



**GRANT AGREEMENT  
STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES (DNR)  
CONTRACT NO. 93-105343**

PI: 244

Funding Source: Federal

Grant Funded: ☒ Yes ☐ No

OMWBE: ☐ Small Business ☐ Veteran Owned ☒ Not Applicable

Procurement method : ☒ Solicitation (RFA 23-39)

This Grant Agreement is made and entered into by and between the state of Washington, Department of Natural Resources, hereinafter referred to as "AGENCY/DNR", and the below named firm, hereinafter referred to as "GRANTEE."

City of Tumwater

555 Israel Road SW

Tumwater, WA 98501

**Phone:** 360-754-4140

**Email:** ajoneswood@ci.tumwater.wa.us

**WA State UBI Number:** 344000001

**Federal Taxpayer Identification Number:** 91-6001520

**Statewide Vendor # (SWV):** SWV0007172

## 1. PURPOSE

The intent of the 2023 Community Forestry Assistance grant program is to assist communities in developing urban forest planning, programming tools, and activities that may not otherwise receive local funding. Projects are to improve management, care, and public engagement with

trees growing in parks, natural areas, and along public rights-of-way. These projects address social and environmental disparities in Washington communities by investing in community-identified urban forestry needs advancing environmental, social, or public health outcomes.

The purpose of this grant agreement is to complete an inventory of the City-owned urban forest, update the city's 2018 Street Tree inventory to include DNR required fields, and produce a Community and Urban Forest Maintenance Report to guide future maintenance.

## **2. SCOPE OF WORK**

- A. Exhibit A, attached hereto and incorporated by reference, contains the *General Terms and Conditions* governing work to be performed under this grant agreement, the nature of the working relationship between DNR and the GRANTEE, and specific obligations of both parties.
- B. Exhibit B, attached hereto and incorporated by reference, contains the Scope of Work. The GRANTEE will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work as included in the Scope of Work.

Projects must be located on public property, or be open to public access. Grant funds may not be used to meet ordinary maintenance and operating expenses.

- C. The GRANTEE shall produce the following written reports by the dates indicated below.
  - Midterm Report: December 29, 2023
  - Final Report: May 31, 2024

The GRANTEE must fill out a report template that includes the following information:

- Summary of the project status
- Achievements or setbacks (if any) to date
- Progress by activity, task, and deliverable
- Line item report of expenditures from the grant funding

The final report must be submitted with the final invoice at the conclusion of the project. The final report must include the following information in addition to the report template:

- Activities undertaken,
- Barriers and lessons learned,
- Any maps and other relevant graphics related to the deliverables,
- Outcomes achieved,
- Minimum Match Requirements Report (page 3, AWARD), and
- 400-500 word article telling the story of the project including references to DNR (and the USDA Forest Service if federally funded), local project partners, location, purpose, and outcomes as well as two high quality images

## **3. PERIOD OF PERFORMANCE**

The period of performance under this grant agreement will be from the date of execution through April 20, 2024 unless terminated sooner as provided herein. Amendments to extend the period of performance are not allowed.

#### **4. AWARD**

The total grant award payable to GRANTEE for satisfactory performance of the work under this grant agreement shall not exceed Forty Thousand Dollars (\$40,000). GRANTEE's compensation for services rendered shall be based on Exhibit C – Budget.

Unless otherwise determined, funding for this agreement is provided by USDA Forest Service grant, Grant No: 2019-DG-11062765-729 DNR Program Index 244, Project Code OKF.

##### Minimum Match Requirements Report

The minimum required amount of matching dollars for this grant award is \$20,000.

The GRANTEE must provide a report recording the source and amount of matching dollars (e.g. grantee, in-kind, donated cash match) that equals, or exceeds, the match requirement. This record must be submitted along with the Final Grant Report. The GRANTEE must also provide a list of any deliverables associated with the recorded match as well as a copy of created materials or data, if applicable. DNR reserves the right to withhold payment of the final invoice until the GRANTEE provides both the match record, and evidence of associated deliverables.

#### **5. BILLING PROCEDURES**

DNR will pay GRANTEE upon satisfactory acceptance of each fully completed activity and affiliated tasks outlined in the scope of work documented by associated deliverables as approved by the DNR Grant Manager. Invoices may only be submitted to the DNR Grant Manager along with the midterm report and final report. Invoices and the required supporting documentation must be submitted as one PDF document.

Each invoice submitted to DNR shall include information needed by DNR to determine the exact nature of all expenditures and completed work. At a minimum, each invoice shall specify the following:

1. Agreement number 93-105343
2. Invoice date
3. Organization name and contact information
4. Primary contact phone number and email address
5. Narrative description of the work performed towards completing the activities, tasks, and deliverables
6. Detail of the expenses being billed for each activity and task
  - a. The detail format must reflect Exhibit B, Scope of Work; include the task and deliverable descriptions, and the amount
7. Supporting documentation for all expenses being billed
8. Total invoice amount

No payments in advance or in anticipation of services or goods to be provided under this contract shall be made by DNR.

Payment will be made by check, warrant, or account transfer within 30 days of receipt of the invoice. Upon expiration of the Agreement, final invoices shall be paid, if received within 30 days after the expiration date. However, invoices for all work done within a fiscal year must be submitted within 30 days after the end of the fiscal year. Each invoice submitted to DNR shall include information needed by DNR to determine the exact nature of all expenditures and completed work.

