

APPENDIX B
ALASKA CLEAN WATER ACTIONS (ACWA)
SFY25-27 General Conditions

Article 1. Project Management

Availability of funding is contingent upon approval of grant money from the U.S. Environmental Protection Agency (EPA) and legislative appropriation of funds. No expenditures incurred outside of the period of performance are authorized under this Agreement.

This project will be managed by the Grantee with signatory authority for execution of this Agreement, subsequent Amendments, and financial/progress reports granted to the DEC Project Manager. Delegation of signatory authority and changes in the authorized representative must be received in writing and approved by the Department.

The Grantee will acknowledge Department and federal funding for all reports, brochures, videos, maps, and outreach materials produced by this project with the following statement or similar as approved by the Department: "This project has been funded wholly or in part by the United States EPA under assistance agreement number [FAIN Number(s)] to the Department of Environmental Conservation through the Alaska Clean Water Actions (ACWA) program. The contents of this document do not necessarily reflect the views and policies of the EPA, nor does the EPA endorse trade names or recommend the use of commercial product mentioned in this document." The FAIN Number(s) will be provided to the Grantee by the Grants Administrator. Refer to Appendix B, Article 38 for more information regarding publicity and press releases.

The Grantee will notify the Department immediately of any significant organizational changes during the term of the Agreement, including changes in key personnel or tax status, and any unforeseen problem or project delay that may cause a change to the workplan or budget. Any unreported or unapproved changes to the workplan or budget evident in reports may result in an Amendment being required, costs disallowed, and/or suspension or termination of the Agreement as described in Appendix B, Article 35.

Article 2. Reporting Requirements

The Grantee shall submit all reports to the Department according to the terms and schedule established in this Agreement. Failure to submit progress reports or to make adequate progress may result in the Department withholding funds, suspending, or terminating the Agreement. The Grantee will reference the grant number on all reports.

Progress Reports and Deliverables

The Grantee agrees to provide semiannual progress reports to the Department. These reports must update the Department on project progress and deliverables as necessary. The required format of the progress report will be determined by the DEC Project Manager and communicated to the Grantee prior to the end of the first quarter of the project.

The progress reports are due ten (10) days after the periods ending each year on June 30 (due July 10,) and December 31 (due January 10.) The final progress report is due thirty (30) days after the period of performance end date.

Financial Reports

The Grantee agrees to provide financial reports semiannually to the Department. These reports must update the Department on grant funds and match expenditures (as appropriate) during the reporting period. The financial reporting template will be provided by the Grants Administrator at

project inception. The Grantee will include a general accounting ledger report from their financial tracking system. The ledger report must reflect all expenses charged to the budget categories of the grant.

The financial reports are due ten (10) days after the end of the periods ending each year on June 30 (due July 10,) and December 31 (due January 10.) The final financial report is due thirty (30) days after the period of performance end date.

Costs incurred on the project after the ten (10) day grace period without submission compliance are at the Grantee's risk and may be disallowed. Payments and reimbursements will be subject to submission and approval of the required reports. Repeated failure to submit progress and/or financial status reports in a timely manner may result in the suspension or termination of the Agreement.

The final financial status report is due thirty (30) days after the period of performance end date. Final status reports received thirty-two (32) days or more after the project completion date will not be considered for final payment or reimbursement. Final payment or reimbursement will be paid upon completion of the project including submission and approval of the final financial status report, final project report (if applicable), and all project deliverables. The final project report (if applicable) and all other project deliverables are due thirty (30) days after the period of performance end date and are considered late after that date. All reports will be submitted in written and electronic formats requested by the Department. Electronic signatures are allowable by the Department.

Executive Compensation Reporting Requirement

The Grantee must report the names and totals of the five most highly compensated executives if 1) the Award equals or is greater than \$30,000, and 2) the Grantee received 80 percent or more of its annual gross revenues from federal contracts or grants, and 3) the Grantee received \$25,000,000 or more in annual gross revenues from federal contracts or grants. The Grantee is exempt from this reporting if the Grantee had a gross income from all sources under \$300,000 from the previous tax year. The Grants Administrator will provide a template to the Grantee for completion at grant inception. This form must be submitted to the Department within *thirty (30)* days of the award being obligated.

Disadvantaged Business Enterprise (DBE)

The Grantee agrees to comply with the following requirements and must review the full detail at EPA website under "Disadvantaged Business Enterprise Program Requirements" <https://www.epa.gov/grants/disadvantaged-business-enterprise-program-requirements>:

- MBE/WBE Certification. Entities must meet the certification criteria under at least one of the listed authorizing statutes to qualify for the DBE Program.
- Six Good Faith Efforts. The Grantee is required to make the listed good faith efforts whenever procuring construction, equipment services and supplies under this agreement.
- DBE Contract Administrative Requirements. The Grantee must adhere to the listed contract administrative requirements.

