

# AGENDA

***Port of Kennewick  
Regular Commission Business Meeting  
Port of Kennewick Commission Chambers  
350 Clover Island Drive, Suite 200, Kennewick, Washington***

Tuesday, June 14, 2016  
2:00 p.m.

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. APPROVAL OF THE AGENDA**
- IV. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- V. CONSENT AGENDA**
  - A. Approval of Direct Deposit and ePayments Dated June 2, 2016
  - B. Approval of Warrant Registers Dated June 14, 2016
  - C. Approval of Regular Commission Business Meeting May 24, 2016
  - D. Approval of Resolution 2016-17 Amending Resolutions 2016-10 and 2016-12 regarding applications for funding assistance from Washington Wildlife and Recreation Program (WWRP) and Aquatic Lands Enhancement Account (ALEA)
- VI. PRESENTATIONS**
  - A. Sharon Grant and Bob Bass, Friends of Badger Mountain (TANA)
  - B. Wine Industry Update, Ken Robertson (TANA)
- VII. REPORTS, COMMENTS AND DISCUSSION ITEMS**
  - A. Boise Update (TIM)
  - B. Commissioner Retreat (BRIDGETTE / TIM)
  - C. Rural Capital Funds (TIM)
  - D. Joint Meeting with CTUIR (BRIDGETTE)
  - E. RECESS
  - F. Vista Field
    - 1. Update (LARRY)
    - 2. Guidelines for Vista Field Development Proposals (TIM)
    - 3. Vista Field Various Policy Directives; Resolution 2016-18 (TIM)
  - G. Columbia Drive Update (LARRY)
    - 1. Winery Tenancy Policy; Resolution 2016-19 (TIM)
  - H. Commissioner Meetings (formal and informal meetings with groups or individuals)
  - I. Non-Scheduled Items
- VIII. PUBLIC COMMENT** *(Please state your name and address for the public record)*
- IX. ADJOURNMENT**

***Action may be taken on any item on the Agenda.***

***PLEASE SILENCE CELL PHONES***



# REGULAR COMMISSION MEETING

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## CALL TO ORDER

Commission President Skip Novakovich called the Regular Commission meeting to order at 2:00 p.m. in the Port of Kennewick Commission Chambers located at 350 Clover Island Drive, Suite 200, Kennewick, Washington 99336.

### The following were present:

**Board Members:** Skip Novakovich, President  
Thomas Moak, Vice-President  
Don Barnes, Secretary

**Staff Members:** Tim Arntzen, Chief Executive Officer  
Larry Peterson, Director of Planning and Development  
Lisa Schumacher, Special Projects Coordinator  
Bridgette Scott, Executive Assistant  
Lucinda Luke, Port Counsel

## PLEDGE OF ALLEGIANCE

Terence Thornhill led the Pledge of Allegiance.

Mr. Novakovich inquired if Item VII A. c. (Vista Field Redevelopment Project Name) could be moved up to VII A. a. on the Official Agenda.

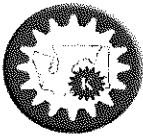
## APPROVAL OF THE AGENDA

**MOTION:** *Commissioner Barnes moved to approve the Agenda, as published, with the change noted, moving item VII A. c. (Vista Field Redevelopment Project Name) to VII A. a.; Commissioner Novakovich seconded. With no further discussion, motion carried unanimously. All in favor 3:0.*

## PUBLIC COMMENT

Chuck Eaton, 2309 Davison Avenue, Richland. Mr. Eaton reported TriConf 2016 is a self-organized event that is aimed at bringing together people in the Tri-Cities. TriConf is an annual celebration for independent minds to share and learn from one another on topics such as: technology, design, entrepreneurship, creativity, art, culture and community. TriConf is now in its sixth year and will take place on July 18-24 in Pasco. This year, there will be an urban design tract with sessions on new urbanism, viticulture and wine making. This may appeal to people who are interested in the Port's Wine Village and Vista Field.

Mark Blotz, 5727 West Victoria, Kennewick. Mr. Blotz, General Manager of Clover Island Inn, thanked the Port for their advertising support for Clover Island Inn's Annual Summer Concert Series. On May 13, Clover Island Inn began the Summer Concert Series with the kickoff to the Untapped Blues Festival which brought approximately 800 people to the Island. On May 29, Hells Belles will perform and the Inn is expecting approximately 1,000 people at this event. The Thunder on the Island series begins Wednesday June 15 through August 17 and features local live bands. The Summer Series wraps up on September 3, with Sawyer Brown Band performing.



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Mr. Novakovich thanked Mr. Blotz for Clover Island Inn's contribution to the Island.

No further comments were made.

Mr. Novakovich stated Consent Agenda items are a number of items taken collectively in one motion to be approved or disapproved. He further stated the Commission has the option to remove items from the Consent Agenda and inquired if any items need to be removed.

Mr. Novakovich would like to remove Item C and have the item approved separately because on April 12, 2011, he disclosed that Esprit, the company he and his wife owns, has a contract with PS Media to print the Port's newsletter. Esprit does not get paid directly from the Port; they get paid from PS Media. Item C is the payment to PS Media and in the interest of any kind of perception that there could be a conflict, he would like to recuse himself from any action on this item.

## CONSENT AGENDA

Consent agenda consisted of the following:

- A. Approval of Direct Deposit and E-Payments Dated May 17, 2016**  
Direct Deposit and E-Payments totaling \$46,476.87
- B. Approval of Warrant Registers Dated May 24, 2016**  
Expense Fund Voucher Numbers 37915 through 37959 for a grand total of \$83,911.30
- C. Approval of Warrant Registers Dated May 24, 2016 (PS Media)**  
Expense Fund Voucher Numbers 37945 for a grand total of \$15,229.67
- D. Approval of Commission Meeting Minutes Dated May 10, 2016**

**MOTION:** Commissioner Moak moved for approval of the Consent Agenda, with the exception of Item C; Commissioner Barnes seconded. With no further discussion, motion carried unanimously. All in favor 3:0.

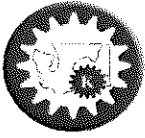
**MOTION:** Commissioner Moak moved for approval of Item C, payment to PS Media; Commissioner Barnes seconded. With no further discussion, motion carried. All in favor 2:0, (Commissioners Moak and Barnes) 1 abstained (Commissioner Novakovich).

## PRESENTATIONS

### **A. Columbia Drive, Terence Thornhill and David Robison**

Mr. Peterson stated Big D's Construction is scheduled to start construction the first week of June for the undergrounding of the utilities, with a completion date of August 26, 2016. The presentation will focus on the redesign of the three winery buildings and David Robison, from Strategic Construction Management and Terence Thornhill, Project Architect are here to present the modified design elements. Mr. Peterson stated staff is working with a budget of \$2,750,000 before tax, for the construction of the buildings, which does not include the ground site work and undergrounding of utilities.

Mr. Robison stated as part of the implementation team, we had to value engineer the project in an effort to reduce the project by \$750,000. Mr. Robison is proud of Mr. Thornhill's ability to address the changes without changing the aesthetics of the buildings. The team worked through the plans to identify items and discern if the changes were applicable to the Port's long term plans.



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Mr. Robison stated the team worked very hard to retain the long term vision and quality the Port has maintained on every project.

Mr. Thornhill stated by removing the utility work from the original bid several efficiencies and considerable savings were created. Mr. Thornhill stated the team looked very carefully at the wall system, which uses ICF blocks filled with insulation and a double wythe wall and recommended utilizing concrete masonry unit (CMU) instead. In addition to the wall structure, Mr. Thornhill recommended the following:

1. Replace trusses with tube steel and plate material;
2. Modifying the roofing material to a prefinished metal roof.

Mr. Robison stated the ICF wall system is not widely used in California and in this region, and the process introduced uncertainty and risk with local contractors. Furthermore, Mr. Robison stated there is not a significant difference between the ICF and the CMU walls and the wall thickness remains the same.

Mr. Thornhill stated the original design had several concrete roof trusses in each structure, which drove the cost up exponentially. By utilizing steel trusses that emulate wood and fabricating the trusses locally, there is a significant cost reduction. The standing metal roof has been used on other Port projects such as the West Marina Professional Building and the Port Administration Office.

Mr. Robison stated a great deal of time was spent looking for ways to value engineer the buildings. Mr. Robison stated if the Commission approves of the revised design elements, the design team will move forward and ready plans for bid by August, with bids due back in September. This is a busy construction community presently and there is not much margin of error or opportunity to extend the time line.

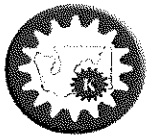
Mr. Peterson stated the design team focused on retaining the quality of the project and feel and inquired if the Commission had any concerns regarding the value engineering options that were presented today.

Mr. Moak inquired if the team believes the bids will be within target budget.

Mr. Robison stated the team enlisted Roen Estimating to help estimate costs and spoke with numerous contractors and subcontractors. Projects are at the mercy of the market, however, the buildings are simplistic in nature and the risks were removed from the first bid.

Mr. Novakovich stated the team did an amazing job value engineering the design while maintaining the essence of the buildings. Mr. Novakovich stated staff was able to reduce the amount significantly and believes the Port can move forward with the project.

Mr. Barnes asked what the total square feet of the buildings are.



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Mr. Peterson stated the three buildings are approximately 10,000 square feet; the two winery buildings are approximately 3,500 to 3,600 square feet and the barrel storage building is slightly larger at 4,200 square feet.

Mr. Moak inquired if the Port is able to maintain the proposed schedule, what is the earliest a tenant can take occupancy.

Mr. Arntzen stated staff would like to run a parallel path with the construction time line and hopes a tenant will be able to move in within sixty days of completion of the buildings.

Mr. Peterson stated there are specific guidelines imposed by the State Liquor Board and a tenant can move equipment in, however there is a sixty day waiting period to obtain a liquor license.

Mr. Arntzen appreciates the continued efforts of the Bridge to Bridge plan and the revitalization of Columbia Drive, however, redevelopment is costly, time consuming and frustrating, but when it is done right, it is the most rewarding.

## REPORTS, COMMENTS AND DISCUSSION ITEMS

### A. *Vista Field*

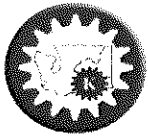
#### a. *Redevelopment Project Name*

Mr. Arntzen reiterated at the last Commission meeting, the Commission discussed whether to retain the name Vista Field or change the name of the development and directed staff to converse with Duany Plater-Zyberk (DPZ) to get their thoughts and expertise regarding the name. Mr. Arntzen reported that staff held a recorded conference call with Elizabeth Plater-Zyberk, where we offered some background and submitted a question (*Exhibit A*) regarding the name, without prejudice. Ms. Plater-Zyberk offered her thoughts surrounding the name and codified her comments via email (*Exhibit B*). Mr. Arntzen stated if the Commission desires, there is audio and transcript available of the conference call.

Mr. Barnes commented that he read Ms. Plater-Zyberk's correspondence and is pleased with the process and is satisfied with what appears to be a straightforward recommendation from DPZ.

Mr. Moak supported Mr. Barnes request to have DPZ weigh in on the name and stated it was important to garner the expertise of the professionals. Mr. Moak stated there are important decisions the Commission will need to weigh in on regarding the redevelopment of Vista Field and it is imperative to listen to the experts. Mr. Moak stated that although he does not personally agree with Ms. Plater-Zyberk's recommendation, but as a representative of the community, he accepts her recommendation. Mr. Moak believes the Commission should accept her recommendation and continue to move forward and do what is best for the community.

It is the consensus of the Commission that the name of Vista Field remain as is.



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Mr. Arntzen stated as the Commission reaches consensus on various elements, staff will bring the items back in resolution form for Commission codification.

***b. Guidelines for Development Proposals***

Mr. Arntzen presented a rough draft of processes by which the Port could provide notice of development with respect to Vista Field. The document would outline the following processes for Vista Field development:

- Parameters regarding staff communication with the development community and private individuals;
- Criteria for receiving development proposals;
- Process by which the development proposal is evaluated.

Mr. Arntzen stated staff will review the development proposal for the established criteria and if the developer or private individual meets the conditions, the proposal will move on to the initial collaborative design process. Currently, the Port is testing the collaborative design process with the Arts Center Task Force, who has been meeting with Mr. Mehaffy, Mr. Qamar and Mr. Peterson. After the collaborative design process meetings, the developer will submit a more detailed proposal that includes the quality of the project and consistency with the Port Master Plan and the price and terms. This will allow the Commission to conditionally approve the developer for a 90 day exclusive with the full plan design.

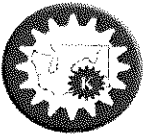
Mr. Arntzen stated Ms. Luke has been very helpful in creating a legally enforceable and valid document that is fair and equitable. Mr. Mehaffy worked to refine the collaborative design process and the artistic process.

Ms. Luke added the document is very cutting edge which does not create a liability potential for the Port and will stand up as a process and work for the Port. Ms. Luke appreciates working with Mr. Arntzen and Mr. Mehaffy and is proud of the document.

Mr. Mehaffy reiterated the importance of having the process in place and stated the document allows balance with the local and out of state developers and clearly defines the Port's processes to achieve the desired results for Vista Field.

Mr. Barnes is very pleased with the document and stated the Port has a tremendous opportunity and responsibility about fairly distributing opportunities for development. Mr. Barnes offered suggestions regarding the document:

1. Notice of Development Opportunities: to list property via the Multiple Listing Service (MLS) the Port may need to enter into a listing agreement with a broker and asked staff to follow up;
2. Letter of Credit: suggested Port should maintain a degree of flexibility, subject to the Port's approval;
3. Price and Terms Offered: inquired if the properties will have asking prices attached;
4. Capability of Developer: suggested adding what civic contributions the developer has made to their community;



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5. \$2,500 Administrative Fee Required: if the developer objects to the administrative fee, receptive to eliminating the fee;
6. Allow for greater flexibility with developer/owner/tenant occupancy.

Mr. Novakovich commented on page one, item II c, regarding the letter of credit, it states, other acceptable means.

Mr. Arntzen will address Mr. Barnes comments and research and comment appropriately. Mr. Arntzen stated one of the things staff has learned with the Arts Center Task Force is the process requires a lot of time and the requested \$2,500 administrative fee will not cover half of the cost of the collaborative design process.

Mr. Peterson stated transactions under \$1,500,000 require a \$500 an administrative fee and over \$1,500,000 the Port requires a \$1,000 fee.