#### Special Budget Provisions

Transfer of funds between line items is allowed and shall not exceed 10% of the total budget. Such transfer needs to have prior approval with the DNR Grant Manager. If the cumulative amount of these transfers exceeds or is expected to exceed 10% of the total budget, this is subject to justification and a contract amendment.

#### Fiscal Year Closures

Under fiscal year closing procedures, the GRANTEE must submit all invoices and/or billings for services or material supplied under this Agreement through June 30, to DNR no later than July 14 of a given year. If DNR does not receive invoices and bills by July 14 of the year of the closing biennium, a considerable delay in payment may result.

DNR may, in its sole discretion, terminate the grant agreement or withhold payments claimed by the GRANTEE for services rendered if the GRANTEE fails to satisfactorily comply with any term or condition of this grant agreement.

Final payment will be withheld until satisfactory acceptance of the final report (page 2, SCOPE OF WORK) and Minimum Match Requirements Report (page 3, AWARD).

## **6. OUTREACH AND PRINTED MATERIALS**

All printed materials, signs, and other products including websites resulting from this agreement must be reviewed by DNR prior to publishing. All projects must include an acknowledgement of funding sources, and may be recognized as follows:

*“Funds for this project were provided by the USDA Forest Service Urban and Community Forestry Program, administered through the State of Washington Department of Natural Resources Urban and Community Forestry Program.”*

USDA Equal Opportunity statement must be included in all publications: *“The USDA is an equal opportunity provider and employer.”*

Appropriate agency logos may be used in addition to the above statement, and will be supplied to the GRANTEE. Use of agency logos must be reviewed and approved by the funding agencies prior to publishing.

## **7. GRANT MANAGEMENT**

The Grant Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this grant agreement.

<b>GRANTEE Grant Manager Information</b>	<b>AGENCY Grant Manager Information</b>
Bonnie Hale City of Tumwater 555 Israel Road SW Tumwater, WA 98501 <i>Phone: 360-754-4140</i> <i>Email address: <a href="mailto:bhale@ci.tumwater.wa.us">bhale@ci.tumwater.wa.us</a></i>	Sajjadullah Alokozai Department of Natural Resources 1111 Washington Street SE Olympia, WA 98504-7037 <i>Phone: 360-915-3944</i> <i>Email address: <a href="mailto:sajjadullah.alokozai@dnr.wa.gov">sajjadullah.alokozai@dnr.wa.gov</a></i>
<b>GRANTEE Project Manager Information</b>	<b>AGENCY Project Manager Information</b>
Alyssa Jones Wood City of Tumwater 555 Israel Road SW Tumwater, WA 98501 <i>Phone: 360-754-4140</i> <i>Email address: <a href="mailto:ajoneswood@ci.tumwater.wa.us">ajoneswood@ci.tumwater.wa.us</a></i>	Ben Thompson Department of Natural Resources 1111 Washington Street SE Olympia, WA 98504-7037 <i>Phone: 360-485-8651</i> <i>Email address: <a href="mailto:ben.thompson@dnr.wa.gov">ben.thompson@dnr.wa.gov</a></i>

## **8. INSURANCE**

Before using any of said rights granted herein and at its own expense, GRANTEE shall purchase and maintain, or require its agent(s)/subcontractor to purchase and maintain, the insurance described below for the entire duration of this Agreement. Failure to purchase and maintain the required insurance may result in the termination of the Agreement at DNR's option.

All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to, or maintained by, the State of Washington, Department of Natural Resources.

GRANTEE shall provide DNR with certificates of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Agreement before using any of said rights granted herein. The description section of the certificate shall contain the Grant Agreement Number and the name of the DNR Project Manager. GRANTEE shall also provide renewal certificates as appropriate during the term of this Agreement.

GRANTEE shall include all subcontractors and agents as insured under all required insurance policies or shall provide separate certificates of insurance for each subcontractor or agent. Failure of GRANTEE to have its subcontractors and agents comply with the insurance requirements contained herein does not limit GRANTEE's liability or responsibility.

**INSURANCE TYPES & LIMITS:** The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

Commercial General Liability (CGL) Insurance: GRANTEE shall purchase and maintain commercial general liability insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the general aggregate limits shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit. All insurance must cover liability arising out of premises, operations, independent GRANTEEs, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.

Employer's liability ("Stop Gap") Insurance: GRANTEE shall purchase and maintain employer's liability insurance and if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Business Auto Policy (BAP) Insurance: GRANTEE shall purchase and maintain business auto insurance and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 per accident, with such insurance covering liability arising out of "Any Auto". The policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense." GRANTEE waives all rights of subrogation against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Industrial Insurance (Workers Compensation): GRANTEE shall comply with Title 51 RCW by maintaining workers compensation insurance for its employees. GRANTEE waives all rights of subrogation against State for recovery of damages to the extent they are covered by Industrial Insurance, employer's liability, general liability, excess, or umbrella insurance. GRANTEE waives its Title 51 RCW immunity to the extent it is required by its indemnity obligation under this Agreement.

**ADDITIONAL PROVISIONS:**

Additional Insured: The State of Washington, Department of Natural Resources, its officials, agents, and employees shall be named as additional insured by endorsement on all general liability, excess, and umbrella insurance policies.

Cancellation: DNR shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications.