MBE/WBE Reporting. The Grantee agrees to report MBE/WBE procurement actions and associated dollar amounts for construction and non-construction costs during the periods of October 1-September 30. MBE/WBE reports are due annually by October 10, and with the final

financial report. A MBE/WBE template will be provided by the Grants Administrator at grant inception.

Article 3. Documentation and Record-Keeping

The Grantee shall set up a file containing the following: grant application, grant agreement and amendments; progress reports; documentation for products indicated in the workplan; financial reports with backup documentation such as billings, invoices or other records that validate expenditures or match; and any other documents pertinent to the performance of this Agreement and completion of the project.

The state or authorized federal representative may inspect, in the manner and at any reasonable time it considers appropriate, the Grantee's facilities, records or activities under this Agreement.

Article 4. Governing Law

The Grantee must conform to all applicable federal, state, and local laws, ordinances, and regulations. It is the responsibility of the Grantee to ensure that all permits required for this project by federal, state, or local governments have been obtained prior to any activity that requires permitting take place. All actions concerning this project shall be brought in the Superior Court of the State of Alaska.

Article 5. Severability and Waivers

If any provision under this Agreement or its application to any person or circumstances is held invalid by a court of rightful jurisdiction, this invalidity does not affect any other provisions of the Agreement which can be given effect without the invalid provision. No condition or provision of this Agreement can be waived unless approved by the Department in writing.

Article 6. Conflicting Provisions

Unless specifically amended and approved by the Department of Law, the General Provisions of this Agreement supersede any provisions in other appendices.

Article 7. Site Control

If the project involves occupancy, use, or modification of real property, the Grantee shall acquire the legal right to occupy, use, or modify the real property for the purposes of this Agreement and authority to access the project site to complete the proposed project.

Article 8. Sovereign Immunity

If the Grantee is an entity that possesses sovereign immunity, it is a requirement of this Agreement that the Grantee irrevocably waives its sovereign immunity with respect to state enforcement of this Agreement. The waiver of sovereign immunity affected by a resolution of the entity's governing body is hereby incorporated into this Agreement.

Article 9. Covenant Against Contingent Fee

The Grantee warrants that no person or agency has been employed or retained to solicit or secure this grant upon an agreement or understanding for a commission, percentage, contingent fee, or

brokerage except employees or agencies maintained by the Grantee for the purpose of securing business. For the breach or violation of this warranty, the state may terminate this Agreement without liability or in its discretion deduct from the grant price or consideration of the full amount of the commission, percentage, brokerage, or contingent fee.

Article 10. Officials Not to Benefit

The Grantee must comply with all applicable federal or state laws regulating ethical conduct of public officers and employees.

Article 11. Political Activity

No portion of these funds will be used to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress. The Grantee must submit EPA Form 6600-06, "Certification Regarding Lobbying" to the Department if this award exceeds \$100,000. The Grant Administrator will provide the form at grant inception if applicable.

The Grantee must submit Standard Form-LLL, "Disclosure of Lobbying Activities" to the Department if any non-federal funds have been paid or will be paid to influence or attempt to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress. A copy of the "Disclosure of Lobbying Activities" can be accessed at the following link: <https://www.epa.gov/grants/epa-grantee-forms>.

Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Failure to submit certification and disclosure forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

Article 12. Obligations regarding Third-Party Relationships

The Grantee may not assign or delegate this Agreement, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Department. None of the work specified in this Agreement shall be contracted by the Grantee unless stated in the Agreement or with prior written approval from the Department. The Grantee shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties of the undertaking of all or part of the project described therein. The Grantee shall bind all contractors to every applicable provision.

Article 13. Conflict of Interest

The Grantee must inform the Department immediately upon determination of any Conflict Of Interest (COI) as defined and described in the EPA's COI Policy found at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy> during the performance period of this Agreement via electronic mail.

Article 14. No Additional Work or Materials

No claim will be allowed for services not specifically provided for in this Agreement which are performed or furnished by the Grantee.

Article 15. Changes

Any changes that have been agreed to by both parties will be attached and made part of this Agreement by use of written notification or an Amendment. Any written notification will be sent to the grantee by DEC. Any Amendment must be dated and signed by both parties before the change is considered approved and effective. The change is effective upon final signature by the Department.

