

**Project Sponsor:**

**Project Number:**

**Project Title:**

**Approval Date:**

**PARTIES OF THE AGREEMENT**

This Recreation and Conservation Office Agreement (Agreement) is entered into between the State of Washington Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917, and (Sponsor, and primary Sponsor), 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.

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

**PURPOSE OF AGREEMENT**

This Agreement sets out the terms and conditions by which a grant is made for the Outdoor Learning Grant Program. The grant has been awarded by the Office of the Superintendent of Public Instruction (OSPI) subject to this Agreement and shall be administered by the RCO per the authority granted the Director of RCO in RCW 79A.25.020, and the Interagency Agreement Between the State of Washington Recreation and Conservation Office and the Office of the Superintendent of Public Instruction (RCO IAA No. xx-xx, OSPI Agreement No. xx-xx).

**DESCRIPTION OF PROJECT**

**PERIOD OF PERFORMANCE**

The period of performance begins on (project start date) and ends on (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 period of performance shall not extend beyond .

**STANDARD TERMS AND CONDITIONS INCORPORATED**

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

**LONG-TERM OBLIGATIONS**

All of the supplies and equipment purchased with project funds under this Agreement shall be retained by sponsor and used for similar uses, or otherwise disposed of per the TREATMENT OF EQUIPMENT AND ASSETS section, or as approved by RCO. This obligation shall survive the completion/termination of this Project Agreement unless otherwise identified in the Agreement or as approved by the RCO.

**PROJECT FUNDING**

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

	Percentage	Dollar Amount	Source of Funding
<b>Office - Outdoor Learning Grant</b>	100.00%	\$	State
<b>Total Project Cost</b>	100.00%	\$	

## **RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS**

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved 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 this Agreement, it shall not be used to vary the terms of the Agreement, unless those terms are shown to be subject to an unintended error or omission. This "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 of the Recreation and Conservation Office.

## **AMENDMENTS TO AGREEMENT**

Except as provided herein, no amendment (including without limitation, deletions) of any of the terms or conditions of this Agreement will be effective unless provided in writing signed by all parties. Extensions of the period of performance and minor scope adjustments consented to in writing (including email) by the Sponsor need only be signed by RCO's director or designee, unless otherwise provided for in another agreement a Sponsor has with the RCO. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

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

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

## **COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES**

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, and any applicable federal program and accounting rules effective as of the date of this Agreement, and with respect to any amendments to this Agreement, as of the effective date of that 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.

For the purpose of this Agreement, WAC 352.80 shall apply as terms of this Agreement; provided, where a WAC refers to a funding board's responsibility and/or authority, the RCO director shall have that role and/or authority.

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

- Outdoor Learning Grants (OLG) - Manual 26
- Reimbursements - Manual 8

## **SPECIAL CONDITIONS**

## **AGREEMENT CONTACTS**

The parties will provide all written communications and notices under this Agreement to the mail address or the email address listed below if not both:

These addresses 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**

This Agreement, for project #, shall be subject to the written approval of the RCO's authorized representative and shall not be effective and binding until the date signed by both the sponsor and the RCO, 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 RECREATION AND CONSERVATION OFFICE. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

**Sponsor**

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

**Date:** \_\_\_\_\_

**Name (printed):** \_\_\_\_\_

**Title:** \_\_\_\_\_

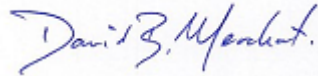
**State of Washington, Washington State Office of the Superintendent of Public Instruction  
Acting through the Recreation and Conservation Office**