1. Insurers subject to Chapter 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or nonrenewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
2. Insurers subject to Chapter 48.15 RCW (Surplus Lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

Insurance Carrier Rating: All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII, or better. Any exception must be reviewed and approved by the DNR Risk Manager or the DNR Contracts Manager, in the Risk Manager's absence. If an insurer is not admitted to do business in the State of Washington, all insurance policies and procedures for issuing the insurance policies must comply with Chapters 48.15 RCW and 284-15 WAC.

Self-Insurance: If GRANTEE is self-insured, evidence of its status as a self-insured entity shall be provided to State. The evidence should demonstrate that GRANTEE's self-insurance meets all of the required insurance coverage of this Agreement to the satisfaction of State including the description of the funding mechanism and its financial condition. If the funding mechanism or financial condition of the self-insurance program of GRANTEE is inadequate, then State may require the purchase of additional commercial insurance to comply with this Agreement.

Waiver: GRANTEE waives all rights of subrogation against State for recovery of damages to the extent these damages are covered by general liability, excess, or umbrella insurance maintained pursuant to this Agreement.

## **9. ASSURANCES**

AGENCY and the GRANTEE agree that all activity pursuant to this grant agreement will be in accordance with all the applicable current federal, state, and local laws, rules, and regulations.

## **10. ORDER OF PRECEDENCE**

Each of the exhibits listed below is by this reference hereby incorporated into this grant agreement. In the event of an inconsistency in this grant agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal statutes and regulations.
2. Terms and conditions of a grant awarded to the state from the federal government, attached as Exhibit D.
3. Washington state statutes and regulations.
4. Special terms and conditions as contained in this basic contract instrument.
5. Exhibit A – WA State Department of Natural Resources General Terms and Conditions.
6. Exhibit B – Scope of Work.
7. Exhibit C – Budget.
8. Any other provision, term or material incorporated herein by reference or otherwise incorporated.

## **11. ENTIRE AGREEMENT**

This grant agreement, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

## 12. CONFORMANCE

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

## 13. APPROVAL

By signature below, the Parties certify that the individuals listed in this document, as representatives of the Parties, are authorized to act in their respective areas for matters related to this instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement.

### CITY OF TUMWATER

### STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES

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*Signature* *Date*

---

Debbie Sullivan  
*Name*

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Mayor  
*Title*

---

555 Israel Road SW  
Tumwater, WA 98501  
*Address*

---

(360) 754-4120  
*Telephone*

---

*Signature* *Date*

---

Andy Tate  
*Name*

---

Community & Landowner Assistance  
Assistant Division Manager  
*Title*

---

1111 Washington Street SE  
Olympia, WA 98504-7037  
*Address*

---

(360) 902-1798  
*Telephone*



## EXHIBIT A

### WA STATE DEPARTMENT OF NATURAL RESOURCES GENERAL TERMS AND CONDITIONS

#### 1. ACCESS TO DATA

The Contractor shall provide access to data generated under this contract to the Agency, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

#### 2. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the Agency.

#### 3. AMENDMENTS

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

#### 4. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

#### 5. ANTITRUST

The Contractor hereby assigns to Agency any and all of its claims for price fixing or overcharges, which arise under federal or state law relating to the goods, products, or services purchased under this contract.

#### 6. ASSIGNMENT

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Contractor without prior written consent of the Agency.

Contractor may not assign its rights under this Agreement without Department of Natural Resources (DNR) prior written consent and DNR may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to DNR within thirty (30) calendar days, Contractor may assign its rights under this Agreement in full to any parent, subsidiary, or affiliate of the Contractor that controls or is controlled by or under common control with the Contractor, is merged or consolidated with the Contractor, or purchases a majority or controlling interest in the ownership or assets of the Contractor. Unless otherwise

agreed, the Contractor guarantees prompt performance of all obligations under this Agreement notwithstanding any prior assignment of its rights.

## **7. 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.

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

At all times during the term of the contract, the Contractor shall comply with all applicable laws.

## **9. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

The Contractor shall not use or disclose any information concerning the Agency, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the Agency, or as may be required by law.

## **10. CONFLICT OF INTEREST**

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

In the event this contract is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Agency provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

## **11. COPYRIGHT PROVISIONS**

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the Agency effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs,

films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

The Agency shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

## **12. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no person or selling Agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established Agents maintained by the Contractor for securing business.

The Agency shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

## **13. DEFAULT**

Contractor shall be in default if it is in material breach of any term or condition of the contract. The time of default shall begin when the material breach occurs or after any applicable opportunity to cure period lapses, whichever is later.

## **14. DELIVERY, INSPECTION, REJECTION, CURE:**

1. TIME OF THE ESSENCE: Time is of the essence in the performance of the contract.

2. **SHIPPING & RISK OF LOSS.** All goods subject to the Contract shall be shipped F.O.B. destination. Risk of loss of the goods shall pass to the Agency at the time the goods are accepted by the Agency.
3. **INSPECTION:** The Agency's inspection of all goods upon delivery is for the sole purpose of identification. Such inspection shall not be construed as acceptance of the goods.
4. **REJECTION:** The Agency may reject any nonconforming Deliverables by reasonably notifying the Contractor in writing.
5. **OPPORTUNITY TO CURE:** Contractor shall have the right to cure the materiality of any breach prior to the time for performance under the Contract. This right to cure terminates upon the time for performance.