Article 16. Budget Flexibility

Notwithstanding the provisions in Article 15, "Changes", the Grantee may revise the project budget without a formal Amendment to this Agreement. Such revisions are limited to a maximum of 10% of the total grant amount over the entire term of this Agreement. Such budget revisions shall be limited to changes to existing budget line items. The creation of new budget line items or addition of funds to the award may only be done through a formal Amendment to the Agreement.

Article 17. Allowable Costs

The Grantee shall comply with the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200, Subpart E – Cost Principles. These cost principles must be used by the Grantee in determining the allowable costs of work performed under this Agreement.

Article 18. Light Refreshments

Upon Department approval, the Grantee may use grant funds for providing light refreshments at outreach events, as long as the activity is reasonable and necessary for the performance of the project as described below. The Grantee will be limited to tea, water, and/or coffee and cannot exceed a total of \$500. Outreach events may be meetings, workshops, or participation in a festival for the purpose of educating the public about water quality protection or restoration efforts. This may also include having a booth designed to educate the public or gather public information at public events. EPA policy prohibits the use of funds for receptions, banquets and similar activities that take place after normal business hours without prior approval.

Grant funds may not be used for any event where alcohol is served, purchased or otherwise available as part of the event or meeting, even if funds are not used to purchase alcohol.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable.

Article 19. Consultant Cap

Individual consultants retained by the Grantee shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed.

Article 20. Income

Program and interest earned on federal or state funds shall be reported to the Department who will make a determination if those funds can be used for the project during the Agreement period.

Article 21. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term “management fees or similar charges” refers to expenses added to the indirect costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this Agreement. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

Article 22. Federally Approved Indirect Rate

Per 2 CFR 200, Subpart E, Section 200.414, the Grantee is entitled to reimbursement of indirect costs, subject to any statutory or regulatory administrative cost limitations, if they have a current rate agreement or have submitted an indirect rate proposal to the appropriate federal agency for review and approval. The Grantee is responsible for maintaining an approved indirect cost rate throughout the life of the Agreement. Documentation of the current rate agreement must be provided at the beginning of each State Fiscal Year.

Budgets that have been placed with an indirect rate not yet approved by the federal agency, for project administrative expenses, are subject to revision based on the rejection or approval of the final approved indirect rate. If the indirect rate proposal was rejected or adjusted by the federal agency the Grantee will be required to notify the Department and adjust project administration expenses already incurred to the appropriate amount as required under federal regulations.

The Grantee will not be reimbursed for any indirect costs which are not incurred during the period of the approved rate agreement or for any period in which the rate has expired.

Article 23. Limitation of Administrative Costs

If the Grantee does not have a federally approved indirect rate and receives less than \$35 million in direct federal funding per fiscal year, they may elect to charge a de minimis rate of 15% of modified total direct costs (MTDC) which may be used indefinitely, per 2 CFR 200, Subpart E, Section 200.414(f). MTDC, is defined in 2 CFR 200, Subpart A, Section 200.1, as all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$50,000 of a subaward. MTDC excludes equipment, rental costs, scholarships and fellowships, and participant support costs. No documentation is required to justify the 15% de minimis rate.

Article 24. Local Share of Project

The Grantee shall contribute a local share of this project as stated in the Agreement. The matching funds may be in the form of cash or in-kind contributions and must be certified as a non-federal source.

Article 25. Debarment and Suspension

Prior to the offer of this Agreement, the Department has verified the Grantee is not included on the government wide suspension and debarment list. Failure to maintain this status may result in the

termination of this Agreement. In addition, the Grantee will not award or permit any award to any party that has been debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs if the value of the subcontract is equal to or exceeds \$25,000. The Grantee may access suspension and debarment information at <http://www.sam.gov>.

Article 26. Procurement

The Grantee must comply with all applicable state or federal or procurement laws in 2 CFR Part 200, Subpart D, Section 200.317 through 200.326. The Grantee is required to follow fair and equitable procurement standards in the acquisition of all services, supplies, and materials. The Grantee must retain clear records of bid procedures. The Grantee will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts.

Article 27. Equipment Use and Disposition

The Grantee must comply with 2 CFR Part 200, Subpart D, Section 200.313 governing the use of equipment. Equipment purchased in part or wholly with federal funds shall be used by the Grantee in the project for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a federal agency. The Grantee shall be responsible for the operation and maintenance of equipment acquired with this project. Property records must be maintained which will include a description, serial number, source and title, cost and percentage of federal participation in cost, location, use and condition, and sale price and date of disposal. A physical inventory of the property must be taken at least once every two years. Disposition of equipment with a current per-unit fair market value of less than \$10,000 may be retained, sold or otherwise disposed of with no further obligation. If the Grantee is a non-profit corporation that dissolves, the assets from this project are to be distributed according to Alaska Statutory law, AS 10.20.290-10.20.452.