Mr. Barnes retracted his comment regarding the administrative fee.

Mr. Novakovich likes Mr. Barnes suggestion of adding the potential developer's community contributions.

Mr. Moak likes the process and appreciates that the proposals have been fully vetted by the committee prior to coming to the Commission. Mr. Moak inquired how the proposal compares to other development guidelines.

Mr. Mehaffy believes it is an important document to have and stated the most successful projects have development guidelines in place.

Mr. Moak inquired when Mr. Arntzen would like Commission comments and when the document would be finalized.

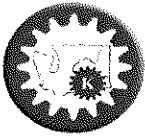
Mr. Arntzen believes the document will not be utilized until next year. Mr. Arntzen inquired if the Commission could review the document and send comments regarding the proposal to him within the next 30 days. Then he will present a proposed draft with the Commission comments and address any changes that were made.

Mr. Moak stated the document seems geared toward the bigger developers and inquired how smaller builders or single lot purchasers fit in.

Mr. Arntzen stated it was written for the bigger developer, however, he believes it can apply to the smaller developer or builder and staff can use discretion and work on an individual basis.

Mr. Moak does not believe the language is clear enough for the smaller business or individual.

Mr. Arntzen stated Ms. Luke could add language commiserate to the scale of the project. Mr. Mehaffy stated the document will also include the following in-house documents:



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- The Pattern Language;
- The Master Plan;
- The Design Guidelines.

This will allow the developer to understand the Port's expectations for the development.

Mr. Arntzen believes the document needs to remain flexible and may need to be altered after the first transaction and language stating the document is subject to change should be added.

Mr. Novakovich agrees with Mr. Arntzen and stated the document will be similar to bylaws and can be amended at any time.

Mr. Arntzen appreciates the Commission comments and believes this will be a keystone document with respect to Vista Field.

Mr. Novakovich believes the additional language suggested should be added and is delighted with the document and believes it is a simple and stringent process. Mr. Novakovich appreciates the complete vetting process prior to presenting to the Commission. Mr. Novakovich stated on page three, the document states "the Port will not accept any other proposal for the site," during the exclusive negotiating period and inquired if the language could read "consider" instead of accept, in case the plan falls through.

Mr. Moak does not agree with that specific change.

Mr. Arntzen appreciates the Commission comments and believes the comments can be incorporated into document and asked for additional comments within next month.

## RECESS

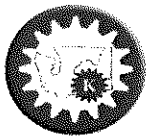
*Mr. Novakovich recessed the meeting at 3:47 p.m. for a break and will reconvene at approximately 3:55 p.m.*

*Mr. Novakovich reconvened the meeting at 3:57 p.m.*

### *c. Transportation Study Impact Evaluation (TSIE)*

Mr. Peterson presented the Transportation Study Impact Evaluation mitigation and cost associated with each intersection, as agreed on by the Port and City. The intersections that need to be improved prior to redevelopment at Vista Field are as follows:

- Columbia Center Boulevard at Grandridge Boulevard
  - Planning level 2016 cost estimate: \$207,500
  - Port cost share: 40%
- Colorado Street at Grandridge Boulevard
  - Planning level 2016 cost estimate: \$17,875
  - Port cost share: 55%
- Columbia Center Boulevard at Deschutes Avenue



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- Planning level 2016 cost estimate: \$169,400
- Port cost share: 25%
- Edison Street and Canal Street
  - Planning level 2016 cost estimate: \$216,200
  - Port cost share: 25%
- Deschutes entry way into Vista Field
  - Planning level 2016 cost estimate: \$325,000
  - Port cost share: 100%

The Port share of the intersections that the City would like to see corrected for the full build out of Vista Field is \$2,700,000. However, the three intersections that exist because of Vista Field: Kellogg and Quinault, Deschutes and Young Street and Deschutes and the new road into Vista Field will cost approximately \$1,500,000 (2016 estimate). Mr. Peterson indicated off-site mitigation is approximately \$1,500,000.

Mr. Mehaffy indicated Phase I will take approximately five years for property sales and buildout, which gives staff a good framework. Mr. Arntzen believes the Port should fund the entry way of Deschutes (\$325,000) first for Phase I.

Mr. Peterson stated the biggest variable will be the Performing Arts Center (PAC) and there will be a direct correlation to the off-site mitigation once the PAC opens.

The Commission is in consensus that the percentages are fair and the City has given the Port every consideration and the professionals performed the work and accepts their conclusions and it is time to move forward.

Mr. Arntzen reiterated any Vista Field related issues that receives Commission consensus, staff will bring back in a resolution for codification.

Mr. Mehaffy believes the mitigation costs are satisfactory and recommends moving forward.

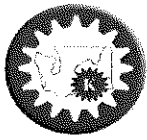
Mr. Mehaffy presented the Commission with a project update for Vista Field and stated the goal is to give the Commission a sense of where the team is and asked the Commission for feedback and if the team is moving in the right direction.

Mr. Mehaffy presented the next steps for Vista Field:

- City entitlement documents (zoning code, standards, master plan);
- Develop internal design documents (precedent library);
- Develop Phase I Detailed Development Plan;
- Prepare construction documents, bidding and construction.

Mr. Mehaffy presented the option for Phase I-A and Plaza which includes:

- Creating a main street connecting north and south;
- Creating an Espanola Way thoroughfare;
- Reorienting the existing hangars;



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- Creating a gateway entrance and plaza.

Mr. Arntzen stated the financial plan is important to dovetail with Mr. Mehaffy's presentation and the budget is \$3,000,000 for bare infrastructure and adding an additional sum of \$500,000 for embellishments such as a water feature or additional elements to the plaza. Mr. Arntzen proposes utilizing funds from the tentative Verizon sale for the hangars rehabilitation. If the funds all materialize, they can be used for other embellishments, however, \$3,000,000 will create a very basic project.

The pavers and landscaping in the public plaza will cost approximately \$100,000 and does not include any grand features. Mr. Peterson asked the Commission for their thoughts regarding additional features for the plaza.

Mr. Barnes stated he would like to see a water feature, however, he is concerned with the water fowl.

Mr. Mehaffy inquired if the Commission would like the team to research additional elements and look at feasibility issues with water fowl and bring back a more detailed plan to make a better decision.

Mr. Barnes would like to go above the bare minimum and believes the plaza needs to have more embellishment.

Mr. Arntzen stated another possibility is Phase I being smaller than initially proposed, which allows the Port to intensify its efforts in a smaller area to narrow the focus.

Mr. Novakovich stated whatever the Port does, it cannot be plain or basic or we run the risk of losing interest in Vista Field. If staff can condense Phase I for same amount or find other funding for these features, we need explore those options.

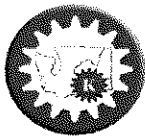
Mr. Moak stated if the Port is going to look at attracting bigger developers, we need to invest more funds in the plaza and he would like to see more than plain or basic to bring in the A class developers.

Mr. Peterson thanked the Commission for their direction.

Mr. Mehaffy presented several options for a market building and tower, which would be a landmark building for Vista Field.

Mr. Barnes stated the tower would be the first vertical point of reference created for Vista Field and believes it needs to be well conceived and well executed. Mr. Barnes likes the concept of the market and tower and believes it is crucial to get the vertical element right.

Mr. Novakovich stated the design team needs to pay a lot of attention to this vertical feature and believes the market could have ROI potential.



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Mr. Arntzen reiterated the concepts the Commission would like to see:

- The Market and Tower Concept;
- The Water Feature in the Plaza;
- The Residential/Woonerf Section;
- Port “laying” down housing types;

Mr. Arntzen stated staff will continue to work on concepts and work with Ms. Carter and the Kennewick Arts Commission for additional ideas. Staff will work on another draft and bring back as soon as feasible, and attempt to cost out.

The consensus of the Commission is to find ways to make the plaza more interesting and less basic and boring.

Mr. Novakovich stated due to the time he would like to table the remaining items for the next meeting.

## ***B. Columbia Drive Update***

Mr. Peterson stated there is no new information at this time.

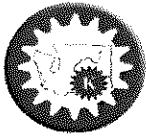
## **PUBLIC COMMENTS**

Barb Carter, 3121 West 30th Avenue, Kennewick. Ms. Carter is very delighted to see the drawings and proposals for Vista Field. Ms. Carter stated the Arts Commission would be pleased to work with the design team or provide assistance on any proposals. Ms. Carter stated the Arts Commission has pamphlets available for developers once they receive their building permits, to help utilize creative design in their development. Ms. Carter likes the drawing of the proposed tower and finds it quirky, interesting, and fun. Ms. Carter agrees with Mr. Barnes regarding the water fowl and stated the City has had nothing but issues trying to keep areas clean. Ms. Carter stated Balboa Park in San Diego, California has an elevated water trough that runs the length of the park, where kids can play with sailboats or other water toys. The trough maintains the concept of water, but does not have the water fowl issues.

No further comments were made.

## **COMMISSIONER COMMENTS**

No comments were made.



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## ADJOURNMENT

With no further business to bring before the Board; the meeting was adjourned at 5:16 p.m.

### ***APPROVED:***

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

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*Skip Novakovich, President*

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*Thomas Moak, Vice President*

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*Don Barnes, Secretary*

## EXHIBIT A

Mr. Peterson:

"The purpose for our call today, the topic of the Vista Field name. Recently the Port Commission raised the issue of whether the name Vista Field should be changed. They directed staff to ask you for your comments related to this issue. The question staff is presenting, is should the name Vista Field be changed."

**Tim Arntzen**

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**From:** Elizabeth Plater-Zyberk <epz@dpz.com>  
**Sent:** Saturday, May 21, 2016 12:22 PM  
**To:** Michael Mehaffy; Laurence Qamar  
**Cc:** Larry Peterson; Tana Bader-Inglima; Tim Arntzen; Senen Antonio; Andres Duany; Matthew J. Lambert  
**Subject:** Vista Field naming and progress

Dear Michael and Lawrence,

Tim, Larry and Tana called yesterday as arranged to confer about the naming of the redevelopment of Vista Field. Larry explained that there has been some informal suggestions of a new name and asked for my opinion.

I responded that the distinguishing identity of a place depends on its reflection of its history and geography, especially in a time of universal development patterns and building materials. Vista Field reflects a significant component of the region's history. Keeping its name will not reflect a sad loss (e.g. Whispering Pines, or Walnut Hill that no longer exist) but rather a recognition of its important past role.

While speaking to a longer term cultural enrichment, carrying on the name Vista Field more immediately offers a clear and appealing branding identity. Further, the two words are separable for use in other combinations throughout the project. They are both optimistic words and truthful in reflecting the new place, including its long views and topography. The landing strips, the field, are physically embedded in its urban plan.

Following the name discussion, Larry, gave me a brief report on the progress of entitlement process, including the growing public support. The first phase of twenty acres with a focus on the performing arts to compliment adjacent facilities, and supporting uses arranged along pedestrian oriented streets seems appropriate.

I reviewed the above with Andres, and your update and drawings of May 13, and he asked me to tell you he is delighted to see the progress - as am I!

Lizz

**Elizabeth Plater-Zyberk FAIA CNU LEED**

**DPZ Partners LLC**

1023 SW 25 Avenue, Miami FL 33135

[lizz@dpz.com](mailto:lizz@dpz.com) | C. 305 798 7393 | T. 305 644 1023 ext. 1045

## PORT OF KENNEWICK

### *Resolution No. 2016-17*

#### **A RESOLUTION OF THE PORT OF KENNEWICK BOARD OF COMMISSIONERS AMENDING RESOLUTION NO. 2016-12 AND RESOLUTION NO. 2016-12 REGARDING APPLICATIONS FOR FUNDING ASSISTANCE FROM WASHINGTON WILDLIFE AND RECREATION PROGRAM AND AQUATIC LANDS ENHANCEMENT ACCOUNT**

**WHEREAS**, on March 8, 2016 the Port of Kennewick Board of Commissioners approved Resolution 2016-10 authorizing application for funding assistance for a Washington Wildlife and Recreation Program (WWRP) project, and Resolution 2016-12 authorizing application for funding assistance for an Aquatic Lands Enhancement Account (ALEA) project, and provided appropriate opportunity for public comment on the application; and

**WHEREAS**, the Port of Kennewick received notification from the Recreation and Conservation Office (RCO) that the WWRP and ALEA grant applications had been reviewed; and

**WHEREAS**, as part of the review process, the RCO indicated the Port of Kennewick's Resolution 2016-10 and Resolution 2016-12 had used RCO template language which had subsequently been updated by RCO on March 18, 2016, and instructed the Port to use the current version.

**NOW, THEREFORE, BE IT RESOLVED** due to Resolution 2016-10 and Resolution 2016-12 being approved prior to the March 18, 2016 RCO language update, the Port of Kennewick hereby amends Resolution 2016-10 and Resolution 2016-12 and replaces those documents with the updated and RCO-approved language for ALEA and WWRP (see attached).

[Note: Although authorized under Resolution 2016-11, the port did not submit an application to the Land and Water Conservation Funding (LWCF) so amending that document is not required].

This Resolution shall be effective immediately upon passage and signature by the Port of Kennewick Commissioners.

**ADOPTED** by the Board of Commissioners of Port of Kennewick this 14<sup>th</sup> day of June, 2016, located at 350 Clover Island Drive, Suite 200, Kennewick, WA 99336.

PORT OF KENNEWICK  
BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
SKIP NOVAKOVICH, President

By: \_\_\_\_\_  
THOMAS MOAK, Vice President

By: \_\_\_\_\_  
DON BARNES, Secretary

**Recreation and Conservation Office  
Aquatic Lands Enhancement Account (ALEA)  
Application Resolution/Authorization**

Organization Name: **Port of Kennewick**

Resolution: **No. 2016-17 amending No. 2016-10**

Project Name and Number: **Clover Island Northshore Restoration and Riverwalk #16-1470C**

This form authorizes submitting application(s) for grant funding assistance for Aquatic Lands Enhancement Account (ALEA) project(s) to the Recreation and Conservation Funding Board as provided in RCW 79.105.150, 79A.25 RCW, WAC 286, and other applicable authorities.

WHEREAS, under provisions of the ALEA program, state grant assistance is requested to aid in financing the cost of **facility development and restoration** [*choose all that apply: acquisition, facility development or renovation, restoration*]; and

WHEREAS, our organization considers it in the best public interest to complete the project described in the application(s).