## 15. DEFINITIONS

Definitions for the purposes of this solicitation include:

**AGENCY** – any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW 28B.10.016, and correctional and other types of institutions.

**AGENT** – Personnel authorized to act on behalf of the Agency for matters contained within.

**APPARENT SUCCESSFUL CONTRACTOR** – Bidder whose bid, quotation and/or proposal provides the best value in meeting AGENCY needs and is selected to contract with DNR for the proposed solution, subject to completion of contract negotiations and execution of contract.

**AWARD DATE** – the announcement date of the Apparent Successful Contractor.

**BID, QUOTATION and/or PROPOSAL** – a formal offer, submitted by an individual or entity, in response to a solicitation issued for goods or services by the Agency.

**BIDDER** – an individual or entity who submits a bid, quotation and/or proposal in response to a solicitation issued for goods or services by the Agency.

**BUSINESS DAYS** – Monday through Friday, 8AM to 5PM, Pacific Standard Time, or, Pacific Daylight Time, Olympia, Washington, USA.

**CALENDAR DAY** – Midnight to midnight, any day of the week.

**CONTRACT** – an agreement between DNR and Contractor that includes terms and conditions, the solicitation, the bid, quotation and/or proposal, all appendices, and exhibits, associated Statements of Work (e.g. Services Contract or Purchase Order), and all amendments awarded pursuant to this solicitation.

**CONTRACTOR** – an individual or entity whose bid, quotation and/or proposal has been accepted and is awarded a contract with the Agency, and who is solely responsible to provide a good or perform a service.

**DNR** – Washington State Department of Natural Resources, an Agency of the State of Washington, and any division, section, office, unit or other entity of, or any of the officers or other officials lawfully representing the department.

**GOODS** – products, materials, supplies, or equipment provided by a Contractor.

**PURCHASE** – the acquisition of goods or services, including the leasing or renting of goods.

**SERVICES** – labor, work, analysis, or similar activities provided by a Contractor to accomplish a specific scope of work.

**SOLICITATION** – a documented formal process providing an equal and open opportunity to BIDDERS and culminating in a selection based on predetermined criteria.

**SUBCONTRACTOR** – one not in the employment of the Contractor, who is performing all or part of the business activities related to this solicitation under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any solicitation tier.

**VENDOR** – individual, firm, organization, company or other entity offering products and/or services.

**WEBS** – Washington's Electronic Business Solution System.

**WORKING DAYS** – Midnight to midnight, Monday through Friday, excluding weekends and state legal holidays.

## **16. DISALLOWED COSTS**

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

## **17. DISPUTES**

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Agent.

1. The request for a dispute hearing must:

- Be in writing;
- State the disputed issue(s);
- State the relative positions of the parties;
- State the Contractor's name, address, and contract number; and

- Be mailed to the Agent and the other party's (respondent's) contract manager within three (3) working days after the parties agree that they cannot resolve the dispute.
- 2. The respondent shall send a written answer to the requester's statement to both the Agent and the requester within five 5 working days.
- 3. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
- 4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

## **18. DUPLICATE PAYMENT**

The Agency shall not pay the Contractor, if the Contractor has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same goods delivered or services rendered.

## **19. ENVIRONMENTAL CONSIDERATIONS**

### **ELECTRONIC PRODUCTS**

The State of Washington encourages the purchase of products that meet environmental performance standards relating to the reduction and elimination of hazardous materials. The database of all products that currently meet EPEAT criteria are viewable at [www.greenelectronicscouncil.org](http://www.greenelectronicscouncil.org). Only products listed as Active in the online EPEAT Registry are considered to have met the EPEAT criteria.

Contractor represents and warrants that, during the term of this contract, for any product(s) for which Contractor sought and was awarded an environmental purchasing preference pursuant to RCW 39.26.265 and Washington State Procurement Policy POL-DES-265-00, such product(s) shall have achieved EPEAT Silver or Gold registration that enabled Contractor to be awarded such preference.

### **NON-HYDROFLUOROCARBONS (HFCs)**

Hydrofluorocarbons (HFCs) contribute to climate change and so have an adverse effect on human health and the environment. Accordingly, the State of Washington, through its procurement of goods is trying to minimize the purchase of products that contain HFCs or contain HFCs with a comparatively low global warming potential and to incentivize its vendors to sell products without HFCs.

Contractor represents and warrants that, during the term of this Contract, for any product(s) for which Contractor sought and was awarded a purchasing preference pursuant to RCW 39.26.310 and Washington State Procurement Policy DES-POL-310-00, such product(s) shall meet or have less than the HFC level(s) that enabled Contractor to be awarded such preference.

#### **NON-MERCURY ADDED PRODUCTS**

Mercury has an adverse effect on human health and the environment. Accordingly, the State of Washington, through its procurements of goods is trying to minimize the purchase of products with mercury and to incentivize its vendors to sell products without mercury.

Contractor represents and warrants that, during the term of this Contract, for any product(s) for which Contractor sought and was awarded a purchasing preference pursuant to RCW 70.95M.060 and Washington State Procurement Policy DES-POL-70.95M.060-00, such product(s) shall meet or have less than the lowest amount of mercury that enabled Contractor to be awarded such preference.

