noninterest money received for infractions issued by such cameras in excess of the cost to administer, install, operate, and maintain the cameras, including the cost of processing infractions, must be deposited into the Cooper Jones active transportation safety account created in RCW 46.68.480.

(d)(i)(A) Jurisdictions with an automated traffic safety camera program in effect before January 1, 2024, may continue to allocate revenue generated from automated traffic safety cameras authorized under RCW 46.63.230 and 46.63.250(2)(c) as determined by the jurisdiction, as well as for the purposes established in (a) through (c) of this subsection, by:

(I) Up to a 10 percent increase in the number of traffic safety camera locations authorized to detect violations for automated traffic safety cameras authorized under RCW 46.63.230; and

(II) Up to a 10 percent increase in the number of traffic safety camera locations authorized to detect violations for automated traffic safety cameras authorized under RCW 46.63.250(2)(c).

(B)(I) Any automated traffic safety camera program in effect before January 1, 2024, with fewer than 10 traffic safety camera locations for automated traffic safety cameras authorized under RCW 46.63.230, which adds automated traffic safety cameras to one additional location for the use of cameras authorized under RCW 46.63.230, may continue to allocate revenue generated from automated traffic safety cameras authorized under RCW 46.63.230 as determined by the jurisdiction, as well as for the purposes established in (a) through (c) of this subsection.

(II) Any automated traffic safety camera program in effect before January 1, 2024, with fewer than 10 traffic safety camera locations for automated traffic safety cameras authorized under RCW 46.63.250(2)(c) as of January 1, 2024, which adds automated traffic safety cameras to one additional location for the use of cameras authorized under RCW 46.63.250(2)(c), may continue to allocate revenue generated from automated traffic safety cameras authorized under RCW 46.63.250(2)(c) as determined by the jurisdiction, as well as for the purposes established in (a) through (c) of this subsection.

(C) For the purposes of this subsection (13)(d)(i), a location is:

(I) An intersection for automated traffic safety cameras authorized under RCW 46.63.230 where cameras authorized under RCW 46.63.230 are in use; and

(II) A school speed zone for automated traffic safety cameras authorized under RCW 46.63.250(2)(c) where cameras authorized under RCW 46.63.250(2)(c) are in use.

(ii) The revenue distribution requirements under (a) through (d) (i) of this subsection do not apply to automated traffic safety camera programs in effect before January 1, 2024, for which an ordinance in effect as of January 1, 2024, directs the manner in which revenue generated from automated traffic safety cameras authorized under RCW 46.63.230 or 46.63.250(2) (c) must be used.

(14) A county or city may adopt the use of an online ability-to-pay calculator to process and grant requests for reduced fines or reduced civil penalties for automated traffic safety camera violations.

(15) Except as provided in this subsection, registered owners of vehicles who receive notices of infraction for automated traffic safety camera-enforced infractions and are recipients of public assistance under Title 74 RCW or participants in the Washington women, infants, and children program, and who request reduced penalties for infractions detected through the use of automated traffic safety camera violations, must be granted reduced penalty amounts of 50 percent of what would otherwise be assessed for a first automated traffic safety camera violation and for subsequent automated traffic safety camera violations issued within 21 days of issuance of the first automated traffic safety camera violation. Eligibility for medicaid under RCW 74.09.510 is not a qualifying criterion under this subsection. Registered owners of vehicles who receive notices of infraction must be provided with information on their eligibility and the opportunity to apply for a reduction in penalty amounts through the mail or internet.

(16) Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this section must be processed in the same manner as parking infractions, including for the purposes of RCW 3.50.100, 35.20.220, 46.16A.120, and 46.20.270(2). The amount of the fine issued for an infraction generated through the use of an automated traffic safety camera may not exceed \$145, as adjusted for inflation by the office of financial management every five years, beginning January 1, 2029, based upon changes in the consumer price index during that time period, but may be doubled for a school speed zone infraction generated through the use of an automated traffic safety camera.