NOW, THEREFORE, BE IT RESOLVED that:

1. The **CEO Tim Arntzen** is authorized to make formal application to the Recreation and Conservation Funding Board for grant assistance.
2. Our organization has reviewed the sample project agreement on the Recreation and Conservation Office's web site at: <http://www.rco.wa.gov/documents/manuals&forms/SampleProjAgreement.pdf> and authorizes **CEO Tim Arntzen** to enter into such a project agreement, if funding is awarded. We understand and acknowledge that the project agreement will contain the indemnification (applicable to any sponsor) and waiver of sovereign immunity (applicable to Tribes) and other terms and conditions that are contained in the sample project agreement. The sample project agreement may be revised periodically by the Recreation and Conservation Office. Our organization recognizes that such changes might occur prior to our authorized representative signing the actual project agreement, and we accept the responsibility and the presumption that our authorized representative shall have conferred with us as to any such changes before he/she executes the project agreement on behalf of our organization and so executes with our authorization.
3. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.
4. Our organization expects our matching share of project funding will be derived from **Port of Kennewick Construction Funds and US Army Corps of Engineers 1135 funding** and that pursuant to WAC 286-13-040 we must certify the availability of match at least one month before funding approval. In addition, our organization understands it is responsible for supporting all non-cash commitments to this project should they not materialize.
5. We acknowledge that if the Recreation and Conservation Funding Board approves grant assistance for the project(s), the Recreation and Conservation Office will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the Recreation and Conservation Office after we incur eligible and allowable costs and pay them. The Recreation and

Conservation Office may also determine an amount of retainage and hold that amount until the project is complete.

- ~~6. [Acquisition Projects Only] We acknowledge that any property acquired with grant assistance must be dedicated for the purposes of the grant in perpetuity unless otherwise agreed to by our organization and the Recreation and Conservation Funding Board in the project agreement or an amendment thereto. We agree to dedicate the property in a signed "Deed of Right" for fee acquisitions, or an "Assignment of Rights" for other than fee acquisitions (which documents will be based upon RCO's standard versions of those documents), to be recorded on the title of the property with the county auditor.~~
- ~~7. [Acquisition Projects Only] We acknowledge that any property acquired in fee title must be immediately made available to the public unless the Recreation and Conservation Office director or the Recreation and Conservation Funding Board agrees to other restrictions in the project agreement or an amendment thereto.~~
8. *[Development, Renovation, and Restoration Projects Only – If your organization owns the property]* We acknowledge that any property owned by our organization that is developed, renovated or restored with grant assistance must be dedicated for the purpose of the grant in perpetuity after the project is complete unless otherwise provided and agreed to by our organization and the Recreation and Conservation Funding Board in the project agreement or an amendment thereto.
- ~~9. [Development, Renovation, and Restoration Projects only – If your organization DOES NOT own the property] We acknowledge that any property not owned by our organization that is developed, renovated or restored with grant assistance must be dedicated for the purpose of the grant for at least twenty-five (25) years after the project is complete unless otherwise provided and agreed to by our organization and the Recreation and Conservation Funding Board in the project agreement or an amendment thereto.~~
- ~~10. [Projects located in Water Resources Inventory Areas 1–19 and applying for funds from the Critical Habitat, Natural Areas, State Lands Restoration and Enhancement, and Urban Wildlife Habitat categories only] We certify that the project(s) does not conflict with the Puget Sound Action Agenda developed by the Puget Sound Partnership under RCW 90.71.310. When completed, the project will not result in water quality degradation in Puget Sound, nor loss of ecosystem process, structure, or functions. The project will meet or exceed all permitting requirements.~~
11. This application authorization becomes part of a formal application to the Recreation and Conservation Funding Board for grant assistance.
12. We provided appropriate opportunity for public comment on this application.
13. We certify that this application authorization was properly and lawfully adopted following the requirements of our organization and applicable laws and policies and that the person signing as authorized representative is duly authorized to do so.

*[Native American Tribes, Local Governments, and Nonprofit Organizations Only]* This application authorization was adopted by our organization during the meeting held:

Location: **350 Clover Island Drive, Suite 200, Kennewick WA 99336**

Date: **June 14, 2016**

[All Applicants] Signed and approved on behalf of the resolving body of the organization by the following authorized representative:

Signed \_\_\_\_\_

Title \_\_\_\_\_ Commission President \_\_\_\_\_ Date \_\_\_\_\_

Signed \_\_\_\_\_

Title \_\_\_\_\_ Commission Vice President \_\_\_\_\_ Date \_\_\_\_\_

Signed \_\_\_\_\_

Title \_\_\_\_\_ Commission Secretary \_\_\_\_\_ Date \_\_\_\_\_

Washington State Attorney General's Office

Approved as to form Brian Tallen March 18, 2016

Assistant Attorney General

Date

*You may reproduce this form in your own format; text however may not change.*

**Recreation and Conservation Office  
Washington Wildlife and Recreation Program (WWRP)  
Application Resolution/Authorization**

Organization Name: **Port of Kennewick**

Resolution: **No. 2016-17 amending No. 2016-12**

Project Name and Number (s): **Clover Island Riverwalk – Northshore Trail #16-1633D**

This form authorizes submitting application(s) for grant funding assistance for Washington Wildlife and Recreation Program (WWRP) project(s) to the Recreation and Conservation Funding Board as provided in Chapter 79A.15 and 79A.25 RCW, WAC 286, and other applicable authorities.

WHEREAS, our organization has approved a comprehensive parks and recreation or habitat conservation plan that includes this project; *[not required for farmland preservation projects]* and

WHEREAS, under provisions of the WWRP program, state grant assistance is requested to aid in financing the cost of **facility development and restoration**; *[choose all that apply: acquisition, facility development or renovation, restoration]*; and

WHEREAS, our organization considers it in the best public interest to complete the project described in the application(s).

NOW, THEREFORE, BE IS RESOLVED that:

14. The **CEO Tim Arntzen** is authorized to make formal application to the Recreation and Conservation Funding Board for grant assistance.
15. Our organization has reviewed the sample project agreement on the Recreation and Conservation Office's web site at: <http://www.rco.wa.gov/documents/manuals&forms/SampleProjAgreement.pdf> and authorizes **CEO Tim Arntzen** to enter into such a project agreement, if funding is awarded. We understand and acknowledge that the project agreement will contain the indemnification (applicable to any sponsor) and waiver of sovereign immunity (applicable to Tribes) and other terms and conditions that are contained in the sample project agreement. The sample project agreement may be revised periodically by the Recreation and Conservation Office. Our organization recognizes that such changes might occur prior to our authorized representative signing the actual project agreement, and we accept the responsibility and the presumption that our authorized representative shall have conferred with us as to any such changes before he/she executes the project agreement on behalf of our organization and so executes with our authorization.
16. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.
17. Our organization expects our matching share of project funding will be derived from **Port of Kennewick Construction funds and US Army Corps of Engineers 1135 funding** and that pursuant to WAC 286-13-040 we must certify the availability of match at least one month before funding approval. In addition, our organization understands it is responsible for supporting all non-cash commitments to this project should they not materialize.

18. We acknowledge that if the Recreation and Conservation Funding Board approves grant assistance for the project(s), the Recreation and Conservation Office will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the Recreation and Conservation Office after we incur eligible and allowable costs and pay them. The Recreation and Conservation Office may also determine an amount of retainage and hold that amount until the project is complete.
19. ~~[Acquisition Projects Only] We acknowledge that any property acquired with grant assistance must be dedicated for the purposes of the grant in perpetuity unless otherwise agreed to by our organization and the Recreation and Conservation Funding Board. We agree to dedicate the property in a signed "Deed of Right" for fee acquisitions, or an "Assignment of Rights" for other than fee acquisitions (which documents will be based upon RCO's standard versions of those documents), to be recorded on the title of the property with the county auditor.~~
20. ~~[Acquisition Projects Only] We acknowledge that any property acquired in fee title must be immediately made available to the public unless the Recreation and Conservation Office director or the Recreation and Conservation Funding Board agrees to other restrictions.~~
21. *[Development, Renovation, and Restoration Projects Only – If your organization owns the property]* We acknowledge that any property owned by our organization that is developed, renovated or restored with grant assistance must be dedicated for the purpose of the grant in perpetuity after the project is complete unless otherwise provided and agreed to by our organization and the Recreation and Conservation Funding Board in the project agreement or an amendment thereto.
22. ~~[Development, Renovation, and Restoration Projects only – If your organization DOES NOT own the property] We acknowledge that any property not owned by our organization that is developed, renovated or restored with grant assistance must be dedicated for the purpose of the grant for at least twenty-five (25) years after the project is complete unless otherwise provided and agreed to by our organization and the Recreation and Conservation Funding Board in the project agreement or an amendment thereto.~~
23. ~~[Projects located in Water Resources Inventory Areas 1 – 19 and applying for funds from the Critical Habitat, Natural Areas, State Lands Restoration and Enhancement, and Urban Wildlife Habitat categories only] We certify that the project(s) does not conflict with the Puget Sound Action Agenda developed by the Puget Sound Partnership under RCW 90.71.310. When completed, the project will not result in water quality degradation in Puget Sound, nor loss of ecosystem process, structure, or functions. The project will meet or exceed all permitting requirements.~~
24. ~~[Nonprofit Nature Conservancy Organizations Only] Our organization certifies it is a registered nonprofit corporation with the Washington Secretary of State and has been active in managing similar types of projects for a minimum of three (3) years. Should our organization dissolve or disband during the period of this project, we agree to name a successor organization pursuant to Recreation and Conservation Funding Board policy.~~
25. This application authorization becomes part of a formal application to the Recreation and Conservation Funding Board for grant assistance.
26. We provided appropriate opportunity for public comment on this application.
27. We certify that this application authorization was properly and lawfully adopted following the requirements of our organization and applicable laws and policies and that the person signing as authorized representative is duly authorized to do so.

[Native American Tribes, **Local Governments**, and Nonprofit Organizations Only] This application authorization was adopted by our organization during the meeting held:

Location: **350 Clover Island Drive, Suite 200, Kennewick, WA** Date: **June 14, 2016**

[All Applicants] Signed and approved on behalf of the resolving body of the organization by the following authorized representative:

Signed \_\_\_\_\_

Title Commission President Date \_\_\_\_\_

Signed \_\_\_\_\_

Title Commission Vice President Date \_\_\_\_\_

Signed \_\_\_\_\_

Title Commission Secretary Date \_\_\_\_\_

Washington State Attorney General's Office

Approved as to form Brian Staller March 15, 2016

Assistance Attorney General

Date

*You may reproduce this form in your own format; text however may not change.*

# Funding Board Project Agreement

Project Sponsor:

Project Number:

Project Title:

Approval Date:

---

## A. PARTIES OF THE AGREEMENT

This Project Agreement (Agreement) is entered into between the State of Washington by and through the [Recreation and Conservation Funding Board (RCFB or funding board) and/or the Salmon Recovery Funding Board (SRFB or funding board)] and the Recreation and Conservation Office, P.O. Box 40917, Olympia, Washington 98504-0917 and [parent organization name if it exists] [by and through the] [child organization name] (sponsor), [Address, City, State, Zip Code] and shall be binding on the agents and all persons acting by or through the parties. [The sponsor's Data Universal Numbering System (DUNS) Number is XXXXX.]

## B. PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the [Account Name] of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO) to the sponsor for the project named above per the director's authority granted in RCW 79A.25.020.

## C. DESCRIPTION OF PROJECT

[project description]

## D. PERIOD OF PERFORMANCE

The period of performance begins on [Project Start Date] (project start date) and ends on [Project End Date] (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 WAC Titles 286, 420; or RCFB and/or SRFB policies published in RCO manuals as of the effective date of this agreement.

The sponsor must request extensions of the period of performance at least 60 days before the project end date.

The sponsor has obligations beyond this period of performance as described in Section E: On-going Obligations.

## E. ON-GOING OBLIGATION

For [acquisition, development, renovation and restoration projects] the sponsor's on-going obligations shall be in perpetuity and shall survive the completion/termination of this Project Agreement unless otherwise identified in the Agreement or as approved by the funding board. It is the intent of the funding board's conversion policy (see Section 24: Restriction of Conversion) that all lands acquired and or facilities and areas [developed, renovated, or restored] with funding assistance remain in the public domain in perpetuity.

For maintenance projects, the sponsor's on-going obligations shall be in for a period of useful service life based on improvements made and shall survive the completion/termination of this Agreement, unless otherwise identified in the Agreement or as approved by the funding board. It is the intent of the funding board's conversion policy (see Section 24: Restrictions on Conversion) that all facilities and areas maintained with funding assistance remain in the public domain until the facilities reach their useful service life, unless otherwise provided in the Agreement or as approved by the board.

For education, education and enforcement, enhancement, planning, and monitoring projects, the sponsor's on-going obligation shall be the same as the period of performance identified in Section D: Period of Performance.

## F. PROJECT FUNDING

The total grant award provided by the funding board for this project shall not exceed [RCO total]. The funding board shall not pay any amount beyond that approved for grant funding of the project and within the funding board's 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:

[Grant Program-account - category]	Percentage	Dollar Amount
	_____	_____
<b>Sponsor Match</b>	_____	_____
<b>Total Project Cost</b>	100.00%	_____

#### G. FEDERAL FUND INFORMATION

A portion or all of the funds for this project are provided through the following federal funding source(s):.

Federal Agency: \_\_\_\_\_

Catalog of Federal Domestic Assistance Number and Name: \_\_\_\_\_

Federal Award Identification Number: \_\_\_\_\_ Federal Fiscal Year: \_\_\_\_\_

Federal Award Date: \_\_\_\_\_ Total Federal Award: \_\_\_\_\_

Federal Award Project Description: \_\_\_\_\_

Sponsor's Indirect Cost Rate: \_\_\_\_\_

If federal funding information is included in this section, this Agreement is funded by a federal subaward from a portion of the total federal award. This funding is not research and development (R & D).

If the sponsor's total federal expenditures are \$750,000 or more during the sponsor's fiscal-year, the sponsor is required to have a federal single audit conducted for that year in compliance with 2 C.F.R. Part 200, Sub Part F – Audit Requirements, Section 500 (2013). The sponsor must provide a copy of the final audit report to RCO within nine months of the end of the sponsor's fiscal year, unless a longer period is agreed to in advance by the federal agency identified in this section.

RCO may suspend all reimbursements if the sponsor fails to timely provide a single federal audit; further the RCO reserves the right to suspend any RCO Agreements with the sponsor if such noncompliance is not promptly cured.