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

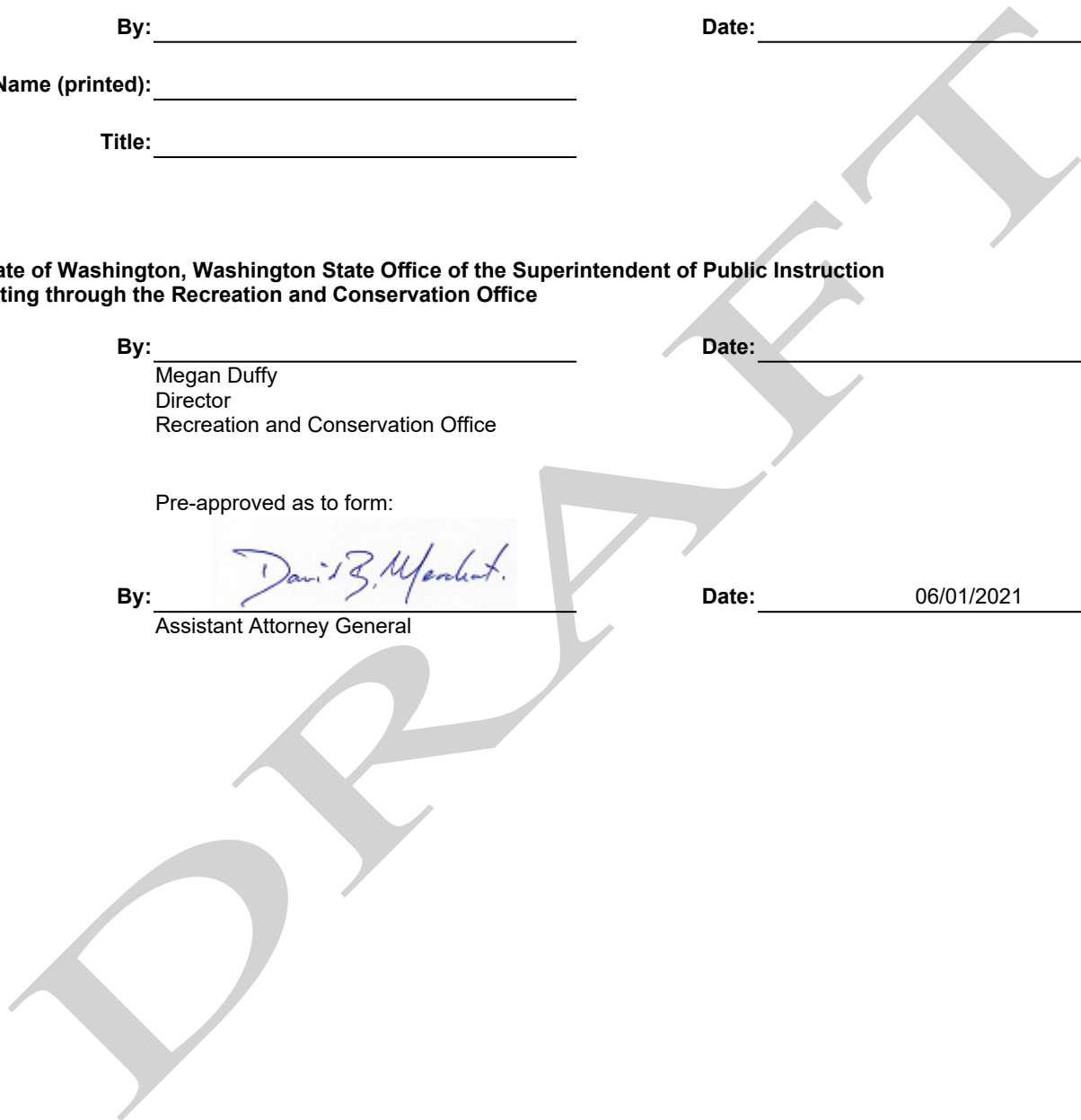
**Date:** \_\_\_\_\_

Megan Duffy  
Director  
Recreation and Conservation Office

Pre-approved as to form:

**By:**  \_\_\_\_\_  
Assistant Attorney General

**Date:** 06/01/2021



Project Sponsor:

Project Number:

Project Title:

Approval Date:

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## Eligible Scope Activities

ELIGIBLE SCOPE ACTIVITIES

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DRAFT

Project Sponsor:

Project Number:

Project Title:

Approval Date:

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## Project Milestones

PROJECT MILESTONE REPORT

DRAFT

Project Sponsor:

Project Number:

Project Title:

Approval Date:

## Standard Terms and Conditions of the Recreation and Conservation Office

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## STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This agreement reflects Standard Terms and Conditions of the Recreation and Conservation Office as of 04/18/2022.