(17) If the registered owner of the vehicle is a rental car business, the issuing agency must, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within 18 days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty. Timely mailing of this

statement to the issuing agency relieves a rental car business of any liability under this chapter for the notice of infraction. [2024 c 307 s 2.]



INFORMATIONAL MEMORANDUM

TO: Community Services & Safety Committee

FROM: David Rosen, Parks & Recreation Analyst

DATE: August 22, 2024

SUBJECT: Contract Approval: SFY25 Local Parks Maintenance Grant

ISSUE

The Parks and Recreation Department, in order to continue use of the Local Parks Maintenance (LPM) Grant through State Fiscal Year (SFY) 25, which is being offered in the amount of \$76,000, must first secure approval of the Tukwila City Council before the Mayor is approved to sign the offered contract.

BACKGROUND

In mid-2023, the Tukwila Parks and Recreation Department applied for and was awarded \$100,000 under the Washington State Recreation & Conservation Office’s LPM program. The award was given for the proposed Crystal Springs Park Lighting Replacement Project, which would see lighting in upper Crystal Springs Park replaced and/or rehabilitated to working condition. Subsequently, the state split this grant into two contracts, one for SFY24 in the amount of \$24,000, and one for SFY25 in the amount of \$76,000.

Per City policy, as the LPM is a zero-match grant, city staff was not required to seek Council approval for the SFY24 contract as it did not meet the required dollar threshold. However, the SFY25 contract being offered does exceed said dollar threshold.

DISCUSSION

To date, work completed for the grant includes a state-required Cultural Resources Survey, which must be done for any state-funded project that is causing ground disturbance. This report has been submitted to RCO and is being reviewed at this time. City staff intend to return to council in October with a contract for the lighting replacement work itself.

FINANCIAL IMPACT

The LPM grant is a reimbursement grant, the state will reimburse eligible expenses submitted to it by the City at periodic intervals. Therefore, signing of this grant creates no net General Fund inflows or outflows.

RECOMMENDATION

City staff recommend the Community Services and Safety Committee forward this grant agreement to the full Tukwila City Council for its approval on the September 16th Consent Agenda.

ATTACHMENTS

A --- Proposed Grant Agreement for Project 24-2215M (Crystal Springs Park Lighting Replacement)

Project Sponsor: Tukwila Parks & Recreation Department
Project Title: Crystal Springs Park Lighting Replacement

Project Number: 24-2215M
Approval Date: 06/30/2024

PARTIES OF THE AGREEMENT

This Recreation and Conservation Office Grant Agreement (Agreement) for the project identified above (Project) is entered into between the State of Washington by and through the Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917, and by and through the Tukwila Parks & Recreation Department (Sponsor, and primary Sponsor), 12424 - 42nd Ave S, Tukwila, WA 98168, 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.

Sponsor attests that prior to and during the Period of Performance, its Authorized Representative(s)/Agent(s) identified on the original signed Applicant Resolution/Authorization has full authority to legally bind the Sponsor(s) regarding all matters related to the Project, including but not limited to, full authority to: (1) sign the grant application for grant assistance, (2) enter into this Agreement, including indemnification, (3) enter into amendments to this Agreement. 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, a Sponsor may change its Authorized Representative/Agent only by providing the RCO written notice of the change and identifying the new designee authorized to sign as Authorized Representative/Agent. Unless and until such written notice is provided to RCO, RCO shall recognize only the person initially identified as the Authorized Representative/Agent.
- B. RCO reserves the right at any time to request, and Sponsor has the obligation to provide authorizations and documents that demonstrate any signatory to this Agreement or an amendment has the authority to legally bind the Sponsor.

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 Local Parks Maintenance Program grant is made from the General Fund State Account of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO).

