

- B. Automobile Liability. In the event that services delivered pursuant to this Agreement involve the use of vehicles, either owned or unowned by the Sponsor, automobile liability insurance shall be required. The minimum limit for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

- C. The insurance required shall be issued by an insurance company/ies authorized to do business within the State of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. Sponsor shall instruct the insurers to give Office 30 days advance notice of any insurance cancellation.

Sponsor shall submit to Office within 15 days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in the *Insurance* section. Sponsor shall submit renewal certificates as appropriate during the term of the Agreement.

SECTION 25. DEBARMENT CERTIFICATION

The Sponsor certifies it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency. If requested by the Office, the Sponsor shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Sponsor for this Agreement shall be incorporated into this Agreement by reference.

SECTION 26. BILLING PROCEDURES

The Office will pay the Sponsor upon receipt of properly completed invoices, which shall be submitted to the Project Manager not more often than monthly. The invoices shall describe and document to the Office's satisfaction a description of the work performed, the progress of the project, and fees. To receive reimbursement, Sponsor must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

Payment shall be considered timely if made by the Office within thirty (30) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Sponsor.

The Office may, in its sole discretion, terminate the Agreement or withhold payments claimed by the Office for services rendered if the Sponsor fails to satisfactorily comply with any term or condition of this Agreement.

SECTION 27. NON-AVAILABILITY OF FUNDS

If amounts sufficient to fund the grant made under this Agreement are not appropriated by the Washington State Legislature, or if such funds are not allocated by the Washington State Office of Financial Management (OFM) to the Office for expenditure for this Agreement in any biennial fiscal period, the Office shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or OFM occurs. If the Office participation is suspended under this section for a continuous period of one year, the Office'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.

SECTION 28. ADVANCE PAYMENTS

Advance payments of or in anticipation of goods or services to be provided under this Agreement are limited to salmon restoration grants and must comply with SRFB policy.

SECTION 29. RECAPTURE OF FUNDS

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 this Agreement, the Office reserves the right to recapture state or federal funds in an amount equivalent to the extent of the noncompliance in addition to any other remedies available at law or in equity.

Such right of recapture shall exist for a period not to exceed six years following Agreement termination. Repayment by the Sponsor of funds under this recapture provision shall occur within 30 days of demand. In the event that the Office is required to institute legal proceedings to enforce the recapture provision, the Office shall be entitled to its costs thereof, including reasonable attorneys' fees.

SECTION 30. COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement 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 Sponsor for the purpose of securing business. The Office shall have the right, in the event of breach of this clause by the Sponsor, to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

SECTION 31. 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. Applicable federal and/or state statutes, regulations policies and procedures including applicable federal Office of Management and Budget (OMB) circulars and federal and state executive orders;
- B. Additional Provisions or Modifications of the General Provisions;
- C. General Provisions; and
- D. Any other attachments or provisions incorporated by reference or otherwise stated in this Agreement.

SECTION 32. AMENDMENTS

This Agreement 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.

SECTION 33. LIMITATION OF AUTHORITY

Only the Office or Office'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 or any clause or condition of this Agreement is not effective or binding unless made in writing and signed by the Office.

SECTION 34. WAIVER

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

SECTION 35. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

In the event of the Sponsor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Agreement may be rescinded, canceled or terminated in whole or in part, and the Sponsor may be declared ineligible for further Agreements with the Office. The Sponsor 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.

SECTION 36. TERMINATION FOR CAUSE

In the event the Office determines the Sponsor has failed to comply with the conditions of this Agreement in a timely manner, the Office has the right to suspend or terminate this Agreement. Before suspending or terminating the Agreement, the Office shall notify the Sponsor in writing of the need to take corrective action. If corrective action is not taken within 30 days, the Agreement may be terminated or suspended. In the event of termination or suspension, the Sponsor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of the competitive bidding, mailing, advertising and staff time. The Office reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Sponsor or a decision by the Office to terminate the Agreement. A termination shall be deemed to be a "Termination for Convenience" if it is determined that the Sponsor: (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 Office provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

SECTION 37. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Agreement, the Office may, by 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, the Office 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 38. TERMINATION PROCEDURES

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

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

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

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

- A. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- B. 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 Agreement that is not terminated;

- C. Assign to the Office, in the manner, at the times, and to the extent directed by the Office, all of the rights, title, and interest of the Sponsor under the orders and subcontracts so terminated, in which case the Office has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Office to the extent Office may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to the Office and deliver in the manner, at the times, and to the extent directed by the Office any property which, if the Agreement had been completed, would have been required to be furnished to the Office;
- F. Complete performance of such part of the work as shall not have been terminated by the Office; and
- G. Take such action as may be necessary, or as the Office may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Sponsor and in which the Office has or may acquire an interest.

SECTION 39. ATTORNEYS' FEES

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

SECTION 40. GOVERNING LAW

This Agreement 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.

SECTION 41. DISPUTES

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

- A. The request for a dispute hearing must:
 - be in writing;
 - state the disputed issue(s);
 - state the relative positions of the parties;
 - state the Sponsor's name, address, and Agreement number; and
 - be mailed to the Office and the other party's (respondent's) Agreement Manager within three (3) working days after the parties agree that they cannot resolve the dispute.
- B. The respondent shall send a written answer to the requester's statement to both the agent and the requester within five (5) working days.
- C. The Office shall review the written statements and reply in writing to both parties within ten (10) working days. The Office may extend this period if necessary by notifying the parties.
- D. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

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

SECTION 42. 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.

Conceptual Plan