#### **POLYCHLORINATED BIPHENYLS (PCBs)**

Polychlorinated biphenyls, commonly known as PCBs, have adverse effects on human health and the environment. Accordingly, the State of Washington, through its procurements of goods, is trying to minimize the purchase of products with PCBs and to incentivize its vendors to sell products in packaging without them.

Contractor represents and warrants that, during the term of this contract, for any product(s) and/or product packaging for which Contractor sought and was awarded a purchasing preference pursuant to RCW 39.26.280 and Washington State Procurement Policy POL-DES-280-00, such product(s) and/or packaging shall meet or exceed the testing limitations that enabled Contractor to be awarded such preference.

#### **RECYCLED CONTENT PRODUCTS**

Buying products made from recycled content creates markets for materials collected in residential & business recycling programs. Recycling does not work without end-markets. In addition buying recycled products supports the development of green technologies, creates jobs and strengthens the local economy, and promotes and supports a more sustainable lifestyle. When manufacturers use recycled material vs. virgin materials to make new products, air and water pollution is reduced, natural resources are conserved, energy is saved, less water is used, and emissions of greenhouse gases that contribute to global climate change are reduced. Accordingly, the State of Washington through its procurements of goods is trying to maximize the purchase of products made from recycled content and to incentivize its vendors to sell products and products in packaging made with recycled content.

Contractor represents and warrants that, during the term of this Contract, for any product(s) for which Contractor sought and was awarded an environmental purchasing preference pursuant to RCW 39.26.255 and Washington State Procurement Policy POL-DES-255-00, such product(s) shall exceed the minimum post-consumer or total recycled content that enabled Contractor to be awarded such preference.

Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Agency may suspend or terminate this Contract. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under law, to a prevailing party, reasonable attorneys' fees and costs.

## **20. EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS**

**MANDATORY INDIVIDUAL ARBITRATION.** If Bidder returned Contractor Certification – Executive Order 18-03 Worker's Rights, and Contractor represents and warrants, as previously certified in Contractor's bid, quotation and/or proposal submission, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

## **21. FUNDING SOURCE**

At all times during the course of this contract, the Contractor must comply with applicable laws, rules, policy and regulations required by the source of funding for the contract. If this contract is funded by a grant, the terms and conditions required by the granting entity are attached as Exhibit D – Federal Grant Terms and Conditions.

## **22. GOVERNING LAW**

This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## **23. HARASSMENT**

Per [RCW 43.01.135](#), Sexual harassment in the workplace, Agency Contractors hereby have access to DNR Policy PO01-037 Harassment Prevention:

[https://www.dnr.wa.gov/publications/em\\_PO01-037\\_harassment\\_prevention.pdf](https://www.dnr.wa.gov/publications/em_PO01-037_harassment_prevention.pdf).

## **24. INDEMNIFICATION**



To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the State, agencies of State and all officials, Agents and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

Contractor's obligations to indemnify, defend, and hold harmless includes any claim by Contractors' Agents, employees, representatives, or any Subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incidental to Contractor's or any Subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its Agents, agencies, employees and officials.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, Agents or employees.

## **25. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent Contractor relationship will be created by this contract. The Contractor and his or her employees or Agents performing under this contract are not employees or Agents of the Agency. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the Agency or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

## **26. INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

## **27. INTERGRATION**

The contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of the contract shall be deemed to exist or to bind any of the parties hereto.

## **28. LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards necessary for the performance of this contract.

## **29. LIMITATION OF AUTHORITY**

Only the Agent or Agent'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 contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

## **30. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Agency. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

## **31. NONDISCRIMINATION**

During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

## **32. PRIVACY**

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure its directors, officers, employees, Subcontractors or Agents use personal information solely for the purposes of accomplishing the delivery of goods or rendering of services as set forth herein. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the Agency for any damages related to the Contractor's unauthorized use of personal information.

### **33. PUBLICITY**

The Contractor agrees to submit to the Agency all advertising and publicity matters relating to this contract wherein the Agency's name is mentioned or language used from which the connection of the Agency's name may, in the Agency's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Agency.

### **34. RECORDS MAINTENANCE**

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of services rendered and/or delivery of goods as described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the Agency, personnel duly authorized by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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.

### **35. REGISTRATION WITH DEPARTMENT OF REVENUE**

The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

### **36. REMEDIES:**

1. With respect to any nonconforming Deliverables, the Agency may elect to do one or more of the following:
  - a. **SPECIFIC PERFORMANCE:** If the Deliverables are unique, sole sourced, or otherwise deemed by the Agency to be unavailable elsewhere, the Agency may demand specific performance.
  - b. **COVER:** The Agency may obtain substitute Deliverables and charge the Contractor the difference between the cost of the substitute Deliverables and the contracted for price.
  - c. **PRICE REDUCTION:** The Agency may retain nonconforming Deliverables and equitably reduce the price of the contract based on the difference between the contracted for price and the fair market value of the nonconforming Deliverables.
  - d. **RETURN:** The Agency may return or set aside for pickup by the Contractor any nonconforming goods and terminate the contract for cause.

2. The Contractor shall be liable for all compensatory, incidental and consequential damages caused by any breach of the contract. At the sole option of the Agency, such damages may be recovered, in whole or in part, by price reduction or credit against any amounts that may be owed to the Contractor under the contract.
3. The agency's total liability for all damages arising out of or related to the contract shall in no event exceed the purchase price of the contract. Furthermore, in the event of a termination of the contract, the agency's total liability for all damages arising out of or related to the contract shall not exceed the purchase price of goods delivered or services rendered prior to the effective date of the termination.
4. The rights and remedies provided by the contract are cumulative and are not exclusive of any other or additional rights or remedies available at law and in equity.