DESCRIPTION OF PROJECT

The City of Tukwila Parks and Recreation Department will use this grant to replace nonfunctional lights in Crystal Springs Park. The City will replace underground wiring systems and purchase new light fixtures. The primary recreational activity supported by this project is maintenance of outdoor recreation sites.

PERIOD OF PERFORMANCE

The period of performance begins on July 1, 2024 (project start date) and ends on June 30, 2025 (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.

The RCO has 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 attached hereto are incorporated by reference as part of this Agreement.

LONG-TERM OBLIGATIONS

For this maintenance project, the Sponsor's ongoing obligations for the project area shall be for the period of performance of this Agreement. For equipment purchased as part of the project, the Sponsor's ongoing obligation shall comply with the

Treatment of Equipment and Assets section and applicable RCO Manuals identified herein.

PROJECT FUNDING AND REIMBURSEMENT PERIOD(S)

The total grant award provided for this project shall not exceed \$76,000.00. The RCO shall not pay any amount beyond that approved for grant funding of the project.:

	<u>Percentage</u>	<u>Dollar Amount</u>	<u>Source of Funding</u>
Office - Local Parks Mnt Single-Tier 2	100.00%	\$76,000.00	State
Total Project Cost	100.00%	\$76,000.00	

If this Grant Agreement’s period of performance spans more than one state fiscal year (July 1st through June 30th), Sponsor’s work performed in each fiscal year shall be reimbursed only with the funds available in that fiscal year. RCO shall not be obligated to reimburse work performed in one single fiscal year with funds from another fiscal year.

Grant funds that are not expended through a reimbursement request in one fiscal year (unused funds) shall not be carried over to the next fiscal year, and Sponsor has no right to these funds in the next fiscal year. Sponsor shall forfeit unspent grant funds, which shall remain with RCO unless otherwise made available as part of an amended Agreement.

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 the 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 shall be effective unless set forth in writing and 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 the 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. 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.

COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES

This Agreement, including any amendment thereto, is governed by, and the 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 purposes of this Agreement, the following RCO manuals are deemed applicable and are incorporated as terms of this Agreement:

- Local Parks Maintenance Grant - Manual 27
- Reimbursements - Manual 8

SPECIAL CONDITIONS

None

SPECIAL CONDITIONS - CULTURAL RESOURCES

None

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

David Rosen
Fiscal Analyst
12424 42nd Ave S
Tukwila, WA 98168
david.rosen@tukwilawa.gov

RCO Contact

Hayley Dalgetty
Outdoor Grants Manager
PO Box 40917
Olympia, WA 98504-0917
hayley.dalgetty@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.

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 24-2215, shall become effective and binding on the date signed by both the Sponsor's and the RCO's Authorized Representative/Agent, 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.

The 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 RCO GRANT AGREEMENT. The signatories listed below represent and warrant their authority to bind the parties to this Agreement.

Tukwila Parks & Recreation Department

By: _____ Date: _____

Name (printed): _____

Title: _____


State of Washington Recreation and Conservation Office

By: _____

FOR Megan Duffy
Director
Recreation and Conservation Office

Date: _____

Pre-approved as to form:

By:  _____

Assistant Attorney General

Date: 10/26/2023

Project Sponsor: Tukwila Parks & Recreation Department
Project Title: Crystal Springs Park Lighting Replacement

Project Number: 24-2215M
Approval Date: 06/30/2024

Eligible Scope Activities

ELIGIBLE SCOPE ACTIVITIES

Maintenance Metrics

Worksite #1, Crystal Springs Park

Recreational Facility Maintenance

Perform Recreational Facility Maintenance

Cultural Resources

Cultural resources

Project Management

Project Management

Permits

Obtain permits

DRAFT

Project Sponsor: Tukwila Parks & Recreation Department
Project Title: Crystal Springs Park Lighting Replacement