#### H. RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement shall be interpreted in light of the information provided in the sponsor's application and the project summary under which the Agreement has been approved as well as documents produced in the course of administering the Agreement, including the eligible scope activities and milestones report incorporated herein by reference. Provided, to the extent that information contained in such documents is inconsistent 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 definition of the Standard Terms and Conditions.

#### I. AMENDMENTS MUST BE IN SIGNED WRITING

Except as provided herein, no amendment/deletions of any of the terms or conditions of this Agreement will be effective unless provided in writing signed by both parties. Except, extensions of the period of performance and minor scope adjustments need only be signed by RCO's director or designee, unless the consent of the sponsor to an extension is required by its auditing policies, regulations, or legal requirements, in which case, no extension shall be effective until so consented.

#### J. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND RCFB-SRFB POLICIES

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, including any applicable [federal accounting rules], RCW [REVISED CODE OF WASHINGTON SECTION(S)], WAC Title [286 or 420], and RCFB and/or SRFB policies published in RCO manuals as of the effective date of this agreement, all of which are incorporated herein by this reference as if fully set forth.

**K. SPECIAL CONDITIONS**

[special conditions]

**L. 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:

**Project Contact**

Name:  
Title:  
Address:  
E-mail Address:

**RCFB-SRFB**

Recreation and Conservation Office  
Natural Resources Building  
PO Box 40917  
Olympia, Washington 98504-0917

These addresses shall be effective until receipt by one party from the other of a written notice of any change.

**L. 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.

**M. EFFECTIVE DATE**

This Agreement, for project [Number], 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 Section D: Period of Performance 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. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

**[Project Sponsor]**

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

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

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

**State of Washington, Recreation and Conservation Office**

**On behalf of the [Recreation and Conservation Funding Board or Salmon Recovery Funding Board]**

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

[RCO DIRECTOR NAME]

Director, Recreation and Conservation Office

Pre-approved as to form:

By: \_\_\_\_\_/s/ \_\_\_\_\_ Date: July 20, 2015

Assistant Attorney General

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## Standard Terms and Conditions of the Project Agreement

**Project Sponsor:**

**Project Number:**

**Project Title:**

**Approval Date:**

---

### SECTION 1. 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:

**acquisition project** – A project that purchases or receives a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

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

**applicant** – Any party that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the funding board.

**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.

**C.F.R.** – Code of Federal Regulations

**contractor** – An entity that receives a contract from a sponsor. A contract is a legal instrument by which a non-Federal entity (sponsor) purchases property or services to carry out the project or program under a Federal award. A contractor is not the same as the sponsor or subrecipient. A contract is for the purpose of obtaining goods and services for the non-Federal entity's (sponsor's) own use and creates a procurement relationship with the contractor (2 C.F.R. § 200.23 (2013)).

**development project** – A project that results in the construction of or work resulting in new elements, including but not limited to structures, facilities, and/or materials to enhance outdoor recreation resources.

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

**education project** - A project that provides information, education, and outreach programs for the benefit of outdoor recreationists.

**education and enforcement project** – A project that provides information, education, and outreach programs; encourages responsible recreational behavior, and may provide law enforcement for the benefit of outdoor recreationists.

**equipment** – Tangible personal property (including information technology systems) having a useful 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. § 200.33 (2013)).

**funding board** – The board that authorized the funds in this Agreement, either the Recreation and Conservation Funding Board (RCFB) created under RCW 79A.25.110, or the Salmon Recovery Funding Board (SRFB) created under RCW 77.85.110.

**indirect cost** - Costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 C.F.R. § 200.56 (2013)).

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

**maintenance and operation** – A project that maintains existing areas and facilities through repairs, upkeep, and routine servicing 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.

**pass-through entity** - A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 C. F. R. § 200.74 (2013)). If this Agreement is a federal subaward, RCO is the pass-through entity.

**period of performance** – The time during which the sponsor may incur new obligations to carry out the work authorized under this Agreement (2 C.F.R. § 200.77 (2013)).

**planning (RCFB projects only)** – A project that results in one or more of the following: a study, a plan, construction plans and specifications, and permits to increase the availability of outdoor recreational resources.

**planning (SRFB projects only)** – A project that results in a study, assessment, project design, or inventory.

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

**project** – An undertaking that is, or may be, funded in whole or in part with funds administered by RCO on behalf of the funding board.

**project cost** - The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (2 C.F.R. § 200.83 (2013)).

**RCO – Recreation and Conservation Office** - The state office that provides administrative support to the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. RCO includes the director and staff, created by RCW 79A.25.110 and 79A.25.150 and charged with administering this Agreement by RCW 77.85.110 and 79A.25.240.

**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 original expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

**restoration project** – A project that brings a site back to its historic function as part of a natural ecosystem or improving the ecological functionality of a site.

**RCW** – Revised Code of Washington

**RTP - Recreational Trails Program** – A federal grant program administered by RCO that allows for the development and maintenance of backcountry trails.

**secondary sponsor** - one of two or more eligible organizations that sponsors a grant-funded project. Of these two sponsors, only one – the primary sponsor – may be the fiscal agent.

**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. For projects funded with federal money, the sponsor is a subrecipient, which is a non-Federal 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. § 200.93 (2013)).

**subaward** - An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal 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 program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract (2 C.F.R. § 200.92 (2013)). 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. § 200.330 (2013)). If this Agreement is a Federal subaward, the subaward amount is the grant program amount in Section F: Project Funding.

**subrecipient** - Subrecipient means a non-Federal 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. § 200.93 (2013)). If this Agreement is a Federal subaward, the sponsor is the subrecipient.

**WAC** – Washington Administrative Code.

## **SECTION 2. PERFORMANCE BY THE SPONSOR**

The sponsor and secondary sponsor where applicable, shall undertake the project as described in this Agreement, the sponsor's application, 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 funding board. All submitted documents are incorporated by this reference as if fully set forth herein. Also see Section 36: Order of Precedence.

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.

## **SECTION 3. 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.

## **SECTION 4. RESPONSIBILITY FOR PROJECT**

While the funding board undertakes to assist the sponsor with the project by providing a grant pursuant to this Agreement, the project itself remains the sole responsibility of the sponsor. The funding board undertakes no responsibilities to the sponsor, a secondary 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.

## **SECTION 5. 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 of, 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 agents for 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 State, its agents, officers and employees pursuant to the Agreement; provided that 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 State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to 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 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, or other entities of state government.

## **SECTION 6. INDEPENDENT CAPACITY OF THE SPONSOR**

The sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the funding board or RCO. The sponsor will not hold itself out as nor claim to be an officer, employee or agent of RCO, a funding board 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 or 28B.

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.

## **SECTION 7. 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.

## **SECTION 8. COMPLIANCE WITH APPLICABLE LAW**

The sponsor will implement the Agreement in accordance with applicable federal, state, and local laws, regulations and RCO and funding board policies regardless of whether the sponsor is a public or non-public organization.

The sponsor shall comply with, and RCO is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, and/or policies, including, but not limited to: State Environmental Policy Act; Industrial Insurance Coverage; Architectural Barriers Act; permits (shoreline, Hydraulics Project Approval, demolition); land use regulations (critical areas ordinances, Growth Management Act); federal and state safety and health regulations (Occupational Safety and Health Administration/Washington Industrial Safety and Health Act); and Buy American Act.

- 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 funding board. The sponsor is responsible for any and all costs or liability arising from the sponsor's failure to so comply with applicable law.
- B. 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 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 39.12.040. The sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.

- C. Archaeological and Cultural Resources.** The RCO facilitates the review of applicable projects for potential impacts to archaeological sites and state cultural resources. The sponsor must assist RCO in compliance with Executive Order 05-05 or the National Historic Preservation Act before initiating ground-disturbing activity. The funding board requires documented compliance with Executive Order 05-05 or Section 106 of the National Historic Preservation Act, whichever is applicable to the project. If a federal agency declines to consult, the sponsor shall comply with the requirements of Executive Order 05-05. In the event that archaeological or historic materials are discovered during project activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following: concerned Tribes' cultural staff and cultural committees, RCO, and the State Department of Archaeology and Historic Preservation. If human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the concerned Tribe's cultural staff and cultural committee, RCO, State Department of Archaeology, the coroner and local law enforcement in the most expeditious manner possible according to RCW 68.50.
- 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 the "Contractors not Allowed to Bid on Public Works Projects" list.

## **SECTION 9. 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 Section 11: Project Reimbursements. 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 funding board 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.

Additionally, in compliance with RCW 77.85.130(8), sponsor agrees to disclose any information in regards to expenditure of any funding received from the SRFB. 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.

## **SECTION 10. PROJECT FUNDING**

- A. Authority.** This agreement is funded through a grant award from the recreation and conservation funding board per WAC 286-13-050 and/or the salmon recovery funding board per WAC 420-04-050. The director of RCO enters into this agreement per delegated authority in RCW 79A.25.020 and 77.85.120.
- B. Additional Amounts.** The funding board 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 funding board or 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 funding board policy, 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. Requirements for Federal Subawards.** Pre-agreements costs before the federal award date in Section F: Project Funding are ineligible unless approved by the federal award agency (2 C.F.R § 200.458 (2013)).
- E. 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 funding board may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

## **SECTION 11. PROJECT REIMBURSEMENTS**

- A. Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12. The sponsors may only request reimbursement for eligible and allowable costs incurred during the period of performance. The 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 Section F: Project Funding. 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, which the sponsor may use as part of its percentage. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- B. Reimbursement Request Frequency.** Sponsors are encouraged to send RCO a reimbursement request at least quarterly. Sponsors are 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 recently published/adopted RCO policies and procedures 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 by the sponsor.
- D. Retainage Held Until Project Complete.** RCO reserves the right to withhold disbursement of up to the final ten percent (10%) 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. On-site signs are in place (if applicable);
3. A final project report is submitted to and accepted by RCO;
4. Any other required documents are complete and submitted to RCO;
5. A final reimbursement request is submitted to RCO;
6. The completed project has been accepted by RCO;
7. Final amendments have been processed; and
8. Fiscal transactions are complete.
9. RCO has accepted a final boundary map, if required for the project, for which the Agreement terms will apply in the future.

**E. Requirements for Federal Subawards: Match.** The sponsor's matching share must comply with 2 C.F.R. § 200.306 (2013). Any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the sponsor's matching share when such contributions meet all of the following criteria:

1. Are verifiable from the non-Federal entity's (sponsor's) records;
2. Are not included as contributions for any other Federal award;
3. Are necessary and reasonable for accomplishment of project or program objectives;
4. Are allowable under 2 C.F.R. Part 200, Subpart E—Cost Principles (2013);
5. Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
6. Are provided for in the approved budget when required by the Federal awarding agency identified in Section G: Federal Fund Information of this Agreement; and
7. Conform to other provisions of 2 C.F.R. Part 200, Subpart D—Post Federal Award Requirements (2013), as applicable.

**F. Requirements for Federal Subawards: Close out.** Per 2 C.F.R § 200.343 (2013), the non-Federal entity (sponsor) must:

1. Submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity (RCO) may approve extensions when requested by the sponsor.
2. Liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
3. Refund any balances of unobligated cash that the Federal awarding agency or pass-through entity (RCO) paid in advance or paid and that are not authorized to be retained by the non-Federal entity (sponsor) for use in other projects. See OMB Circular A-129 and see 2 C.F.R § 200.345 Collection of amounts due (2013), for requirements regarding unreturned amounts that become delinquent debts.
4. Account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 C.F.R §§ 200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property (2013).

## **SECTION 12. 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. See WAC 420-12.

## **SECTION 13. 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.
- C. Requirements for Federal Subawards.** The pass-through entity (RCO) may impose any of the remedies as authorized in 2 C.F.R §§ 200.207 Specific conditions and/or 200.338 Remedies for noncompliance (2013).

#### **SECTION 14. 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.

#### **SECTION 15. INCOME AND USE OF INCOME**

- A. RCFB Projects.** See WAC 286-13-110 for additional requirements for projects funded from the RCFB.
- B. Income.**
1. **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.
  2. **Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored with funding board grants if the fees are consistent with the:
    - a. Value of any service(s) furnished;
    - b. Value of any opportunities furnished; and
    - c. Prevailing range of public fees in the state for the activity involved.
    - d. Excepted are Firearms and Archery Range Recreation Program safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (RCW 79A.25.210).
- C. Use of Income.** Regardless of whether income or fees in a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) are gained during or after the reimbursement period cited in the Agreement, unless precluded by state or federal law, the revenue may only 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 funding board grant;
  4. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the sponsor's system; and/or
  5. Capital expenses for similar acquisition and/or development and renovation.
- D. Requirements for Federal Subawards.** Sponsors must also comply with 2 C.F.R. § 200.307 Program income (2013).

#### **SECTION 16. PROCUREMENT REQUIREMENTS**

- A. Procurement Requirements.** If Sponsors have a procurement process that follows applicable state and/or required federal procurement principles, it must be followed. 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. 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.

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 other 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. Requirements for Federal Subawards.**

1. For all Federal subawards except RTP projects, non-Federal entities (sponsors) must follow 2 C.F.R §§ 200.318 General procurement standards through 200.326 Contract Provisions (2013).
2. For RTP subawards, sponsors follow such policies and procedures allowed by the State when procuring property and services under a Federal award (2 C.F.R § 1201.317 (2013)). State procurement policies are in subsection A of this section.

**SECTION 17. TREATMENT OF EQUIPMENT**

- A. Discontinued Use.** Equipment shall remain in the possession of the sponsor for the duration of the project or applicable grant program. When the sponsor discontinues use of the equipment for the purpose for which it was funded, RCO will require the sponsor to deliver the equipment to RCO, dispose of the equipment according to RCO policies, or return the fair market value of the equipment to RCO. Equipment shall be used only for the purpose of this Agreement, unless otherwise provided herein or approved by RCO in writing.
- B. Loss or Damage.** The sponsor shall be responsible for any loss or damage to equipment which results from the negligence of the sponsor or which results from the failure on the part of the sponsor to maintain and administer that equipment in accordance with sound management practices.
- C. Requirements for Federal Subawards.** Except RTP, procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements (2 C.F.R § 200.313 (2013)):
1. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
  2. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  3. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
  4. Adequate maintenance procedures must be developed to keep the property in good condition.
  5. If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- D. Requirements for RTP Subawards.** The subrecipient (sponsor) shall follow such policies and procedures allowed by the State with respect to the use, management and disposal of equipment acquired under a Federal award (2 C.F.R § 1201.313 (2013)).

