

**ATTACHMENT A
INTERAGENCY AGREEMENT**

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

As used throughout this Agreement (Contract), the following terms shall have the meaning set forth below:

- A.** "Council" or "EFSEC" shall mean the Energy Facility Site Evaluation Council of the state of Washington, any division, section, office, unit or other entity of the Council, or any of the officers or other officials lawfully representing the Council.
- B.** "EFSEC Representative" shall mean the Council Manager and/or the Council's delegate authorized in writing to act on the Council's behalf.
- C.** "Contractor" shall mean the state agency, local government, special district, or other entity performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- D.** "Contractor Representative" shall mean the Contractor's Contract Manager and/or the designee authorized in writing to act on the Contractor's behalf.
- E.** "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
- F.** "State" shall mean the state of Washington.
- G.** "Commerce" shall mean the Department of Commerce.
- H.** "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

2. 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.

3. 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 Council.

4. AUDIT

A. General Requirements

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

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

EFSEC reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to EFSEC requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

Contractors expending \$100,000 or more in total State funds in a fiscal year must have a financial audit as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS). The Schedule of State Financial Assistance must be included. The schedule includes:

- Grantor agency name
- State program name
- BARS account number
- Grantor
- EFSEC Contract number
- Contract award amount including amendments (total grant award)
- Beginning balance
- Current year revenues
- Current year expenditures
- Ending balance
- Program total

If the Contractor is a State or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by EFSEC.

C. Documentation Requirements

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

- Department of Commerce
- ATTN: Audit Review and Resolution Office
- 906 Columbia Street SW, Fifth Floor
- PO Box 48300
- Olympia WA 98504-8300

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by Commerce.
- Copy of the Management Letter.

5. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**A.** “Confidential Information” as used in this section includes:

1. All material provided to the Contractor by EFSEC that is designated as “confidential” by EFSEC;
2. All material produced by the Contractor that is designated as “confidential” by EFSEC; and
3. All personal information in the possession of the Contractor that may not be disclosed under State or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of EFSEC or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide EFSEC with its policies and procedures on confidentiality. EFSEC may require changes to such policies and procedures as they apply to this Contract whenever EFSEC reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by EFSEC. Upon request, the Contractor shall immediately return to EFSEC any Confidential Information that EFSEC reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.**C.** Unauthorized Use or Disclosure. The Contractor shall notify EFSEC within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.**6. 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 EFSEC. EFSEC 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, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to EFSEC 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, the Contractor hereby grants to EFSEC a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to EFSEC.

The Contractor shall exert all reasonable effort to advise EFSEC, 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 which was not produced in the performance of this Contract. The Contractor shall provide EFSEC with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. EFSEC shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

7. 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 EFSEC representative, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the EFSEC representative and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the EFSEC representative or their designee and the requestor within five (5) working days.

The EFSEC representative or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The EFSEC representative or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

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 (ADR) method in addition to the dispute hearing procedure outlined above.

8. GOVERNING LAW AND VENUE

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 Kittitas County.

9. INDEMNIFICATION

Each party to this Contract shall be responsible for its own acts or omissions and those of its officers, employees, subcontractors or agents. No party to this Contract shall be responsible for the acts or omissions of entities or individuals not party to this contract.

10. LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended including, but not limited to:

Washington State Laws and Regulations

- A. Affirmative action, Section 41.06.020 (11) RCW.
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, Section 4.24.264 RCW.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.

- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. Open public meetings act, Chapter 42.30 RCW.
- H. Public records act, Chapter 42.56 RCW.
- I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

11. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

12. POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

13. RECORDS MAINTENANCE

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

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 finally resolved.

14. 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, EFSEC may terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

15. SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Contract and to this end the provisions of this Contract are declared to be severable.

16. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

17. TERMINATION FOR CAUSE / SUSPENSION

In event EFSEC determines that the Contractor failed to comply with any term or condition of this Contract, EFSEC may terminate the Contract in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, EFSEC upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, EFSEC may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow EFSEC to terminate the Contract upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when EFSEC determines that the Contractor did not fail to comply with the terms of the Contract or when EFSEC determines the failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated for cause, 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 Contract, as well as all costs associated with entering into the replacement Contract (i.e., competitive bidding, mailing, advertising, and staff time).

18. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, either party may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or part. If this Contract is so terminated, EFSEC shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination and the County shall be liable to perform only services paid for under the terms of this Contract made prior to the effective date of termination.

19. TERMINATION PROCEDURES

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

- A.** Stop work under the Contract on the date, and to the extent specified, in the notice;
- B.** Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C.** Assign to EFSEC all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case EFSEC has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of EFSEC; and
- D.** Preserve and transfer any materials, Contract deliverables and/or EFSEC property in the Contractor's possession as directed by EFSEC.

Upon termination of the Contract, EFSEC shall pay the Contractor for any service provided by the Contractor under the Contract prior to the date of termination. EFSEC may withhold any amount due as EFSEC reasonably determines is necessary to protect EFSEC against potential loss or liability resulting from the termination. EFSEC shall pay any withheld amount to the Contractor if EFSEC later determines that loss or liability will not occur.

The rights and remedies of EFSEC under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

20. 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 Contract unless stated to be such in writing and signed by the EFSEC Representative.