## CITATIONS, HEADINGS AND DEFINITIONS

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

**agreement or project agreement** – The document entitled “Recreation and Conservation Office Agreement” accepted by all parties to the present project and transaction, including without limitation the Standard Terms and Conditions of the Recreation and Conservation Office, all attachments, addendums, and amendments, and any intergovernmental agreements or other documents that are incorporated into the Agreement subject to any limitations on their effect.

**applicable manual(s)** -- A manual designated in this Agreement to apply as terms of this Agreement, subject to substitution of the “RCO director” for instances where the term “board” occurs.

**applicable WAC(s)** -- Designated chapters or provisions of the Washington Administrative Code that are deemed under this Agreement to apply as terms of the Agreement, subject to substitution of the “RCO director” for instances where the term “board” occurs.

**applicant** – Any party that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds administered by RCO.

**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.

**child abuse or neglect** - The injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child under circumstances, which indicate that the child’s health, welfare, and safety is harmed. An abused child is a child who has been subjected to child abuse or neglect.

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

**corporal punishment** - Any act that willfully inflicts or causes the infliction of physical pain on a child.

**critical injury** - a serious injury that places life in jeopardy, typically involves a person that is unconsciousness, experienced a significant loss of blood, an acute fracture or amputation of a leg or arm, burns over a major portion of the body, loss of sight or other significant losses that require immediate medical attention in a hospital or by a qualified medical practitioner.

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

**DSHS** – Washington State Department of Social and Health Services

**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 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 applicable regulations and policies.

**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.

**Minor (minors)** – a child (children). A person or persons under the age of 18.

**Office** – Means the Recreation and Conservation Office or RCO.

**OSPI - The Office of the Superintendent of Public Instruction**

**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. This administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

**program participant** – persons taking part in programs, or being served by; the sponsor, contractor, subcontractor, or its assigns; under the terms of this Agreement.

**project** – An undertaking that is, or may be, funded in whole or in part with funds administered by RCO.

**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.

**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.

**regulation** – any federal, state, or local regulation, rule, or ordinance.

**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.

**RCFB** – Recreation and Conservation Funding Board

**RCW** – Revised Code of Washington

**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 or primary sponsor** – The eligible applicant who has been awarded a grant of funds and is bound by this executed Agreement; includes its officers, employees, agents and successors.

**subcontractor** – An entity that receives a contract from a contractor.

**State** – the government of the State of Washington to include all its departments, agencies, offices, boards and commissions.

**vulnerable adult** – a person over the age of 18 who has the functional, mental, or physical inability to care for himself or herself; or has a developmental disability, or has been admitted to any facility or is receiving services from home care agencies licensed or required to be licensed under RCW 70.127, or receiving services from an individual provider; or who self-directs his or her own care and receives services from a personal aide under chapter RCW 74.39, or any combination of or all of the above.

**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. 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 consent of the RCO.

### **RESPONSIBILITY FOR PROJECT**

While 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 responsibility for the implementation of the project is solely that of the Sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project is Sponsored by more than one entity, 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.

### **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 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 that nothing herein shall require a Sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and/or agents 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, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor is legally liable, and (b) the State its employees and agents for whom it is vicariously liable, the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or the negligence of the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

This provision shall be included in any agreement between Sponsor and any contractors, subcontractor and vendor, of any tier.

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.

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.

The RCO is 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, 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 herein, 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 implementing 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 Act. 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.
- B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.40. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.
  - 1) **Exception, Service Organizations of Trail and Environmental Projects (RCW 79A.35.130).** If allowed by state and federal law and rules, participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided: (1) The nonprofit organization must be registered as a nonprofit corporation pursuant to RCW 24.03; (2) The nonprofit organization's management and administrative headquarters must be located in Washington; (3) Participants in the program must spend at least fifteen percent of their time in the program on education and training activities; and (4) Participants in the program must receive a stipend or living allowance as authorized by federal or state law. Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program.
- 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.
- E. 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.
- F. **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."