## **SECTION 18. 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, compliance, and/or quality assurance under this Agreement.

If a landowner agreement or other form of control and tenure as described in Section 22.B: Control and Tenure has been executed, it will further stipulate and define the funding board and RCO's right to inspect and access lands acquired or developed with funding board assistance.

## **SECTION 19. STEWARDSHIP AND MONITORING**

Sponsor agrees to perform monitoring and stewardship functions as stated in policy documents approved by the funding boards or RCO. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the funding board.

## **SECTION 20. PREFERENCES FOR RESIDENTS**

Sponsors shall not express a preference for users of grant assisted projects 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. Even so, the funding board discourages the imposition of differential fees. 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.

## **SECTION 21. ACKNOWLEDGMENT AND SIGNS**

- A. Publications.** The sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.
- B. Signs.** The sponsor also shall post signs or other appropriate media during the period of performance and in the future at project entrances and other locations on the project which acknowledge the applicable grant program's funding contribution, unless exempted in funding board policy or waived by the director.
- C. Ceremonies.** The sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies.
- D. Federally Funded Projects.** When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, sponsors shall clearly state:
  - 1. The fund source;
  - 2. The percentage of the total costs of the project that is financed with federal money;
  - 3. The dollar amount of federal funds for the project; and
  - 4. The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

## **SECTION 22. PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS**

The following provisions shall be in force only if the project described in this Agreement is for construction of land or facilities in a development, maintenance, renovation or restoration project:

- A. Document Review and Approval.** The sponsor agrees to submit one copy of all construction plans and specifications to RCO for review prior to implementation or as otherwise identified in the milestones. Review and approval by RCO will be for compliance with the terms of this Agreement. Only change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the funding board or RCO must receive prior written approval.
- B. Control and Tenure.** The sponsor must provide documentation that shows appropriate tenure (landowner agreement, long-term lease, easement, or fee simple ownership) for the land proposed for

construction. The documentation must meet current RCO requirements identified in the appropriate grant program policy manual as of the effective date of this Agreement.

- C. Nondiscrimination.** 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."

- D. Use of Best Management Practices.** Sponsors are encouraged to use best management practices developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "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.

## **SECTION 23. PROVISIONS APPLYING TO ACQUISITION PROJECTS**

The following provisions shall be in force only if the project described in this Agreement is an acquisition project:

- A. Evidence of Land Value.** Before disbursement of funds by RCO as provided under this Agreement, the sponsor agrees to supply documentation acceptable to RCO that the cost of the property rights acquired has been established according to funding board policy.
- B. Evidence of Title.** The sponsor agrees to provide documentation that shows the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
- C. Legal Description of Real Property Rights Acquired.** The legal description of the real property rights purchased with funding assistance provided through this project Agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the Agreement before final payment.
- D. Conveyance of Rights to the State of Washington.** When real property rights (both fee simple and lesser interests) are acquired, the sponsor agrees to execute an appropriate document conveying certain rights and responsibilities to RCO, on behalf of the State of Washington. These documents include a Deed of Right, Assignment of Rights, Easements and/or Leases as described below. The sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.
- 1. Deed of Right.** The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. See WAC 420-12 or 286-13. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the sponsor has acquired a perpetual easement for public purposes.
  - 2. Assignment of Rights.** The Assignment of Rights document transfers certain rights such as access and enforcement to RCO. Sponsors shall use this document when an easement or lease is being acquired for habitat conservation or salmon recovery purposes. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
  - 3. Easements and Leases.** The sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.

**E. Real Property Acquisition and Relocation Assistance.**

1. **Federal Acquisition Policies.** When federal funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.
2. **State Acquisition Policies.** When state funds are part of this Agreement, the sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.
3. **Housing and Relocation.** In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the sponsor agrees to provide any housing and relocation assistance required.

**F. Buildings and Structures.** In general, grant funds are to be used for outdoor recreation, habitat conservation, or salmon recovery. Sponsors agree to remove or demolish ineligible structures. Sponsors must consult RCO regarding compliance with Section 8.C.: Archaeological and Cultural Resources before structures are removed or demolished.

**G. Hazardous Substances.**

1. **Certification.** The sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(10), and certify:
  - a. No hazardous substances were found on the site, or
  - b. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
2. **Responsibility.** Nothing in this provision alters the sponsor's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.
3. **Hold Harmless.** The sponsor will defend, protect and hold harmless RCO and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the sponsor is acquiring.

**H. Requirements for Federal Subawards.** The non-Federal entity (sponsor) must submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or the pass-through entity (RCO), at its option, may require the sponsor to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or RCO may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years) (2 C.F.R § 200.329 (2013)).

**SECTION 24. RESTRICTION ON CONVERSION OF REAL PROPERTY AND/OR FACILITIES TO OTHER USES**

The sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, maintained, renovated, and/or restored pursuant to this Agreement to uses other than those purposes for which funds were approved without prior approval of the funding board in compliance with applicable statutes, rules, and funding board policies. Also see WAC Title 286 or 420. It is the intent of the funding board's conversion policy, current or as amended in the future, that all real property or facilities acquired, developed, renovated, and/or restored with funding assistance remain in the public domain in perpetuity unless otherwise identified in the Agreement or as approved by the funding board. Determination of whether a conversion has occurred shall be based upon applicable law and RCFB/SRFB policies.

For acquisition projects that are term limited, such as one involving a lease or a term-limited restoration, renovation or development project or easement, this restriction on conversion shall apply only for the length of the term, unless otherwise provided in written documents or required by applicable state or federal law. In such case, the restriction applies to such projects for the length of the term specified by the lease, easement, deed, or landowner agreement.

When a conversion has been determined to have occurred, the sponsor is required to remedy the conversion per established funding board policies.

## **SECTION 25. CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS**

The following provisions shall be in force only if the project described in this Agreement is an acquisition, development, maintenance, renovation or restoration project:

- A. Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with funding board funds, including undeveloped sites, are built, operated, used, and maintained:
  - 1. According to applicable federal, state, and local laws and regulations, including public health standards and building codes.
  - 2. In a reasonably safe condition for the project's intended use.
  - 3. Throughout its estimated useful service life so as to prevent undue deterioration.
  - 4. In compliance with all federal and state nondiscrimination laws, regulations and policies.
- B. Open to the public.** Facilities open and accessible to the general public must:
  - 1. Be constructed and maintained to meet or exceed the minimum requirements of the most current local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as updated.
  - 2. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
  - 3. Be available for use by the general public without reservation at reasonable hours and times of the year, according to the type of area or facility.

## **SECTION 26. 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 prior to 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. 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.
- C.** Sites or facilities open to the public may not require exclusive use, (e.g., members only).

## **SECTION 27: PROVISIONS FOR FEDERAL SUBAWARDS ONLY**

The following provisions shall be in force only if the project described in this Agreement is funded with a federal subaward as identified in Section G: Federal Fund Information.

- A. Equal Employment Opportunity.** Except as otherwise provided under 41 C.F.R. 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 Fed. Reg. 12319, 12935, 3 C.F.R. 1964, 1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal

Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

Federally assisted construction contract means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work. (41 C.F.R. § 60-1.3)

Construction work means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction. (41 C.F.R. § 60-1.3)

- B. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities (sponsors) must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity (sponsor) must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity (sponsor) must report all suspected or reported violations to the Federal awarding agency identified in Section G: Federal Fund Information.

The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U. S. C. 3145), as supplemented by Department of Labor regulations (29 C.F.R Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient (sponsor) must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity (sponsor) must report all suspected or reported violations to the Federal awarding agency identified in Section G: Federal Fund Information.

- C. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity (sponsor) in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- D. Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 C.F.R § 401.2(a) and the recipient or subrecipient (sponsor) wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient (sponsor) must comply with the requirements of 37 C.F.R Part

401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- E. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency identified in Section G: Federal Fund Information and the Regional Office of the Environmental Protection Agency (EPA).
- F. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- G. Procurement of Recovered Materials.** A non-Federal entity (sponsor) that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- H. Required Insurance.** The non-Federal entity (sponsor) must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award (2 C.F.R § 200.310 (2013)).
- I. Debarment and Suspension (Executive Orders 12549 and 12689).** The sponsor must not award a contract (see 2 C.F.R § 180.220) to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 C.F.R § 180 that implement Executive Orders 12549 (3 C.F.R part 1986 Comp., p. 189) and 12689 (3 C.F.R part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

## **SECTION 28. PROVISIONS FOR FIREARMS AND ARCHERY RANGE RECREATION PROJECTS ONLY**

The following provisions shall be in force only if the project described in this Agreement is funded from the Firearms and Archery Range Recreation Account.

- A. Liability Insurance.** The sponsor of a firearms or archery range recreation project shall procure an endorsement, or other addition, to liability insurance it may currently carry, or shall procure a new policy of liability insurance, in a total coverage amount the sponsor deems adequate to ensure it will have resources to pay successful claims of persons who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars (\$1,000,000) for the death of, or injury to, each person.

- B. Insurance Endorsement.** The liability insurance policy, including any endorsement or addition, shall name Washington State, the funding board, and RCO as additional insured and shall be in a form approved by the funding board or director.
- C. Length of Insurance.** The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the sponsor's obligation to the project as identified in this Agreement in Section E: On-going Obligation.
- D. Notice of Cancellation.** The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to RCO not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the sponsor.
- E. Government Agencies.** The requirement of Subsection A through D above shall not apply if the sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the funding board.
- F. Sole Duty of the Sponsor.** By this requirement, the funding board and RCO does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based on such death, injury, or damage, must look to the sponsor, or others, for any and all remedies that may be available by law.

## **SECTION 29. PROVISIONS FOR LAND AND WATER CONSERVATION FUND PROJECTS ONLY**

The following provisions shall be in force only if the project described in this Agreement is funded from the Land and Water Conservation Fund.

If the project has been approved by the National Park Service, US Department of the Interior, for funding assistance from the federal Land and Water Conservation Fund (LWCF), the "Project Agreement General Provisions" in the LWCF State Assistance Program Federal Financial Assistance Manual are also made part of this Agreement and incorporated herein. The sponsor shall abide by these LWCF General Provisions, in addition to this Agreement, as they now exist or are hereafter amended. Further, the sponsor agrees to provide RCO with reports or documents needed to meet the requirements of the LWCF General Provisions.

## **SECTION 30. PROVISIONS FOR FARMLAND PRESERVATION ACCOUNT PROJECTS ONLY**

The following provisions shall be in force only if the project described in this Agreement is funded from the Washington Wildlife and Recreation Program Farmland Preservation Account.

For projects funded through the Washington Wildlife and Recreation Program Farmland Preservation Account, the following sections will not apply if covered separately in a recorded RCO approved Agricultural Conservation Easement:

- A.** Section 15 - Income and Income Use;
- B.** Section 19 - Stewardship and Monitoring;
- C.** Section 21 - Acknowledgement and Signs;
- D.** Section 23 – Provisions applying to Acquisition Projects, Sub-sections D, F, and G;
- E.** Section 24 – Restriction on Conversion of Real Property and/or Facilities to Other Uses; and
- F.** Section 25 – Construction, Operation and Maintenance of Assisted Projects.

## **SECTION 31. PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS ONLY**

The following provisions shall be in force only if the project described in this Agreement is funded by the SRFB.

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB the sponsor shall not commence with clearing of riparian trees or in-water work unless either the sponsor has complied with 50 C.F.R. § 223.203 (b)(8) (2000), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this project Agreement. This section shall not be the basis for any enforcement responsibility by RCO.

## SECTION 32. PROVISIONS FOR PUGET SOUND ACQUISITION AND RESTORATION PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Puget Sound Acquisition and Restoration program.

The sponsor agrees to the following terms and conditions:

- A. Cost Principles/Indirect Costs for State Agencies.** Sub-Recipient (sponsor) will comply with the cost principles of 2 C.F.R. Part 200 Subpart E (2013). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement and in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.
- B. Audit Requirements.** Sub-recipient (sponsor) shall meet the provisions in Office of Management and Budget (OMB) Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the sponsor expends \$750,000 or more in total Federal funds in a fiscal year. The \$750,000 threshold for each year is a cumulative total of all federal funding from all sources. The sponsor shall forward a copy of the audit along with the sponsor's response and the final corrective action plan to RCO within ninety (90) days of the date of the audit report. For complete information on how to accomplish the single audit submissions, visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>.
- C. Credit and Acknowledgement.** In addition to Section 21: Acknowledgement and Signs, materials produced must display both the Environmental Protection Agency (EPA) and Puget Sound Partnership (PSP) logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use." This requirement is for the life of the product, whether during or after the Agreement period of performance.
- D. Hotel Motel Fire Safety Act.** Sponsor agrees to ensure that all conference, meeting, convention, or training space funded in whole or part with federal funds, complies with the federal Hotel and Motel Fire Safety Act (PL 101-391, as amended). Sponsors may search the Hotel-Motel National Master List @ <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance or to find other information about the Act.
- E. Drug Free Workplace Certification.** Sub-recipient (sponsor) shall make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 2 C.F.R. Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization shall identify all known workplaces under its federal awards, and keep this information on file during the performance of the award. Sponsors who are individuals must comply with the drug-free provisions set forth in 2 C.F.R. Part 1536 Subpart C. The consequences for violating this condition are detailed under 2 C.F.R. Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at: <http://ecfr.gpoaccess.gov>.
- F. Management Fees.** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to the expenses added to direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities or for other similar costs which are not allowable. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except for the extent authorized as a direct cost of carrying out the scope of work.
- G. Trafficking in Persons and Trafficking Victim Protection Act of 2000 (TVPA).** This provision applies only to a Sub-recipient (sponsor), and all sub-awardees of sub-recipient (sponsor), if any. Sub-recipient (sponsor) shall include the following statement in all sub-awards made to any private entity under this Agreement.

"You as the sub-recipient, your employees, sub-awardees under this award, and sub-awardees' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under this Award."

Sub-recipient (sponsor), and all sub-awardees of sub-recipient (sponsor) must inform RCO immediately of any information you receive from any source alleging a violation of this prohibition during the award term.

Federal agency funding this agreement may unilaterally terminate, without penalty, the funding award if this prohibition is violated, Section 106 of the Trafficking Victims Protection Act of 2000, as amended.