Article 28. Supplies

The Grantee will compensate the awarding agency if residual inventory of unused supplies exceeds \$10,000 and are not needed for any other federally funded projects upon completion or termination of the Agreement, in compliance with 2 CFR Part 200, Subpart D, Section 200.313, paragraph (e)(2).

Article 29. Recycled Paper

The Grantee agrees to use recycled paper and double-sided printing for all reports which are prepared as part of this Agreement. The Grantee agrees to give preference to the purchase of recycled materials.

Article 30. Financial Management and Accounting

The Grantee shall establish and maintain a financial management and accounting system that conforms to generally accepted accounting principles.

Article 31. Payment Schedule

The Grantee shall comply with the payment schedule established in Attachment 2 of this Agreement.

Article 32. Records Maintenance and Retention

The Grantee shall keep a file for financial, progress, and other records relating to the performance of the Agreement. The file must be retained for a period of three years from the fully executed close out of the Agreement or until final resolution of any audit findings claim or litigation related to the project.

Article 33. Inspection of Records

The state or authorized federal representative may inspect, in the manner and at any reasonable time it considers appropriate, the Grantee's facilities, records or activities under this Agreement.

Article 34. Audit

The Grantee must comply with the provisions of 2 CFR Part 200, Subpart F governing the audit of the state and local governments and nonprofit organizations federal assistance recipients.

Article 35. Compliance Enforcement

If the Grantee fails to comply with the terms of this Agreement, or fails to use the Agreement for only those purposes set forth therein, the Department may take one or more of the following actions:

a) Right to Withhold Funds

The Department may temporarily withhold payments under this Agreement for any violations pending correction of any deficiency by the Grantee or the Department may take more severe enforcement action.

b) Suspension

After written notice that the Grantee is out of compliance with the Agreement, the Department will suspend the project and withhold payment or prohibit the Grantee from incurring additional obligations of grant funds pending corrective action or a decision to terminate. Response must be received within fifteen (15) days of notification.

c) Termination for Cause

The Department, by written notice, may terminate this Agreement, in whole or in part, when it is in the best interest of the state at any time before the final payment is made. The Department shall notify the Grantee in writing of its determination to terminate, the reason for such termination, the effective date, and the reason and amount for recoveries that will be made.

Article 36. Termination Due to Lack of Funding

In the event funding from the state, federal, match, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, the Department may terminate the Agreement, reduce funding, or re-negotiate subject to those new funding conditions.

If the Agreement is terminated, reduced, or re-negotiated for withdrawal or reduction of match funds, the Grantee shall be entitled to compensation of no more than 60% of total costs of the project, as approved by the Department for cost eligibility. The Grantee shall reimburse the Department for all unspent grant funds advanced to the Grantee for project expenses above the final total approved for project cost or above the renegotiated quarterly payment plan; whichever best applies to the current status of the project. The Grantee shall also reimburse the Department for expenses using grant funds during the course of the project that do not meet eligibility requirements. Eligibility requirements include but are not limited to the required match for all grant funds spent by the Grantee. The Grantee must ensure that grant funds expended during the project do not exceed the limit of total project cost.

Article 37. Closeout

The Department will close out the Agreement when it determines that all reporting requirements and required work has been completed. The Grantee must submit all financial, performance and other reports and deliverables required as a condition of the project within thirty-two (32) days of the expiration of this Agreement unless otherwise stated in the workplan or with prior written approval. The Grantee shall return all unexpended grant monies to the state within sixty (60) days of the expiration of the Agreement.

Article 38. Press Releases

The Grantee must notify the Department of any press releases or public announcements prior to publication or dissemination that describe or are otherwise related to the project supported by the Agreement. If the Department objects to any provision of a press release or public announcement under this section, it shall notify the Grantee within twenty-four (24) hours of receiving the notification described herein and shall work diligently and in good faith with the Grantee to develop mutually agreeable language prior to the planned publication or dissemination.

The Grantee must notify the Department within the same day of any media inquiries directed at the Grantee and describe any response or information provided to the media. For some projects, the Department may also issue press releases, may respond to media inquiries or may direct the Grantee to refer questions regarding the project to the Department.