## INSURANCE

The sponsor shall at all times comply with the following insurance requirements.

- A. **Industrial Insurance Coverage.** If required by law, sponsor shall provide or purchase industrial insurance coverage for themselves and their employees as required by Labor and Industries prior to performing work under this Agreement. Any and all claims that might arise under the Workmen's Compensation Act on behalf of the sponsor or other persons while engaged in the performance of the duties and services contemplated and any and all claims that might be made by a third person as a result of any act or failure to act, shall be the sponsor's sole obligation. RCO will not be responsible for payment of industrial premiums or for any other claim or benefit for sponsor, or any sponsor employee, volunteer, contractor or subcontractor, which might arise under the industrial insurance laws during the performance of duties and services under this agreement. Sponsor, or any sponsor employee, volunteer, contractor or subcontractor are not employees of RCO or OSPI.
- B. **General Liability Insurance.** The sponsor shall maintain General Liability Insurance or Business Liability Insurance, including coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of the parties' performance under this Agreement, including but not limited to premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract.
- C. **Other Insurance.** Sponsor shall maintain automobile insurance on all vehicles used to transport staff, volunteers, and program participants, including vehicles hired by the sponsor or owned by the sponsor's employees, contractors, subcontractors, volunteers or others, with the following minimum limits: \$1,000,000 per accident combined single limit. In addition, sponsor shall ensure that sponsor, its employees, contractors, or volunteers who use vehicles to transport program participants or deliver services have automobile insurance that covers passengers and driver, and current driver's licenses.
- D. **Evidence of Coverage.** The sponsor shall, upon request by RCO or any other state of Washington agency, submit a copy of the Certificate of Insurance, policy, and additional insured endorsement for each coverage required.
- E. **General.** By requiring insurance, the RCO does not represent that the coverage and limits specified will be adequate to protect the Contractor. Such coverage and limits shall not be construed to relieve the sponsor from liability in excess of the required coverage and limits and shall not limit the sponsor's liability under the indemnities and reimbursements granted to the State of Washington.

## PARTICIPANT HEALTH, SAFETY, AND WELFARE

- A. **Health and Safety.** Sponsor shall perform any and all of its obligations under this Agreement in a manner that does not unduly compromise the health and safety of any program participant.
- B. **First Aid and CPR.** Sponsor and all sponsor employees, contractors, and subcontractors accompanying program participants shall have current first aid and cardiopulmonary resuscitation (CPR) training.
- C. **Background Checks.** Sponsor and all sponsor employees, volunteers, contractors, and subcontractors; and all prospective sponsor employees, volunteers, contractors, and subcontractors who may have unsupervised access to a minor (child, children) or a vulnerable adult served under this Agreement or other persons having access to program participants, shall have a criminal history background check pursuant to RCW 43 and WAC 388, prior to providing services under the terms of this Agreement. These background checks will be done through the Washington state patrol criminal identification section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. Sponsor shall assist in obtaining additional state or national criminal history and/or child abuse/neglect history, if requested by or required by any local, state, or federal agency, or law or regulation.
- D. **Corporal Punishment Prohibited.** Corporal punishment of program participants is prohibited.
- E. **Program Participants' Personal Information and Confidentiality.** Sponsor shall protect and maintain all program participants' personal and confidential information obtained under this agreement against unauthorized use, access, disclosure, modification or loss. This duty requires the sponsor to employ reasonable security measures, which include restricting access to the personal and confidential information to persons and organizations that need the information to perform essential duties under this Agreement. The compromise of personal or confidential information must be reported to the program participant (or guardian thereof if a minor) within one (1) business day of discovery. Sponsor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law.
- F. **Publishing and Distribution of Photographs and Video.** Any photographs or videos of program participants may only be published, distributed, or otherwise made available to the public if the program participants therein, have given written consent. For minors, only his or her legal guardian may give such consent.