- H. Lobbying.** The chief executive officer of this recipient agency (sponsor) shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient (sponsor) shall abide by their respective Cost Principles (OMB Circulars A-21, A-87, and A-122), which generally prohibits the use of federal grant funds for litigation against the U. S. or for lobbying or other political activities.

The sponsor agrees to comply with 40 C.F.R. Part 34, New Restrictions on Lobbying. Sponsor shall include the language of this provision in award documents for all sub-awards exceeding \$100,000, and require that sub-awardees submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any sponsor who makes a prohibited expenditure under 40 C.F.R. Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure.

All contracts awarded by sponsor shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at 40 C.F.R. Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, sponsor affirms that it is not a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a non-profit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

- I. Reimbursement Limitation.** If the sponsor expends more than the amount of RCO funding in this Agreement in anticipation of receiving additional funds from the RCO, it does so at its own risk. RCO is not legally obligated to reimburse the sponsor for costs incurred in excess of the RCO approved budget.
- J. Disadvantaged Business Enterprise Requirements.** Sponsor agrees to comply with the requirements of EPA's Utilization of Small, Minority and Women's Business Enterprises in procurements made under this award.
- K. Minority and Women's Business Participation.** Sponsor agrees to solicit and recruit, to the maximum extent possible, certified minority owned (MBE) and women owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

These goals are expressed as a percentage of the total dollars available for the purchase or Agreement and are as follows:

Purchased Goods	8% MBE	4% WBE
Purchased Services	10% MBE	4% WBE
Professional Services	10% MBE	4% WBE

Meeting these goals is voluntary and no Agreement award or rejection shall be made based on achievement or non-achievement of the goals. Achievement of the goals is encouraged, however, and sponsor and ALL prospective bidders or persons submitting qualifications shall take the following affirmative steps in any procurement initiated after the effective date of this Agreement:

1. Include qualified minority and women's businesses on solicitation lists.
2. Assure that qualified minority and women's business are solicited whenever they are potential sources of services or supplies.
3. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

- L. MBE/WBE Reporting.** In accordance with the deviation from 40 C.F.R. §33.502, signed November 8, 2013, DBE reporting is limited to annual reports and only required for assistance agreements where one or more the following conditions are met:

1. There are any funds budgeted in the contractual/services, equipment or construction lines of the award;
2. \$3,000 or more is included for supplies; or
3. There are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as
4. Described in items (a) and (b).

When completing the form, recipients (sponsors) should disregard the quarterly and semi-annual boxes in the reporting period section 1B of the form. For annual submissions, the reports are due by October 30th of each year or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on planned procurements. Recipients (sponsors) with funds budgeted for non-supply procurement and/or \$3,000 or more in supplies are required to report annually whether the planned procurements take place during the reporting period or not. If no procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to the DBE Coordinator in the sponsor's region. Contact information can be found at <http://www.epa.gov/osbp/contactpage.htm>. The coordinators can also answer any questions.

Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. To be in compliance with regulations, the sponsor must submit a final MBE/WBE report. Non-compliance may impact future competitive grant proposals. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at [http://www.epa.gov/osbp/dbe\\_reporting.htm](http://www.epa.gov/osbp/dbe_reporting.htm).

- M. SIX GOOD FAITH EFFORTS, 40 C.F.R., Part 33, Subpart C.** Pursuant to 40 C.F.R. § 33.301, the sponsor agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients (sponsors), and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

1. Ensure Disadvantaged Business Enterprise (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government sponsors, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government sponsors, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when an Agreement is too large for one of these firms to handle individually.
5. Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development of the Department of Commerce.
6. If the sponsor awards subcontracts, require the sponsor to take the steps in paragraphs (a) through (e) of this section.

- N. Lobbying & Litigation.** By signing this agreement, the sponsor certifies that none of the funds received from this agreement shall be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

The chief executive officer of this sponsor agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The sponsor shall abide by its respective Attachment in 2 C.F.R. Part 200, which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

For subawards exceeding \$100,000, EPA requires the following certification and disclosure forms:

Certification Regarding Lobbying, EPA Form 6600-06:  
[http://www.epa.gov/ogd/AppKit/form/Lobbying\\_sec.pdf](http://www.epa.gov/ogd/AppKit/form/Lobbying_sec.pdf)

Disclosure of Lobbying Activities, SF LLL: [http://www.epa.gov/ogd/AppKit/form/sflllin\\_sec.pdf](http://www.epa.gov/ogd/AppKit/form/sflllin_sec.pdf)

Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

- O. Payment to Consultants.** EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients (sponsors) or by a recipients' (sponsor's) contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 C.F.R. Parts 30 or 31, are not affected by this limitation unless the terms of the contract provide the recipient (sponsor) with responsibility for the selection, direction and control of the individual who will be providing services under the contract at an hourly or daily rate of compensation. See 40 C.F.R. § 30.27(b) or 40 C.F.R. § 31.369(j), as applicable, for additional information.

As of January 1, 2014, the limit is \$602.24 per day \$75.28 per hour.

- P. Peer Review.** Where appropriate, prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review, and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.

### **SECTION 33. PROVISIONS FOR ESTUARY AND SALMON RESTORATION PROGRAM AND MARINE SHORELINE PROTECTION PROJECTS ONLY**

The following provisions shall be in force only if the project described in this Agreement is funded from the Estuary and Salmon Restoration Program or the Marine Shoreline Protection program.

The sponsor shall comply with all applicable federal, State, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement.

#### **A. Administrative Conditions**

1. **Cost Principles.** The sponsor agrees to comply with the cost principles of 2 C.F.R Part 200 (2013). Unless otherwise indicated, the Cost Principles apply to the use of funds provided under this Agreement and In-kind matching donations. The applicability of the Cost Principles depends on the type of organization incurring the costs.
2. **Audit Requirements.** The sponsor shall fully comply with requirements of 2 C.F.R. Part 200, Subpart F- Audit Requirements (2013), if applicable. See also Section F: Project Funding.
3. **Hotel-Motel Fire Safety Act.** Pursuant to 40 C.F.R. 30.18, if applicable, and 15 U.S.C 2225a, sponsor agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). The sponsor may search the Hotel-Motel National Master List at: <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

#### 4. Recycled Paper

- a. **Institutions of Higher Education Hospitals and Non-Profit Organizations.** In accordance with 40 C.F.R. 30.16, sponsor agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.
- b. **State Agencies and Political Subdivisions.** In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchases of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 C.F.R. 247.
- c. **State and Local Institutions of Higher Education and Non-Profit Organizations.** In accordance with 40 C.F.R. § 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.
- d. **State Tribal and Local Government Recipients.** In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the sponsor agrees to use recycled paper and double sided printing for all reports which are prepared a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

5. **Lobbying.** The sponsor agrees to comply with Title 40 C.F.R. Part 34, New Restrictions on Lobbying. The sponsor shall include the language of this provision in award documents for all sub-awards exceeding \$100,000, and require that sub-awardees submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 C.F.R. Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure. See also Section 11: Compliance with Applicable Federal Laws.

- a. **Part 30 Recipients.** All contracts awarded by the sponsor shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at Title 40 CFR Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, the sponsor affirms that it is not a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a non-profit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

- b. **Lobbying and Litigation.** The sponsor's chief executive officer shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The sponsor shall abide by its respective Appendix in 2 C.F.R. Part 200, which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

6. **Suspension and Debarment.** The sponsor shall fully comply with Subpart C of 2 C.F.R. Part 180 and 2 C.F.R. Part 1532, entitled 'Responsibilities of Participants Regarding Transaction (Doing

Business with Other Persons)'. The sponsor is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 C.F.R. Part 180 and 2 C.F.R. Part 1532, entitled 'Covered Transactions', includes a term or condition requiring compliance with Subpart C. The sponsor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The sponsor acknowledges that failing to disclose the information as required at 2 C.F.R. § 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

The sponsor may access the Excluded Parties List System at: <http://www.epls.gov>. This term and condition supersedes EPA Form 5700-49, 'Certification Regarding Debarment, Suspension, and Other Responsibility Matters'. See also Section 27: Provisions for Federal Subawards Only.

- 7. Drug-Free Workplace Certification.** The sponsor must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 2 C.F.R. Part 1536 Subpart B. Additionally, in accordance with these regulations, the sponsor must identify all known workplaces under its federal award; and keep this information on file during the performance of the award.

  - a. Sponsors who are individuals must comply with the drug-free provisions set forth in 2 C.F.R. Part 1536 Subpart C.
  - b. The consequences for violating this condition are detailed under 2 C.F.R. Part 1536 Subpart E. The sponsor can access 2 C.F.R. Part 1536 at <http://ecfr.gpoaccess.gov>.
- 8. Management Fees.** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.
- 9. Reimbursement Limitation.** If the sponsor expends more than the grant amount in this Agreement in its approved budget in anticipation of receiving additional funds, it does so at its own risk. The Federal Government and RCO is not legally obligated to reimburse the sponsor for costs incurred in excess of the approved budget. See also Section 11: Project Reimbursements.
- 10. Trafficking in Persons.** The following prohibition statement applies to the sponsor, and all sub-awardees of the sponsor. The sponsor must include this statement in all sub-awards made to any private entity under this Agreement.

"YOU AS THE SUB-RECIPIENT, YOUR EMPLOYEES, SUB-AWARDEES UNDER THIS AWARD, AND SUB-AWARDEES' EMPLOYEES MAY NOT ENGAGE IN SEVERE FORMS OF TRAFFICKING IN PERSONS DURING THE PERIOD OF TIME THAT THE AWARD IS IN EFFECT; PROCURE A COMMERCIAL SEX ACT DURING THE PERIOD OF TIME THAT THE AWARD IS IN EFFECT; OR USE FORCED LABOR IN THE PERFORMANCE OF THE AWARD OR SUB-AWARDS UNDER THIS AWARD."
- 11. Disadvantaged Business Enterprise Requirements, General Compliance.** The sponsor agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 C.F.R. Part 33.
- 12. Sub-Awards.** If the sponsor makes sub-awards under this Agreement, the sponsor is responsible for selecting its sub-awardees and, if applicable, for conducting sub-award competitions. The sponsor agrees to:

  - a. Establish all sub-award agreements in writing;

- b. Maintain primary responsibility for ensuring successful completion of the approved project (SPONSORS CANNOT DELEGATE OR TRANSFER THIS RESPONSIBILITY TO A SUB-AWARDEE);
- c. Ensure that any sub-awards comply with the standards in 2 C.F.R. Part 200, and are not used to acquire commercial goods or services for the sub-awardee;
- d. Ensure that any sub-awards to 501(c)(4) organizations do not involve lobbying activities;
- e. Monitor the performance of sub-awardees, and ensure sub-awardees comply with all applicable regulations, statutes, and terms and conditions which flow down in the sub-award;
- f. Obtain RCO's consent before making a sub-award to a foreign or international organization, or a sub-award to be performed in a foreign country; and
- g. Obtain approval from RCO for any new sub-award work that is not outlined in the approved work plan in accordance with 40 C.F.R. Parts 30.25 and 31.30, as applicable.

**13. Federal Employees.** No Subcontract or grant funds may be used to provide any Federal Employee transportation assistance, reimbursement, and any other expense.

**14. Fly America Act.** The sponsor agrees to comply with 49 U.S.C. 40118 (the "Fly America" act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The sponsor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The sponsor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**15. Recovered Materials.** The sponsor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247. See also Section 27: Provisions for Federal Subawards Only.

**16. Copeland "Anti-Kickback" Act.** All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency. See also Section 27: Provisions for Federal Subawards Only.

**17. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7).** When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency. See also Section 27: Provisions for Federal Subawards Only.

- 18. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).** Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. See also Section 27: Provisions for Federal Subawards Only.
- 19. Rights to Inventions Made Under a Contract or Agreement.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 C.F.R. Part 401, "Rights to Inventions made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. See also Section 27: Provisions for Federal Subawards Only.
- 20. FY12 APPR ACT: Unpaid Federal Tax liabilities and Federal Felony Convictions.** This Agreement is subject to the provisions contained in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2012, HR 2055, Division E, Sections 433 and 434 regarding unpaid federal tax liabilities and federal felony convictions. Accordingly, by accepting this award the recipient acknowledges that it (1) is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal conviction under and Federal law within 24 months preceding the award, unless EPA has considered suspension or debarment of the corporation, or such officer or agent, based on these tax liabilities or convictions and determined that such action is not necessary to such action is not necessary to protect the Government's interests. If the recipient fails to comply with these provisions, EPA will annul this agreement and may recover any funds the recipient has expended in violation of sections 433 and 434.

**B. Programmatic Conditions:**

1. **Semi-Annual FEATS Performance Reports.** The sponsor is required to submit performance reports every six months, unless a different reporting frequency is outlined in the Scope of Work, using the reporting tool supplied by RCO. The sponsor agrees to include brief information on each of the following areas:
  - a. Comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period;
  - b. The reasons for slippages if established outputs/outcomes were not met; AND
  - c. Additional pertinent information, including when appropriate, analysis and information of cost overruns or high unit costs.Reporting periods are from October 1 to March 31 and April 1 to September 30. Performance reports are due to RCO 15 calendar days after the end of each reporting period.
2. **Final Performance Report.** In addition to the periodic performance reports, the sub-recipient will submit a final performance report to RCO within 60 calendar days after the expiration or termination of the award. The report shall be submitted to the RCO Grant Manager and must be provided electronically. The report shall generally contain the same information as in the periodic reports, but should cover the entire project period.

3. **Recognition of EPA Funding.** Reports, documents, signage, videos, or other media, developed as part of projects funded by this Agreement shall contain the following statement:

"THIS PROJECT HAS BEEN FUNDED WHOLLY OR IN PART BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER ASSISTANCE AGREEMENT [EPA agreement number] TO WASHINGTON DEPARTMENT OF FISH AND WILDLIFE. THE CONTENTS OF THIS DOCUMENT DO NOT NECESSARILY REFLECT THE VIEWS AND POLICIES OF THE ENVIRONMENTAL PROTECTION AGENCY, NOR DOES MENTION OF TRADE NAMES OR COMMERCIAL PRODUCTS CONSTITUTE ENDORSEMENT OR RECOMMENDATION FOR USE."

4. **Copyrighted Material.** EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

RCO acknowledges that EPA may authorize another grantee to use copyrighted works or other data developed under this Agreement as a result of: a) the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or; b) termination or expiration of this agreement.