Project Number: 24-2215M
Approval Date: 06/30/2024

Project Milestones

PROJECT MILESTONE REPORT

Complete Milestone	Target Date	Comments/Description
Project Start	07/01/2024	
Permits Complete	07/15/2024	
Cultural Resources Documents	07/15/2024	Survey Submitted
Cultural Resources Complete	09/01/2024	Consultation Complete & Inadvertent Discovery Plan Submitted
RCO Notice to Proceed	09/10/2024	No ground disturbance allowed prior to Notice to Proceed
Progress Report Due	01/15/2025	
Annual Project Billing Due	01/31/2025	
Agreement End Date	06/30/2025	
Final Billing Due	07/31/2025	
Final Report Due	08/15/2025	

DRAFT

Project Sponsor: Tukwila Parks & Recreation Department
Project Title: Crystal Springs Park Lighting Replacement

Project Number: 24-2215M
Approval Date: 06/30/2024

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 03/15/2024.

CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the version current on 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 the Agreement, the following terms shall have the meaning set forth below (Note: not all defined terms may be present in a particular Agreement):

Agreement, terms of the Agreement, or project agreement – The document entitled “RCO GRANT AGREEMENT” accepted by all parties to the present project and transaction, including without limitation the Standard Terms and Conditions of the RCO Grant 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 the RCO has contracted to or been delegated to administer the grant program in question.

applicant – Any party, prior to becoming a Sponsor, who meets the qualifying standards/eligibility requirements for the grant application or request for funds in question, and who has submitted an application to RCO requesting grant funds.

application – The documents and other materials that an applicant submits to the RCO to support the applicant’s request for grant funds; this includes materials required for the “Application” in the 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 the 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 the following have occurred:

- The grant funded project has been inspected by the RCO, if applicable
- The RCO has determined that the project has been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any amendments to the Agreement required by RCO have been executed by the 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 Agreement is signed by both the Sponsor’s and the RCO’s Authorized Representative/Agent, whichever is later.

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 the 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 as may apply.

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.

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 the Sponsor.

maintenance project – A project that maintains existing areas and facilities through repairs and upkeep for the benefit of outdoor recreation.

maintenance and operation – A project that maintains and operates existing areas and facilities through repairs, upkeep, and routine services for the benefit of outdoor recreationists.

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

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

primary Sponsor – The Sponsor who 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). A Primary Sponsor includes its officers, employees, agents and successors.

Project – The undertaking identified on the first page of the Agreement 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 the RCO and the 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 amendments to the Agreement required by RCO have been entered by the Sponsor and RCO and have been delivered to the 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 the 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 – A Sponsor is an organization that is listed in and has signed 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 the Sponsor to this Agreement, grant, and project.

subaward – Funds allocated to the RCO from another organization, for 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, the 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 tribal recommendations for project implementation, which may include not proceeding with parts of the project, altering the project concept and design, relocating the project, or not implementing the project. Tribal consultation does not affect RCO's final approval authority for project proposals.

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 THE SPONSOR

The Sponsor shall undertake the project as described in this Agreement, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the RCO (to include any RCO approved changes or amendments thereto). All submitted documents are incorporated by this reference as if fully set forth herein.

Timely completion of the project and submission of required documents, including progress and final reports, is important. 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 the Sponsor without prior written approval of the RCO. Sponsor shall not sell, give, or otherwise assign to another party any property right, or alter a conveyance (see below) for the project area acquired with this grant without prior approval of the RCO.

RESPONSIBILITY FOR PROJECT

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

The Sponsor has sole responsibility to implement the project and 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.

The 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 the Sponsor and others with expertise or authority. In this respect, the 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 in accordance with the Agreement.

INDEMNIFICATION

The Sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity (however denominated) 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 the Sponsor or the Sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable. Provided, however, that Sponsor is not required to defend or indemnify the State against and hold harmless the State from claims, demands or suits based upon the sole negligence of the State, its employees and/or agents 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) the Sponsor or the Sponsor's agents or employees, and (b) the State, or its employees or agents, the Sponsor's indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or its agents, or employees.