Article 39. Ownership of Documents and Products

All designs, drawing, specifications, notes, artwork, computer programs, reports and other work developed with grant funds in the performance of this Agreement are public domain and will be used by the state and/or public without notice or compensation to the Grantee. The Grantee agrees not to assert any rights and not to establish any claim under the design patent or copyright laws.

Article 40. Civil Rights

The Grantee must comply with all applicable civil rights regulations, state laws, and policies in accordance with the Equal Employment Opportunity Executive Orders, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. Failure in prevention of discriminatory employment practices constitutes a material breach of the Agreement and could result in termination of the Agreement.

Article 41. Electronic and Information Technology Accessibility

The Grantee must ensure that any electronic and information technology (EIT) developed under this Agreement must be designed to meet the diverse needs of users without barriers or diminished function or quality as described and defined in Section 504 of the Rehabilitation Act.

Article 42. Hotel-Motel Fire Safety Act

The Grantee agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act. The Grantee may research the Hotel-Motel National Master List at <https://apps.usfa.fema.gov/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

Article 43. Drug-Free Workplace

The Grantee must make an ongoing good faith effort to maintain a drug-free workplace as set forth in the Drug-Free Workplace Act of 1988.

Article 44. Disputes

Any disputes concerning a question of fact arising under this project which is not disposed of by mutual agreement shall be decided in accordance with contract controversies, AS 36.30.620-632 of the state Procurement Code.

Article 45. False Claim

The Grantee is advised that providing false, fictitious, or misleading information with respect to the receipt and disbursement of grant funds may result in criminal, civil or administrative fines and/or penalties.

The Grantee must promptly refer to EPA's Inspector General any credible evidence that a false claim has been submitted under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Agreement.

Article 46. Prohibition Statement

The Grantee is advised that no employees may engage in severe forms of trafficking in persons during the period of time that this Agreement is in effect; procure a commercial sex act during the period of time this Agreement is in effect; or use forced labor in the performance of this Agreement.

The Grantee must inform the Department immediately of any information that is received from any source alleging a violation of the Prohibition Statement above.

Article 47. Patents and Inventions

Rights to inventions made under this Agreement are subject to federal patent and licensing regulations as defined in Title 37 CFR Part 401 and Title 35 USC Sections 200-212.

Article 48. Indemnification

The Grantee shall indemnify, save harmless and defend the state, its officers, agents, and employees from all liability, including costs and expenses, for all actions or claims resulting from injuries or damages sustained by any person or property arising directly or indirectly as a result of any error, omission or negligent act of the Grantee, subcontractor or anyone directly or indirectly employed by them in the performance of this Agreement.

All actions or claims including costs and expenses resulting from injuries or damages sustained by any person or property arising directly or indirectly from the performance of this Agreement which are caused by the joint negligence of the state and the Grantee shall be apportioned on a comparative fault basis. Any such joint negligence on the part of the state must be a direct result of active involvement by the state.

Article 49. Insurance

Without limiting the Grantee's indemnification, it is agreed that the Grantee shall purchase and maintain in force at all times during the performance of services under this Agreement the following policies of insurance; when applicable. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Grantee's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits.

a. Worker's Compensation Insurance

The Grantee shall provide and maintain, for all employees of the Grantee engaged in work under this Agreement, Workers' Compensation Insurance as required by AS 23.30.045. The Grantee shall be responsible to ensure all subcontractors provide Workers' Compensation Insurance for anyone who directly or indirectly provides services under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection of not less than \$100,000 per person, \$100,000 per occurrence. Where applicable, coverage for all federal acts (i.e., U. S. L&H and Jones Act) must also be included.

b. **Comprehensive (Commercial) General Liability Insurance:** The Grantee shall ensure coverage limits not less than \$300,000 combined single limit per occurrence and annual aggregates where generally applicable, and shall include premises-operations, independent contractor, products/completed operations, broad form property damage, blanket contractual and personal injury endorsements.

c. **Comprehensive Automobile Liability Insurance:** covering all owned, hired and non-owned vehicles with coverage limits not less than \$100,000 per person/\$300,000 per occurrence bodily injury and \$50,000 property damage.

d. **Professional Liability Insurance:** covering all errors, omissions or negligent acts of the contractor, subcontractor or anyone directly or indirectly employed by them, made in the performance of this Agreement which results in a financial loss to the state. Limits required as per the following schedule:

Contract Amount	Minimum Required Limit
Under \$100,000	\$100,000 per occurrence/annual aggregate
\$100,000-\$499,999	\$250,000 per occurrence/annual aggregate