5. **Peer Review.** The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the RCO Grants Manager prior to releasing any final reports or products resulting from the funded study.
6. **Quality Assurance Requirements.** Acceptable Quality Assurance documentation must be submitted to the Grant Program within 30 days of acceptance of this agreement or another date as negotiated with the RCO Grants Manager. The National Estuary Program (NEP) Quality Coordinator supports quality assurance for EPA-funded NEP projects. No work involving direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology shall be initiated under an agreement until RCO or the NEP Quality Coordinator has approved the quality assurance document. The sponsor will submit all Quality Assurance documentation to the following address. Please copy the Grant Program on all correspondence with the NEP Quality Coordinator. Thomas H. Gries, NEP Quality Coordinator Department of Ecology Tgri460@ecy.wa.gov 360.407.6327.
7. **Environmental Data and Information Technology.** Sub-recipients are required to institute standardized reporting requirements into their work plans and include such costs in their budgets. All environmental data will be required to be entered into the EPA's Storage and Retrieval data system (STORET). The best method (local or state consolidated) for reporting will be determined on a project-by-project basis between the DFW grant manager and sub-recipient. More information about STORET can be found at <http://www.epa.gov/STORET>.

#### **SECTION 34: PROVISIONS FOR ESTUARY AND SALMON RESTORATION PROGRAM PROJECTS ONLY**

The following provisions shall be in force only if the project described in this Agreement is funded from the Estuary and Salmon Restoration Program.

##### **A. DUNS and CCR Requirements**

1. Unless otherwise exempted from this requirement under 2 C.F.R. § 25.110, the sponsor must maintain the currency of its information in the CCR until submission of its final financial report required under this Agreement or receive the final payment, whichever is later.
2. The sponsor may not make a sub-award to any entity unless the entity has provided its DUNS number to the sponsor.

- B. FY2011 ACORN Funding Restriction.** No funds provided under this Agreement may be used for sub-awards/sub-grants or contracts to the Association of Community Organizations for Reform NOW (ACORN) or any of its subsidiaries.

### **SECTION 35. PROVISIONS FOR MARINE SHORELINE PROTECTION PROGRAM PROJECTS ONLY**

The following provisions shall be in force only if the project described in this Agreement is funded from the Marine Shoreline Protection program.

The Sub-Recipient shall comply with all applicable federal, State, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement.

- A. Federal Finance Report (FFR).** Recipients (sponsor) shall submit final Federal Financial Reports (FFR), Standard Form 425 (SF-425), to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at [www.epa.gov/ocfo/financeservices/forms.htm](http://www.epa.gov/ocfo/financeservices/forms.htm). All FFRs must be submitted to the Las Vegas Finance Center: US EPA, LVFC, 4220 S. Maryland Pkwy Bldg C, Rm 503, Las Vegas, NV 89119, or by FAX to: 702-798-2423. The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients (sponsor) will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement. EPA may take enforcement actions in accordance with 40 C.F.R. § 30.62 and 40 C.F.R. § 31.43 if the recipient does not comply with this term and condition.

- B. Reimbursement Limitation.** If the sponsor expends more than the amount of federal funding in its approved budget in anticipation of receiving additional funds, it does so at its own risk. The Federal Government and RCO is not legally obligated to reimburse Sub-Recipient for costs incurred in excess of the approved budget.

#### **C. DUNS and CCR Requirements**

- 1. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM).** Unless the sponsor is exempted from this requirement under 2 C.F.R. § 25.110, the sponsor must maintain the currency of its information in the SAM until the sponsor submits the final financial report required under this award or receive the final payment, whichever is later. This requires that the sponsor review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.
- 2. Requirement for Data Universal Numbering System (DUNS) numbers.** If the sponsor is authorized to make subawards under this award, the sponsor:
  - a. Must notify potential subrecipients that no entity may receive a subaward from the sponsor unless the entity has provided its DUNS number to the sponsor.
  - b. May not make a subaward to an entity unless the entity has provided its DUNS number to the sponsor.
- 3. Definitions. For purposes of this award term:**
  - a. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site <http://www.sam.gov>.
  - b. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

- c. Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R Part 25, subpart C:
  - i. A Governmental organization, which is a State, local government, or Indian tribe;
  - ii. A foreign public entity;
  - iii. A domestic or foreign nonprofit organization;
  - iv. A domestic or foreign for-profit organization; and
  - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- d. Subaward:
  - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
  - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMS Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
  - iii. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
- e. Subrecipient means an entity that:
  - i. Receives a subaward from you under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the subaward.

#### **D. CIVIL RIGHTS OBLIGATIONS**

1. **General.** This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 4248 or Standard Form 424D, as applicable. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.
2. **Statutory Requirements.** In carrying out this agreement, the recipient must comply with:
  - a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
  - b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
  - c. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving
  - d. Federal financial assistance.

If the recipient is conducting an education program under this agreement, it must also comply with Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

3. **Regulatory Requirements.** The recipient agrees to comply with all applicable EPA civil rights regulations, including:
  - a. For Title IX obligations, 40 C.F.R. Part 5; and
  - b. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
  - c. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.
4. **Title VI - LEP, Public Participation and Affirmative Compliance Obligation.**
  - a. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004\\_register&docid=fr25jn04-79.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf)
  - b. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

- E. Additional Term and Condition for Agricultural Landowners - Riparian Buffer Term for Agricultural Landowners.** To be eligible for NEP implementation funding, provided directly or through a subaward, a private agricultural land owner whose property borders fresh or estuarine waters must establish and maintain a riparian buffer on all water courses on the property consistent with the National Marine Fisheries Service (NMFS) guidelines for Riparian Buffers Along Agricultural Water Courses in NW Washington and NRCS guidance on the NMFS guidelines. A land owner may be excluded from meeting this requirement if the funding is used solely for removal of shoreline armoring, onsite sewage system repair or replacement, engineered dike setbacks, or culvert or tide-gate replacements that provide for fish passage at all life stages. In some cases, the NMFS recommendations are framed in terms of ranges of buffer widths rather than point estimates, and expressed as probabilities of achieving desired outcomes. Local conditions and local circumstances matter, and may affect the choice of the riparian buffer most effective at achieving salmon recovery. Buffer widths may be less than specified in the table in cases where there is a scientific basis for doing so and all affected tribes in the watershed agree to deviations from the NMFS guidelines or where there are physical constraints on an individual parcel (e.g. transportation corridors, structures, naturally occurring).

## **SECTION 36. 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 an inconsistency in the terms of this Agreement, or between its terms and any applicable statute, rule, or policy or procedure, the inconsistency 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;
- E. State law;

- F. Washington Administrative Code;
- G. Project Agreement;
- H. Board policies and procedures.

### **SECTION 37. AMENDMENTS**

Amendments to this Agreement shall be binding only if writing and signed by personnel authorized to bind each of the parties except period of performance extensions in and minor scope adjustments need only be signed by RCO's director or designee, unless the consent of the sponsor to an extension or scope adjustment is required by its auditing policies, regulations, or legal requirements, in which case, no extension shall be effective until so consented.

### **SECTION 38. LIMITATION OF AUTHORITY**

Only RCO or RCO's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by RCO.

### **SECTION 39. 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 to the original Agreement.

### **SECTION 40. APPLICATION REPRESENTATIONS -- MISREPRESENTATIONS OR INACCURACY OR BREACH**

The funding board 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 may be deemed a breach of this Agreement.

### **SECTION 41. SPECIFIC PERFORMANCE**

The funding board and RCO may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the project 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 funding board or RCO shall be deemed exclusive. The funding board or 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.

### **SECTION 42. TERMINATION**

The funding board and RCO will require 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 all funding board and RCO policies, and with the representations of the sponsor in its application for a grant as finally approved by the funding board. For federal awards, notification of termination will comply with 2 C.F.R. § 200.340.

- A. For Cause.** The funding board or the director may suspend or terminate the obligation to provide funding to the sponsor under this Agreement:
  - 1. In the event of any breach by the sponsor of any of the sponsor's obligations under this Agreement; or
  - 2. If the sponsor fails to make progress satisfactory to the funding board or 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

In the event this Agreement is terminated by the funding board or director, under this section or any other section after any portion of the grant amount has been paid to the sponsor under this Agreement, the funding board or director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived.

- B. 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.
- C. 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. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

### **SECTION 43. DISPUTE HEARING**

Except as may otherwise be provided in this Agreement, when a dispute arises between the sponsor and the funding board, 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 third person shall be chosen by the funding board's chair.

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.

### **SECTION 44. 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.

### **SECTION 45. 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. The sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

#### **SECTION 46. PROVISIONS APPLICABLE ONLY IF FEDERALLY RECOGNIZED INDIAN TRIBE IS THE SPONSOR**

In the cases where this Agreement is between the funding board (State) and a federally recognized Indian Tribe, the following governing law/venue applies, but only between those parties:

- A.** Notwithstanding the above venue provision, if the State of Washington intends to initiate a lawsuit against a federally recognized Indian tribe relating to the performance, breach or enforcement of this Agreement, it shall so notify the Tribe. If the Tribe believes that a good faith basis exists for subject matter jurisdiction of such a lawsuit in federal court, the Tribe shall so notify the State within five days of receipt of such notice and state the basis for such jurisdiction. If the Tribe so notifies the State, the State shall bring such lawsuit in federal court; otherwise the State may sue the Tribe in the Thurston County Superior Court. Interpretation of the Agreement shall be according to applicable State law, except to the extent preempted by federal law. In the event suit is brought in federal court and the federal court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the parties agree to venue in Thurston County Superior Court.
- B.** Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from such a lawsuit arising out of this agreement, including any third party claims relating to any work performed under this agreement, shall be binding and enforceable on the parties. Any money judgment or award against a Tribe, tribal officers, employees, and members, or the State of Washington and its officers and employees may exceed the amount provided for in Section F: Project Funding of the Agreement in order to satisfy the judgment.
- C.** The Tribe hereby waives its sovereign immunity for suit in federal and state court for the limited purpose of allowing the State to bring such actions as it determines necessary to give effect to this section and to the enforcement of any judgment relating to the performance, or breach of this Agreement. This waiver is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

For purposes of this provision, the State includes the RCO and any other state agencies that may be assigned or otherwise obtain the right of the RCO to enforce this Agreement.

#### **SECTION 47. 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.

## Eligible Scope Activities

Project Sponsor:

Project Number:

Project Title:

Project Type:

Program

Approval

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### Project Metrics

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#### Project Acquisition

Project acres by purpose type:	
Habitat Conservation	18.00
Public Access	32.00
Miles of shoreline protected:	1.00

#### Sites Improved

Project areas developed:	2.00
Project areas renovated:	0.00

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### Acquisition Metrics

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#### Property: Worksite #1

##### Real Property

##### Land

Acres by Acreage Type (fee simple):	
Uplands	17.00
Tidelands	33.00
Existing structures on site:	No structures on site
Clean up of hazardous substances required (yes/no):	Unknown

##### Incidentals

##### Signs (Acq)

Number of permanent signs that identify site and funding partners	1
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### Development Metrics

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#### Property: Worksite #1

##### Buildings and Structures

##### Construct / install restroom

Number of restrooms:	1 new, 0 renovated
Select the restroom type:	Vault toilets

##### General Site Improvements

##### Develop paths/walkways

Select the surface of the path/walkway:	Compacted gravel
Linear feet of path/walkway:	1200
Walkway lighting provided (yes/no):	No
Number of walkway bridges:	0 new, 0 renovated

##### Develop viewpoint

Number of designated viewpoints:	1 new, 0 renovated
Select the viewpoint structures:	Benches/seating

##### Install signs/kiosk

Number of kiosks:	0 new, 0 renovated
Number of interpretive signs/displays:	5 new, 0 renovated
Number of permanent entrance signs:	1 new, 0 renovated
Project involves installation of informational signs (yes/no):	

**Parking and Roads****Parking development**

Number of vehicle parking stalls:	8 new, 0 renovated
Number of vehicle with trailer parking stalls:	0 new, 0 renovated
Number of accessible parking stalls:	
Vehicle with trailers	0
Vehicle	1
Select the parking surfaces:	Gravel
Select the parking enhancements:	Entry gate, Wheel stops

## Legal Description

**Project Sponsor:**

**Project Number:**

**Project Title:**

**RCO Approval:**

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**Worksite Name**

**Property Name**

**Legal Description**

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**Worksite #1**

The legal description of the property purchased with funding assistance provided through this Project Agreement (and protected by a recorded Deed-of-Right) shall be amended into the Project Agreement prior to reimbursement of the final payment.

## Milestone Report by Project

**Project Number:**

**Project Name:**

**Sponsor:**

**Project Manager:**

X	!	Milestone	Target Date	Comments/Description
X		Project Start	08/01/2014	
X		Baseline Documentation to RCO	10/01/2014	Please provide the preliminary title report for the property prior to closing
X		Survey Complete	10/31/2014	
X		Order Appraisal(s)	11/01/2014	
X	!	Progress Report Submitted	01/15/2015	
X	!	Order Appraisal Review(s)	03/15/2015	
X	!	Purchase Agreement Signed	03/31/2015	
X	!	Acquisition Closing	06/30/2015	
X		Funding Acknowl Sign Posted	06/30/2015	
X	!	Progress Report Submitted	06/30/2015	
X		Recorded Acq Documents to RCO	07/30/2015	
X	!	Annual Project Billing	07/31/2015	
X	!	Cultural Resources Complete	12/31/2015	
X	!	Progress Report Submitted	01/15/2016	
		RCO Final Inspection	02/01/2016	
	!	Agreement End Date	06/30/2016	
		Final Billing to RCO	07/31/2016	
		Final Report in PRISM	07/31/2016	

X=Milestone Complete

!=Critical Milestone

**PORT OF KENNEWICK**  
**GUIDELINES FOR VISTA FIELD DEVELOPMENT PROPOSALS**

**DRAFT ~~05/20~~ 06/08/2016**

These guidelines identify the procedure by which the Port of Kennewick (Port) provides public notice of Vista Field development opportunities and the process by which the Port shall receive, evaluate and accept development proposals. The Port Commission shall evaluate the effectiveness of this policy over time and reserves the right to expand, amend or rescind this policy as appropriate.