### **37. RIGHT OF INSPECTION**

The Contractor shall provide right of access to its facilities to the Agency, 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 contract.

### **38. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Agency may terminate the contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the Agency's discretion under those new funding limitations and conditions.

### **39. SEVERABILITY**

The provisions of this contract 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 contract.

### **40. SITE SECURITY**

While on Agency premises, Contractor, its Agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

### **41. SUBCONTRACTING**

Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Agency. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to the Agency for any breach in the performance of the Contractor's duties. This clause

does not include contracts of employment between the Contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Agency or as provided by law.

#### **42. TAXES**

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

#### **43. TERMINATION FOR CAUSE**

In the event the Agency determines the Contractor has failed to comply with the conditions of this contract in a timely manner, the Agency has the right to suspend or terminate this contract. Before suspending or terminating the contract, the Agency shall notify the Contractor in writing (including email) of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The Agency reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of the Agency provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

#### **44. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this contract, the Agency may, by 10 calendar days written notice (including email), beginning on the second calendar day after the notice is sent, terminate this contract, in whole or in part. If this contract is so terminated, the Agency shall be liable only for

payment required under the terms of this contract for goods delivered or services rendered prior to the effective date of termination.

#### **45. TERMINATION PROCEDURES**

Upon termination of this contract, the Agency, in addition to any other rights provided in this contract, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for goods or services accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (i) goods delivered or services rendered for which no separate price is stated, (ii) partially completed goods delivered or services rendered, (iii) other goods delivered or services rendered that are accepted by the Agency, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Agency may withhold from any amounts due the Contractor such sum as the Agent determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the Agency and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to the Agency;

6. Complete performance of such part of the work as shall not have been terminated by the Agent; and
7. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

#### **46. TREATMENT OF ASSETS**

1. Title to all property furnished by the Agency shall remain in the Agency. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Agency upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Agency upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Agency in whole or in part, whichever first occurs.
2. Any property of the Agency furnished to the Contractor shall, unless otherwise provided herein or approved by the Agency, be used only for the performance of this contract.
3. The Contractor shall be responsible for any loss or damage to property of the Agency that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
4. If any Agency property is lost, destroyed or damaged, the Contractor shall immediately notify the Agency and shall take all reasonable steps to protect the property from further damage.
5. The Contractor shall surrender to the Agency all property of the Agency prior to settlement upon completion, termination or cancellation of this contract.
6. All reference to the Contractor under this clause shall also include Contractor's employees, Agents or Subcontractors.

#### **47. U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL**

The Agency complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at [U.S. Treasury Specially Designated Nationals And Blocked Persons List](#). Compliance with OFAC payment rules ensures that the Agency does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, the Agency will download the current OFAC SDN file and compare it to Agency and statewide vendor files. In the event of a positive match, the Agency reserves the right to: (1) make a determination of “reasonability” before taking the positive match to a higher authority, (2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (3) comply with an OFAC investigation, if required, and/or (4) if the positive match is substantiated, notify the Contractor in writing and terminate the contract according to the Termination for Convenience provision without making payment. The Agency will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

#### **48. WAIVER**

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the Agency.

#### **49. WARRANTIES**

Contractor warrants that all Deliverables provided under this contract shall be fit for the purpose(s) for which intended, are merchantable, and shall conform to the requirements and specifications herein.



## EXHIBIT B - SCOPE OF WORK

Costs per task are best estimates based on the Grantee's application; transfer of funds between tasks is allowable with written approval from DNR Project Manager

<b>Activity 1: Tree Inventory</b> Contractor will scrub and update existing inventory data and collect new data throughout the city.			
<b>Task</b>	<b>Deliverable</b>	<b>Completion Date</b>	<b>Estimated Cost</b>
1A. Consultant scrubs and updates existing tree inventory data	GIS data and excel export of updated tree inventory	April 20, 2024	\$9,000
1B. Consultants collect new point-based tree inventory data and performs data analysis	GIS data and excel export of new inventory data; results of analysis	April 20, 2024	\$12,000
1C. Consultant collects new inventory data using a sample-based approach	GIS data and excel export; results of analysis	April 20, 2024	\$10,000
<b>Activity 1 Total</b>			<b>\$31,000</b>

<b>Activity 2: Community and Urban Forest Maintenance Report</b> Consultant provides summaries of data analysis, maintenance recommendations, and costs estimates for maintenance work, etc.			
<b>Task</b>	<b>Deliverable</b>	<b>Completion Date</b>	<b>Estimated Cost</b>
2A. Consultant writes summary of methodology and inventory results	Narrative summary (may be a component part of larger report)	April 20, 2024	\$2,000
2B. Consultants reports on the results of iTree analysis	Narrative summary of analysis results and findings (may be a component part of larger report)	April 20, 2024	\$1,000
2C. Consultant develops maintenance prioritization and strategy	Narrative summary of maintenance prioritization and strategy; GIS data set showing priority areas for maintenance	April 20, 2024	\$2,000
2D. Consultant provides cost estimates for maintenance work	Narrative summary of estimated costs (may be a component part of larger report)	April 20, 2024	\$2,000
2E. Consultant develops planting strategy for improving tree canopy equity	Narrative summary of planting strategy (may be a component part of larger report)	April 20, 2024	\$2,000
<b>Activity 1 Total</b>			<b>\$9,000</b>

## EXHIBIT C

### BUDGET

The total budget is **\$40,000**. See the Scope of Work for activity and task descriptions.