- G. **Smoking, Drugs and Alcohol Prohibited in Presence of Youth.** Smoking, (including the use of e-cigarettes), consumption of alcohol or other drugs by sponsor, sponsor employees, volunteers, contractors and subcontractors in the presence of youth is prohibited.
- H. **Notifications.** Sponsor must immediately notify RCO if any of the following occurs in connection with the services provided under the terms of this Agreement:
- 1) Death of sponsor employee, volunteer, or program participant.
  - 2) Critical injury to a program participant.
- I. **Safety Plan.** Sponsor shall have and follow a safety plan during the period performance of this agreement.
- J. **Mandated Reporter Training.** Sponsor shall ensure that sponsor, sponsor's employees and volunteers, and contractors and subcontractors who are legally required to report child abuse or neglect (RCW 26.44.030), read and/or view the materials in DSHS's Mandated Reporter Toolkit prior to having access to children. After reading and reviewing the materials, all persons shall sign and date a statement acknowledging his or her duty to report child maltreatment and affirming that he or she understands when and how to report suspected child abuse or neglect. The sponsor shall retain the signed statement in each individual's personnel file. The Contractor shall either obtain a copy of the Mandated Reporter Toolkit from DSHS, or access the Mandated Reporter Toolkit online at the following address: <http://www.dshs.wa.gov/ca/safety/abuseReport.asp?2>
- K. **Transportation of Children.** The sponsor shall only provide transportation that is safe, reliable, and in conformance with local, state, and federal laws. Specifically, and in addition:
- 1) Drivers shall be age 21 or older, have a current valid driver's license for the classification of motor vehicle operated, have proof of liability insurance, and successfully pass a background check.
  - 2) Drivers shall at all times comply with the child passenger restraint requirements of RCW 46.61.687 when transporting children or providing transportation to children served under this Agreement. Current child passenger restraint requirements may be accessed at <http://www.800bucklup.org/>.
  - 3) Motor vehicle is maintained in safe operating condition.
  - 4) Number of passengers does not exceed the seating capacity of the motor vehicle.
  - 5) Motor vehicle is equipped with the required safety devices and seat belts, which shall be used as required by law.
- L. The sponsor shall ensure that no transportation of program participants occurs unless an auto insurance policy that covers the transportation of them is in effect.
- M. **Investigations of Sponsor or Related Personnel.** RCO reserves the right in its sole discretion, without prior notice to sponsor, to suspend or terminate this agreement if the sponsor, or any partner, officer or director of the sponsor, volunteer, or a contractor or subcontractor is investigated by DSHS or any local, county, state or federal agency and that investigation identifies a matter or condition that, if ultimately established, would potentially:
- 1) Result in a conviction for violating a local, state or federal law, or
  - 2) In the sole judgment of RCO, adversely affect the delivery of services under this agreement or compromise the health, safety, or welfare of program participants.
- N. **Compliance Sponsor's Sole Responsibility.** It is sponsor's sole responsibility to ensure that the above requirements A-K are fully complied with. The RCO does not assume any responsibility to ensure or review such compliance.

## RECORDS

- A. **Maintenance.** The Sponsor shall maintain books, records, documents, data and other evidence 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 six 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 six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- B. **Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by

law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.

- C. **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 document 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. **Authority.** This Agreement and funding is made available to Sponsor through the RCO.
- B. **Savings.** In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, RCO may terminate the Agreement under the Non Availability of Funds clause in the TERMINATION Section.
- C. **Additional Amounts.** The RCO or Funding Entity shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the RCO director and incorporated by written amendment into this Agreement.
- 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

- A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may only request reimbursement 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 for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recent applicable RCO manuals and this Agreement regarding reimbursement requirements.
- C. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.
- D. **Retainage Held Until Project Complete.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the project has been completed. A project is considered "complete" when:
- 1) All approved or required activities outlined in the Agreement are done;
  - 2) A final project report is submitted to and accepted by RCO;
  - 3) Any other required documents and media are complete and submitted to RCO;
  - 4) A final reimbursement request is submitted to RCO;
  - 5) The completed project has been accepted by RCO;
  - 6) Final amendments have been processed;

7) Fiscal transactions are complete.