As part of its obligations provided above, the Sponsor specifically assumes potential liability for actions brought by the Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the 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 the Sponsor. This shall not apply to a contractor or subcontractor donating its services to the project without compensation or other substantial consideration.

The 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 the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the 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 the Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the 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 CAPACITY OF THE SPONSOR

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

The Sponsor is responsible for withholding and/or paying employment taxes, other 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 the 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 the Sponsor in the procurement of, or performance under, this Agreement. In the event this Agreement is terminated as provided in this paragraph, RCO shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the 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 performing its obligations under the Agreement, the 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.** The 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 the 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 the Sponsor may be declared ineligible for further grant awards from the RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, the 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 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. Provided, however, that this restriction shall be based on an analysis of the use of the funds, not the identity or affiliation of the Sponsor.
- C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction affecting wages and job safety. The Sponsor agrees, that 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. The 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 the Sponsor with an affirmative statement of the contractor's or subcontractor's intent. Unless required by law, the 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, the 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, the 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. The 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 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, the Sponsor must

provide RCO all documentation acknowledging and demonstrating that the 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 archaeology and 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, or repair work, 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, the 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. The Sponsor must agree to 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 budget grant amount shall be the responsibility of the Sponsor Inadvertent Discovery Plan. The Sponsor shall request, review, and be bound by the RCO Inadvertent Discovery Plan, and:
- 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, the 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 RCO or 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, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.
- B. **Maintenance and Retention.** The 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 to RCO, 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/or 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 the Sponsor's reports, including computer models and methodology for those models.
- D. **Public Records.** Sponsor acknowledges that the RCO is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, the 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. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such record to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

PROJECT FUNDING

- A. **State Operating Budget.** Grant funds for this Grant/Agreement derive from the State's Operating Budget. Sponsor shall comply with state rules that direct, and in some cases restrict, the use of such funds for work performed per this Agreement. Sponsor shall follow RCO's direction on what activities Sponsor performs per this Agreement because of Operating Budget rules and requirements.
- B. **Additional Amounts.** The RCO or Funding Entity shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement nor for activities that do not occur in the fiscal year in which funds are available 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 the 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 the 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

Reimbursement Basis (also see PROJECT FUNDING AND REIMBURSEMENT PERIOD(S) section)

- A. 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) the 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 the 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 and only for reimbursable activities occurring in the same fiscal year (July 1st through June 30th) or as identified in the milestones. Sponsors must refer to the PROJECT FUNDING AND REIMBURSEMENT PERIOD(S) section and the most recent applicable RCO manuals and this Agreement regarding reimbursement requirements. Where conflicts exist between this Agreement and RCO Manual 8, this Agreement shall prevail.

- 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 the 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.** In the event that the 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 reserves 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.** The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the 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 the 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 the Sponsor receives the overpayment from the 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

The 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 the Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the 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.

INCOME (AND FEES) AND USE OF INCOME

See WAC 286-13-110 for additional requirements for projects funded from the RCFB.

- A. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any applicable manuals, RCWs, and WACs.
- B. **Use of Income.** Subject to any limitations contained in applicable state or federal law, any needed approvals of RCO, and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, rent, franchise fees, ecosystem services, carbon offsets sequestration, etc.) during or after the reimbursement period cited in the Agreement, must be used to offset:
 - 1) The Sponsor's matching resources;
 - 2) The project's total cost;
 - 3) The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the grant funding;
 - 4) The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;
 - 5) Capital expenses for similar acquisition and/or development and renovation; and/or
 - 6) Other purposes explicitly approved by RCO or otherwise provided for in this agreement.
- C. **Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored and shall be consistent with the:
 - 1) Grant program laws, rules, and applicable manuals;

- 2) Value of any service(s) furnished;
- 3) Value of any opportunities furnished; and
- 4) Prevailing range of public fees in the state for the activity involved.