**Table 1. Cost by Activity**

Activities	Personnel and Benefits	Travel	Supplies	Contractual	Total
Activity 1	0	0	0	\$31,000	\$31,000
Activity 2	0	0	0	\$9,000	\$9,000
<b>Total</b>				<b>\$40,000</b>	<b>\$40,000</b>

**Table 2. Cost by Line Item**

<b>Contractual</b>	
Consultant specializing in urban forestry A consultant will be hired to implement tasks 1A-1C and 2A-2E and provide the associated deliverables. In general these tasks involve scrubbing existing data, collecting new data, analyzing data, and providing data analysis results in a report along with management recommendations and cost estimates.	\$40,000
<b>Total</b>	<b>\$40,000</b>

## EXHIBIT D – FEDERAL GRANT TERMS AND CONDITIONS

Award Number: 19-DG-11062765-729

OMB 0596-0217  
Expiration Date: 11/30/2017  
Rev. (12-13)

### ATTACHMENT A: FOREST SERVICE AWARD PROVISIONS

- A. COLLABORATIVE ARRANGEMENTS. Where permitted by terms of the award and Federal law, WDNR may enter into collaborative arrangements with other organizations to jointly carry out activities with Forest Service funds available under this award.
- B. FOREST SERVICE LIABILITY TO THE RECIPIENT. The United States shall not be liable to WDNR for any costs, damages, claims, liabilities, and judgments that arise in connection with the performance of work under this award, including damage to any property owned by WDNR or any third party.
- C. NOTICES. Any notice given by the Forest Service or WDNR will be sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the Forest Service Program Manager, at the address specified in the award.

To WDNR, at the address shown in the award or such other address designated within the award.

Notices will be effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- D. SUBAWARDS. WDNR shall notify Subrecipients under this award that they are subject to the OMB guidance in subparts A through F of 2 CFR Part 200, as adopted and supplemented by the USDA in 2 CFR Part 400. Any sub-award must follow the regulations found in 2 CFR 200.330 through .332.
- E. USE OF FOREST SERVICE INSIGNIA. In order for WDNR to use the Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted by the Forest Service's Office of Communications (Washington Office). A written request will be submitted by Forest Service, Program Manager, to the Office of Communications Assistant Director, Visual Information and Publishing Services prior to use of the insignia. The Forest Service Program Manager will notify WDNR when permission is granted.
- F. MEMBERS OF CONGRESS. Pursuant to 41 U.S.C. 22, no member of, or delegate to, Congress shall be admitted to any share or part of this award, or benefits that may arise therefrom, either directly or indirectly.
- G. TRAFFICKING IN PERSONS.
1. Provisions applicable to a Recipient that is a private entity.
    - a. You as the Recipient, your employees, Subrecipients under this award, and Subrecipients' employees may not:

- (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
    - (2) Procure a commercial sex act during the period of time that the award is in effect; or
    - (3) Use forced labor in the performance of the award or subawards under the award.
  - b. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a Subrecipient that is a private entity:
    - (1) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
    - (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:
      - i. Associated with performance under this award; or
      - ii. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),”.
2. Provision applicable to a Recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity:
  - a. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
  - b. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
    - (1) Associated with performance under this award; or
    - (2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),”
3. Provisions applicable to any recipient.
  - a. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
  - b. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
    - (1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    - (2) Is in addition to all other remedies for noncompliance that are available to us under this award.
  - c. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

4. Definitions. For purposes of this award term:
- a. "Employee" means either:
    - (1) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
    - (2) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
  - b. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  - c. "Private entity":
    - (1) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
    - (2) Includes:
      - i. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
      - ii. A for-profit organization.
  - d. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

#### H. DRUG-FREE WORKPLACE.

1. WDNR agree(s) that it will publish a drug-free workplace statement and provide a copy to each employee who will be engaged in the performance of any project/program that receives federal funding. The statement must
  - a. Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
  - b. Specify the actions WDNR will take against employees for violating that prohibition; and
  - c. Let each employee know that, as a condition of employment under any award, the employee:
    - (1) Shall abide by the terms of the statement, and
    - (2) Shall notify WDNR in writing if they are convicted for a violation of a criminal drug statute occurring in the workplace, and shall do so no more than 5 calendar days after the conviction.
2. WDNR agree(s) that it will establish an ongoing drug-free awareness program to inform employees about
  - a. The dangers of drug abuse in the workplace;
  - b. The established policy of maintaining a drug-free workplace;