E. **Sources of Eligible Match.** Applicant resources used to match grant funds must be eligible in the grant program.

#### **ADVANCE PAYMENTS**

Advance payments of or in anticipation of goods or services are not allowed unless approved by the RCO director and are consistent with legal requirements and Manual 8: Reimbursements.

#### **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, or meet its percentage of the project total, 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. **Overpayment Payments.** 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 that payment becomes due and owing.

#### **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 without liability or, in its 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**

Any fees charged must be consistent with the value of any service(s) furnished, value of any opportunities furnished; and prevailing range of similar programs by similar providers.

#### **RIGHTS IN DATA**

Copyright in all material created by sponsor and paid for under the terms of this agreement shall be the property of the State of Washington. Both the State of Washington and sponsor may use these materials, and permit others to use them, for any purpose consistent with their respective missions. This material includes, but is not limited to: books, computer programs, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes, and/or training materials. Sponsor hereby grants (or, if necessary and to the extent reasonably possible, shall obtain and grant), a perpetual, unrestricted, royalty free, non-exclusive license to the State of Washington to use any such materials.

#### **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.

- B. **Direct Buy Purchases (RCW 39.26.125).** Sponsor is not required to have a competitive process for procurement of goods and services if the item or service purchased is \$10,000 or less (not including tax). Sponsor may also directly buy an item of service from up to \$13,000 (not including tax) if the supplier is a microbusiness, minibusiness, or small business as defined in RCW 39.26.010.
- C. **Discrimination.** Sponsor purchases must comply with the same legal standards regarding unlawful discrimination based upon race, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

#### **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 RULES of applicable grant assisted program. 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 the RCO, or any of its staff, officers, or delegates access to its facility and its programs, at all reasonable times, in order to monitor and evaluate performance and compliance under this Agreement.

#### **ACKNOWLEDGMENT AND SIGNS**

The sponsor shall include language that acknowledges the funding contribution of the OSPI Outdoor Learning Grant program in its publications and marketing materials and portals. This acknowledgement shall be accompanied by the OSPI and RCO logos.

#### **LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS**

Long-Term Obligations. Sponsor shall comply with the terms of this Agreement.

#### **PROGRAMS OPEN TO THE PUBLIC**

All potential program participants must have an equal opportunity to participate in opportunities and programs provided under the terms of this Agreement. If membership is required to participate in a program or opportunity, membership must be open to the general public.

#### **PROVISIONS RELATED TO CORPORATE (INCLUDING NONPROFIT) SPONSORS**

A corporate Sponsor, including any nonprofit Sponsor, shall:

- A. Maintain corporate status with the state, including registering with the Washington Secretary of State's office, throughout the Sponsor's obligation to the project as identified in the Agreement.
- B. Notify RCO before corporate dissolution at any time during the period of performance or long-term obligations. Within 30 days of dissolution the Sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities, and transfer all property and assets to the successor. A qualified successor is any party eligible to apply for funds in the subject grant program and capable of complying with the terms and conditions of this Agreement. RCO will process an amendment transferring the Sponsor's obligation to the qualified successor if requirements are met.

#### **FINAL REPORT**

Sponsor shall provide to the Recreation and Conservation Office a final report on the program's accomplishment within 30 days of receiving its final reimbursement payment. The report shall be in the format prescribed by RCO.

## **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 law (constitution, statute);
- F. Washington Administrative Code;
- G. Applicable RCO manuals.
- H. RCO policies

## **LIMITATION OF AUTHORITY**

Only RCO's Director or RCO's delegate by 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 relies 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 may be deemed a breach of this Agreement.

## **SPECIFIC PERFORMANCE**

RCO may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the project as described in this Agreement and /or enforcement of long-term obligations. 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 of 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, 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 it 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.

## 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 consisting of 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 RCO:

a third person. This process shall be repeated until a three-person panel is established.

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

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without 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 attorney fees and costs.

#### **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 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.

#### **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.