PROCUREMENT REQUIREMENTS

A. **Procurement Requirements.** If the 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, the 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; and
- 4) Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.
- 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 the RCO. Sponsors may be required to certify to the 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.

TREATMENT OF EQUIPMENT AND ASSETS

Equipment shall be used and managed only for the purpose of this Agreement, unless otherwise provided herein or in the applicable manuals, or approved by RCO in writing.

- A. **Discontinued Use.** Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or as allowed by this Agreement and applicable RCO Manuals. When the Sponsor discontinues use of the equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.
- B. **Loss or Damage.** The Sponsor shall be responsible for any loss or damage to equipment.

RIGHT OF INSPECTION

The Sponsor shall provide right of access to the project to RCO, 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, long-term obligations, compliance, and/or quality assurance under this Agreement. If a landowner agreement or other form of control and tenure limits access to the project area, it must include (or be amended to include) the RCO's right to inspect and access lands acquired or developed with this funding assistance.

PREFERENCES FOR RESIDENTS

Sponsors shall not express a preference for users of grant assisted project sites 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.

PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS

The following provisions shall be in force:

- A. **Operations and Maintenance.** Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted per this Agreement and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration. It is the Sponsor's sole responsibility to ensure the

same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.

- 1) Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the RCO must receive prior written approval of the RCO.
- B. **Control and Tenure.** At the request of RCO, the Sponsor must provide documentation that shows appropriate tenure and term (such as long-term lease, perpetual or long-term easement, or perpetual or long-term fee simple ownership, or landowner agreement or interagency agreement for the land proposed for construction, renovation, or restoration, or maintenance. The documentation must meet current RCO requirements identified in this Agreement as of the effective date of this Agreement unless otherwise provided in any applicable manual, RCW, WAC, or as approved by the RCO.
- C. **Use of Best Management Practices.** Sponsors are encouraged to use best management practices including those developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery", 2009; "Protecting Nearshore Habitat and Functions in Puget Sound", 2010; "Stream Habitat Restoration Guidelines", 2012; "Water Crossing Design Guidelines", 2013; and "Marine Shoreline Design Guidelines", 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in "Reducing Accidental Introductions of Invasive Species" which is available on the WISC Web site.
- D. **Safety and Risk.** At no time shall the Sponsor design, construct, or operate this grant funded project in a way that unreasonably puts the public, itself, or others at risk of injury or property damage. The Sponsor agrees and acknowledges that the Sponsor is solely responsible for safety and risk associated with the project, that RCO does not have expertise, capacity, or a mission to review, monitor, or inspect for safety and risk, that no expectation exists that RCO will do so, and that RCO is in no way responsible for any risks associated with the project.

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
- G. Applicable Manuals;
- H. 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 the 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 is presumed to be material and to have been relied upon, and may be deemed a breach of this Agreement at RCO's sole discretion.

SPECIFIC PERFORMANCE

RCO may, at its sole discretion, enforce this Agreement by the remedy of specific performance, which means Sponsor's completion of the project and/or its completion of long-term obligations as described in this Agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the RCO shall be deemed exclusive. The 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

The RCO requires strict compliance by the 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 the Sponsor in its application for a grant as finally approved by RCO. 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 the Sponsor under this Agreement:
 - a) If the Sponsor breaches any of the Sponsor's obligations under this Agreement;
 - b) If the 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, the RCO shall notify the 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, the 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 the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the 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 it 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) The 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) In the event this Agreement is terminated by the director, after any portion of the grant amount has been paid to the Sponsor under this Agreement 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 the 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 the Sponsor.

- 1) **Suspension:** The obligation of the 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 the 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 the Sponsor and the 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. The 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; one person chosen by the 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 the Sponsor and director shall be dismissed and an alternate person chosen by the Sponsor, and one 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 set by the disputes panel according to the nature and complexity of the issues involved. The process will be solely based on written material if the parties so request or if so directed by the disputes panel. 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 disputes 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 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. The 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.

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