- c. Any available drug counseling, rehabilitation and employee assistance programs; and
  - d. The penalties that you may impose upon them for drug abuse violations occurring in the workplace.
- 3. Without the Program Manager's expressed written approval, the policy statement and program must be in place as soon as possible, no later than the 30 days after the effective date of this instrument, or the completion date of this award, whichever occurs first.
- 4. WDNR agrees to immediately notify the Program Manager if an employee is convicted of a drug violation in the workplace. The notification must be in writing, identify the employee's position title, the award number of each award on which the employee worked. The notification must be sent to the Program Manager within 10 calendar days after WDNR learns of the conviction.
- 5. Within 30 calendar days of learning about an employee's conviction, WDNR must either
  - a. Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 USC 794), as amended, or
  - b. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
- I. PROHIBITION AGAINST USING FUNDS WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS.
  - 1. The recipient may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
  - 2. The recipient must notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this award provision are no longer in effect.
  - 3. The prohibition in paragraph (1) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
  - 4. If the Government determines that the recipient is not in compliance with this award provision, it;
    - a. Will prohibit the recipient's use of funds under this award in accordance with sections 743, 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law; and



- b. May pursue other remedies available for the recipient's material failure to comply with award terms and conditions.
- J. ELIGIBLE WORKERS. WDNR shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). WDNR shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract or supplemental instruments awarded under this award.
- K. FINANCIAL STATUS REPORTING. A Federal Financial Report, Standard Form SF-425 (and Federal Financial Report Attachment, SF-425A, if required for reporting multiple awards), must be submitted annually. These reports are due 90 days after the reporting period ending December 31. The final SF-425 (and SF-425A, if applicable) must be submitted either with the final payment request or no later than 90 days from the expiration date of the award. These forms may be found at [www.whitehouse.gov/omb/grants\\_forms](http://www.whitehouse.gov/omb/grants_forms).
- L. PROGRAM PERFORMANCE REPORTS. The recipient shall perform all actions identified and funded in application/modification narratives within the performance period identified in award.
- In accordance with 2 CFR 200 301, reports must relate financial data to performance accomplishments of the federal award.
- WDNR shall submit annual performance reports. These reports are due 90 days after the reporting period. The final performance report shall be submitted either with WDNR's final payment request, or separately, but not later than 90 days from the expiration date of the award.
- M. NOTIFICATION. WDNR shall immediately notify the Forest Service of developments that have a significant impact on the activities supported under this award. Also, notification must be given in case of problems, delays or adverse conditions that materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.
- N. FREEDOM OF INFORMATION ACT (FOIA). Public access to award or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552). Requests for research data are subject to 2 CFR 315(e).
- Public access to culturally sensitive data and information of Federally-recognized Tribes may also be explicitly limited by P.L. 110-234, Title VIII Subtitle B §8106 (2009 Farm Bill).

- O. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All Cooperatives, their Employees, Volunteers, and Contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- P. FUNDING EQUIPMENT. Federal funding under this award is not available for reimbursement of WDNR's purchase of equipment. Equipment is defined as having a fair market value of \$5,000 or more per unit and a useful life of over one year. Supplies are those items that are not equipment.
- Q. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS, AND ELECTRONIC MEDIA. WDNR shall acknowledge Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this award. Follow direction in USDA Supplemental 2 CFR 415.2.
- R. COPYRIGHTING. WDNR is/are granted sole and exclusive right to copyright any publications developed as a result of this award. This includes the right to publish and vend throughout the world in any language and in all media and forms, in whole or in part, for the full term of copyright and all renewals thereof in accordance with this award.
- No original text or graphics produced and submitted by the Forest Service shall be copyrighted. The Forest Service reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for federal government purposes. This right shall be transferred to any sub-awards, sub-awards or subcontracts.
- This provision includes:
- The copyright in any work developed by WDNR under this award.
  - Any right of copyright to which WDNR purchase(s) ownership with any federal contributions.
- S. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. WDNR shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.



*In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)*

**To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.**

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

*"This institution is an equal opportunity provider."*

- T. AWARD CLOSEOUT. The Recipient must 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.

Any unobligated balance of cash advanced to WDNR must be immediately refunded to the Forest Service, including any interest earned in accordance with 2 CFR 200.343(d).

If this award is closed without audit, the Forest Service reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

- U. TERMINATION. This award may be terminated, in whole or part pursuant to 2 CFR 200.339.

- V. DISPUTES.

1. Any dispute under this award shall be decided by the Signatory Official. The Signatory Official shall furnish WDNR a written copy of the decision.
2. Decisions of the Signatory Official shall be final unless, within 30 days of receipt of the decision of the Signatory Official, WDNR appeal(s) the decision to the Forest Service's Director, Acquisition Management (AQM). Any appeal made under this provision shall be in writing and addressed to the Director, AQM, USDA, Forest Service, Washington, DC 20024. A copy of the appeal shall be concurrently furnished to the Signatory Official.
3. In order to facilitate review on the record by the Director, AQM, WDNR shall be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.
4. A decision under this provision by the Director, AQM is final.

5. The final decision by the Director, AQM does not preclude WDNR from pursuing remedies available under the law.

- W. DEBARMENT AND SUSPENSION. WDNR shall immediately inform the Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should WDNR or any of their principals receive a transmittal letter or other official federal notice of debarment or suspension, then they shall notify the Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary. The Recipient shall adhere to 2 CFR Part 180 Subpart C in regards to review of sub-recipients or contracts for debarment and suspension.

All subrecipients and contractors must complete the form AD-1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Lower Tier Covered Transactions. Blank forms are available electronically. Completed forms must be kept on file with the primary recipient.

- X. INTERNATIONAL TRAVEL. When Forest Service funds are used, and no Federal, statutory exceptions apply, WDNR shall ensure that any air transportation of passengers and property is provided by a carrier holding a United States government issued certificate in compliance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 40118 (Fly American Act).