**I. NOTICE OF DEVELOPMENT OPPORTUNITIES**

In providing notice of opportunities for Vista Field development, the Port will prepare project information including a description of development-ready site(s); a description of the development types and styles desired; whether sites are for sale or lease; minimum price/terms; and reference to applicable Port planning documents (i.e. master plans, design standards, etc.).

The Port may post notice:

- A. On its website; on the "LoopNet" real estate site; on the MLS service for local real estate (if applicable);
- B. In the Tri-City Herald; Tri-City Business Journal; the Spokane Business Journal; the Puget Sound Business Journal and other similar publications; and
- C. By other methods as appropriate, including making direct contact with potential developers.

**II. RECEIPT OF DEVELOPMENT PROPOSALS**

A developer wishing to develop available Vista Field property shall submit a Letter of Intent (LOI) describing the developer's experience and the proposed development concept for the site. In describing its experience, the developer shall address its:

- A. Knowledge of the local planning and permitting processes;
- B. Knowledge of "New Urbanism", "Smart Growth", "Green Building" or similar development principles (if any);
- C. Financial capability, as evidenced by a letter of credit or other acceptable means, as confirmation of its ability to complete its proposed development, including a description of funding sources for property acquisition and construction of infrastructure and facilities;
- D. Relevant experience with similar development projects including:
  - 1. Project name, location, and description;
  - 2. Color images or other graphic material depicting the project;

3. Total project budget and budget per phase (if applicable);
  4. Budget funding sources – equity partner, development lender, permanent lender, etc.;
  5. Total duration of project development and details regarding whether project schedule was met;
  6. Brief description of the development process;
  7. Consultants and contractors utilized and the role of each; and
  8. Major tenants (if applicable).
- E. Price and terms offered;
- F. A list of developer's key personnel anticipated to participate in the development, including a summary of their relevant experience;
- G. A list and short description of all litigation and/or claims that the developer (or any entity or individual named in the developer's proposal) is currently or in the last 10 years was, a named party (if any), including a description of how the litigation and/or claim was resolved; ~~and;~~
- ~~H. A list of past community, charitable and/or civic contributions; and~~
- ~~H1. A minimum of three references, one of which shall be a financial institution.~~

### III. EVALUATION OF DEVELOPMENT PROPOSALS

LOIs will be reviewed by the Port CEO. If the LOI demonstrates that the developer possesses the relevant experience, that the development concept is likely to assist with the redevelopment of the property and that the price and terms are reasonable, then the CEO will arrange for the parties to participate in a preliminary collaborative design process described below. If more than one LOI is received by the Port, the CEO shall exercise his discretion as to which proposal(s), if any, shall be referred to the preliminary collaborative design process. The decision of the Port CEO on all matters shall be final and not subject to appeal or review.

- A. Preliminary Collaborative Design Process. The Port and developer (working through each party's design team) shall meet to refine the development concept described in the LOI. Initiation of the collaborative design process may be by telephone conference or other preliminary discussion. The preliminary collaborative design process shall consist of:
1. Pre-Development Meeting. A pre-development meeting shall take place in Kennewick, Washington (or other location mutually agreed upon) where the developer, its design team and principal(s) shall be interviewed, and where the initial project development concept will be reviewed. The parties will endeavor to produce rough project sketches and assemble precedent photographs and other illustrative materials.
  2. Design Workshop. Upon successful completion of the pre-development meeting, a design workshop will be conducted whereby the parties will refine the development concept and

the rough sketches in order for the developer to produce a schematic design mutually acceptable to the parties.

B. Initial Evaluation by Port Commission. Upon successful completion of the preliminary collaborative design process, the CEO shall present all relevant project information to the Port Commission for evaluation. The Port Commission may evaluate the proposal utilizing the following criteria:

1. Quality of the project and consistency with Port planning documents;
2. Price and terms;
3. Knowledge, financial capability and references of the developer; **and**
4. Developer's recent experience with similar projects; and
- 4.5. Other factors including but not limited to the developer's past community, charitable and/or civic contributions.

The Port Commission may take any action deemed appropriate with respect to proposal evaluation, including but not limited to requesting the parties to further refine the proposal through the final collaborative design process described below. In this case, the Port Commission shall grant the developer exclusive negotiating rights with respect to the proposal and site for a period of 90 days.

During the exclusive negotiating period, the Port will not accept any other proposal for the site. In the event that the parties are not able to negotiate a purchase and sale agreement for the site within the exclusive negotiating period, the LOI shall terminate and be of no further force and effect, and the Port shall have no further obligations to the developer. In consideration of providing the developer with the exclusive negotiating rights period, developer shall pay to the Port of \$2,500.00 which is intended to reimburse the Port for administrative and other costs.

C. Final Collaborative Design Process. Provided the parties enter into the final collaborative design process, the developer, at its sole expense, shall produce a set of drawings acceptable to the Port including site and representative floor plans with elevations for the major elements of the project. Schematic drawings shall also include exterior sections reflecting proposed architectural design and building materials. Substantial emphasis will be placed on exteriors, and especially, elevations facing streets and public spaces. The plans shall include a conceptual site plan and a description of specific noteworthy site features that will be preserved (i.e. trees, etc.). The plans should include a sample or conceptual planting plan for site vegetation. Additionally, the developer shall describe the components, planning tools and means of implementing the project to completion; the proposed schedule of development; and its ability to secure tenants and market the property to end-users. At this time, the developer shall also develop a project timeline (subdivided into phases, if necessary) identifying the estimated length of time to reach key development milestones, including: commencement and completion of design; financing; commencement and completion of construction; and availability for tenant occupancy. Any contingencies that may affect this timeline shall be identified by developer. The Port may request additional project information.

D. Final Presentation to Port Commission. Provided the parties successfully complete the final collaborative design process, the CEO shall report to the Port Commission related to the overall progress of the project. The Port Commission, in its sole discretion, shall either reject

the development proposal or direct the CEO to negotiate a purchase and sale agreement (or ground lease) with the developer related to the site. If the parties are unable to execute a purchase and sale agreement within 45 days, the development proposal shall expire, the Port shall take no further action, and each party shall be relieved of all further obligations related to the proposed development.

#### **IV. POST PURCHASE AND SALE AGREEMENT MATTERS**

- A. Project Refinement. Upon execution of a purchase and sale agreement, the developer shall apply to the City of Kennewick (City) for project review and permitting, which shall be the sole and exclusive responsibility of the developer. Should the City require changes to the project, which in the sole discretion of the Port CEO, materially alters the proposed project, the parties will then attempt to negotiate the changes required in order for the developer to receive City approval of its project. If the parties are unable to negotiate changes required in order for the developer to receive City approval of its project within a 45 day period of commencing such negotiations, the development proposal shall expire, the Port shall take no further action and each party shall be relieved of all further obligations related to the proposed development. Any earnest money deposited by the developer shall be refunded to the developer, less any applicable administrative fee.
- B. Construction Progress. Reviewers specified by the Port CEO, will monitor construction and provide periodic updates to the Port Commission.

#### **V. MISCELLANEOUS MATTERS**

- A. All discussions between the parties are to explore the developer's qualifications and the viability of a development proposal. A binding obligation shall only be created by a written agreement setting forth all material terms and conditions of the proposed transaction, signed by the parties; and no agreement shall be binding except upon an affirmative vote by a majority of the Port Commission;
- B. The Port may arrange for further action including introducing the concept to the Port Commission or appropriate third parties in order to gather information, analyze proposal feasibility and cost, and to perform due diligence; the parties understand that complete confidentiality cannot be guaranteed;
- C. Each party shall be responsible for all costs it incurs with respect to this matter, including but not limited to professional and attorney's fees and costs;
- D. The Port makes no representations with respect to the property and the developer agrees to exercise all due diligence it deems necessary;
- E. Development proposals may be subject to disclosure under the Washington State Public Records Act. However, any information within a development proposal that is claimed to be proprietary or a trade secret may be marked as "confidential". Prior to disclosure of any such information, the Port will provide the developer statutory notice of developer's right to seek a court order to preclude such disclosure; and

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F. The Port reserves the right to verify developer credentials and to request supplemental information or documents at any time during the process that it determines the necessity therefore.

G. The Port commission, in its discretion, may waive any of the requirements set forth herein for small scale developments including the sale of individual residential lots or developments where the total project value, including land price, is expected to be less than \$1,000,000.

# ***PORT OF KENNEWICK***

## **Resolution No. 2016-18**

### **A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PORT OF KENNEWICK APPROVING VARIOUS POLICY DIRECTIVES REGARDING THE REDEVELOPMENT OF VISTA FIELD**

**WHEREAS**, on May 24, 2016, staff presented several policy matters for Commission consideration.

**NOW, THEREFORE; BE IT HEREBY RESOLVED** that upon consideration and discussion of the matters by the Commission, the Commission provides the following direction to the Chief Executive Officer (CEO) and hereby directs the CEO to take all action to implement the policy directives listed below:

**Directive No. 1. Name of Development**

- ✓ *Vista Field will remain the name of the development*

**Directive No. 2. Vista Field – Transportation System and Fire Code**

- ✓ *Move forward with professional recommendations regarding mitigation*

**Directive No. 3. Vista Field Concepts**

- ✓ *Vista Field will incorporate a Market and Vertical Feature/Tower*
- ✓ *Vista Field will contain a water feature in the Plaza*
- ✓ *Vista Field will incorporate a Residential/Woonerf Section*
- ✓ *The Port of Kennewick will provide examples of housing*
- ✓ *Staff and Town Architect will incorporate interesting elements and embellishment throughout Phase I*

**ADOPTED** by the Board of Commissioners of the Port of Kennewick on the 14th day of June, 2016.

**PORT OF KENNEWICK  
BOARD OF COMMISSIONERS**

By: \_\_\_\_\_  
SKIP NOVAKOVICH, *President*

By: \_\_\_\_\_  
THOMAS MOAK, *Vice President*

By: \_\_\_\_\_  
DON BARNES, *Secretary*



## AGENDA REPORT

**TO:** Port Commission  
**FROM:** Tim Arntzen, CEO  
**MTG. DATE:** 6/14/16  
**AGENDA ITEM NO.:** Resolution 2016-19, Winery Tenancy Policy

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**I. REFERENCE(S):** Resolution 2016-19, attached; Winery Tenancy policy, attached.

**II. FISCAL IMPACT:** N/A.

**III. DISCUSSION:** Attached is a Winery Tenancy Policy for Commission consideration. It focuses on the Columbia Gardens Wine Village, Phase I structures, which are to be built by the Port and leased to winery tenants. The policy sets basic standards applicable to those seeking tenancy and establishes a procedure whereby tenants would be selected to fill each of the two leasable spaces. Among other miscellaneous matters, the policy provides that leases will be at market rate, and that initial lease terms will not exceed five years.

**IV. STAFF RECOMMENDATION:** Approve Resolution 20016-19, authorizing the Port's Winery Tenancy Policy which the Port CEO will adhere to when the tenant selection process commences in the near future.

**V. ACTION REQUESTED OF COMMISSION:**

**Motion:** *I move approval of Resolution 2016-19, authorizing the Port's Winery Tenancy Policy.*

# ***PORT OF KENNEWICK***

## **RESOLUTION 2016-19**

### **A RESOLUTION OF THE BOARD OF COMMISSISONERS OF PORT OF KENNEWICK ADOPTING THE WINERY TENANCY POLICY**

**WHEREAS**, this policy is intended to assist the Port of Kennewick (Port) in selecting tenants for its Columbia Gardens Wine Village rental complex, Phase I; and

**WHEREAS**, the Commission shall evaluate the effectiveness of this policy over time and reserves the right to expand, amend or rescind this policy as appropriate; and

**WHEREAS**, upon consideration and discussion of this policy, the Commission authorizes and directs the Chief Executive Officer (CEO) to take all action necessary to implement this policy.

**NOW, THEREFORE BE IT RESOLVED**, that the Board of Commissioners of the Port of Kennewick hereby approves and adopts the Winery Tenancy Policy as attached in Exhibit A.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick this 14<sup>th</sup> day of June, 2016.

***PORT OF KENNEWICK  
BOARD OF COMMISSIONERS***

By:

\_\_\_\_\_  
SKIP NOVAKOVICH, *President*

By:

\_\_\_\_\_  
THOMAS MOAK, *Vice President*

By:

\_\_\_\_\_  
DON BARNES, *Secretary*

***PORT OF KENNEWICK  
WINERY TENANCY POLICY***

**I. GENERAL**

- A. This policy is intended to assist the Port of Kennewick (Port) in selecting tenants for its Columbia Gardens Wine Village rental complex, Phase I, which is situated on the former 421 E. Columbia Drive site. The Commission shall evaluate the effectiveness of this policy over time and reserves the right to expand, amend or rescind this policy as appropriate.
- B. The Port may enter into a landlord-tenant relationship in order to foster economic development opportunities. The Port may lease to small businesses, whether existing or start-ups.

**II. EVALUATION CRITERIA**

Requirements for consideration as a tenant include:

- A. Demonstrating the ability to pay rent and/or other fees;
- B. Demonstrating a need for the facilities;
- C. Demonstrating strong commercial potential;
- D. Demonstrating the ability to provide strong community benefits, such as job creation and economic diversification opportunities; and
- E. Having well-qualified principals involved with the business.

Applicants must provide a basic business plan which identifies product(s), markets, management and financial capability, as evidenced by a letter of credit or other means acceptable to the Port. The Port shall review pertinent references.

**III. SELECTION PROCESS**

Applications received by the Port will be screened and evaluated through the following process:

The Port commission shall establish a selection committee to review and evaluate applications. The committee shall consist of one Port staff member, one City of Kennewick staff member and the Port's winery consultant. The Port CEO, or his designee, shall screen applications

to ensure completeness. Following screening, the CEO shall forward all complete applications to the selection committee, which shall review the applications based on the criteria set forth in Section II hereof. The committee, in its discretion, may interview applicants. Following review, the selection committee shall make recommendations to the Port Commission regarding applicant qualifications. The Port commission shall select applicant(s) for tenancy in a Port Commission Meeting, with or without physical presence and presentations by the applicants. Once selected, the CEO shall negotiate a rental agreement with the selected applicant(s).

#### **IV. LEASE TERM AND RENTAL RATE**

The initial lease term may not exceed five years. If the tenant has fully complied with all terms of the lease, the tenant, at its option, shall have the right to extend the lease for one additional five-year term as set forth in the lease agreement. The Port shall determine the market rate for any lease based upon local market conditions as determined by staff with the assistance of real estate professionals.