

Approved: 10/12/2022
Effective: 10/27/2022

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

ORDINANCE NO. 22-035

APPROVING AND AUTHORIZING THE SNOHOMISH COUNTY EXECUTIVE
TO SIGN THE INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY
AND THE TULALIP TRIBES OF WASHINGTON TO IMPLEMENT PORTIONS
OF THE COMMUNITY FLOODPLAIN SOLUTIONS – PHASE II PROJECT

WHEREAS, Snohomish County (the “County”) was awarded grant funds
from Ecology under Agreement No. SEAFBD-2123-SnCoPW-00013 (the “County
Grant”) to implement the Community Floodplain Solutions – Phase II Project; and

WHEREAS, the goal of the County Grant is to advance the implementation
of integrated floodplain management in the Snohomish Watershed, with focus on
the lower Skykomish River, the Snohomish River mainstem, and Snohomish
Estuary. Community Floodplain Solutions (CFS) aims to increase ecological
function, reduce impact from flooding, and protect and enhance farmland
productivity, through property acquisition, farmland conservation, implementation
of agricultural viability and floodway projects, and design of large-scale integrated
floodplain projects; and

WHEREAS, the County Grant requires the County and the Tulalip Tribes of
Washington (the “Tribes”) to enter into an Interlocal Agreement to conduct a
feasibility analysis to identify drainage improvements and fish habitat restoration
projects for the Riley and Haskel Sloughs and for the Tribes to complete a
conceptual design for a future restoration project on Haskel Slough; and

WHEREAS, the County and the Tribes have negotiated the terms of an
interlocal agreement attached to this ordinance as Exhibit A; and

WHEREAS, the interlocal agreement attached to this ordinance as Exhibit
A is authorized by the Interlocal Cooperation Act, chapter 39.34 RCW; and

WHEREAS, the County Council held a public hearing to consider approving
and authorizing the County Executive to sign the agreement attached as Exhibit A
to this ordinance on the County’s behalf;

NOW, THEREFORE, BE IT ORDAINED:

ORDINANCE NO. 22-035; APPROVING AND AUTHORIZING
THE SNOHOMISH COUNTY EXECUTIVE TO SIGN THE
INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY
AND THE TULALIP TRIBES OF WASHINGTON TO IMPLEMENT
PORTIONS OF THE COMMUNITY FLOODPLAIN SOLUTIONS – PHASE II PROJECT

1 Section 1. The County Council hereby adopts the foregoing recitals as
2 findings of fact and conclusions as if set forth in full herein.

3
4 Section 2. The County Council approves and authorizes the County
5 Executive to execute the *Interlocal Agreement Between Snohomish County and*
6 *the Tulalip Tribes of Washington to Implement Portions of the Community*
7 *Floodplain Solutions – Phase II Project* in the form attached hereto as Exhibit A.
8
9

10
11 PASSED this 12th day of October, 2022.

12
13 SNOHOMISH COUNTY COUNCIL
14 Snohomish County, Washington

14 ATTEST:

15
16 
17 _____
18 Asst. Clerk of the Council

19
20 
21 _____
22 Council Chair

23 (X) APPROVED

24 DATE: 10/17/2022

25 () EMERGENCY

26 () VETOED

27 
28 _____
29 Dave Somers
30 County Executive

31 ATTEST: Melissa Geraghty

32 Approved as to form only:
33 Kisielius, Laura Digitally signed by Kisielius,
Laura
Date: 2022.08.24 09:30:43
-07'00'
34 _____
Deputy Prosecuting Attorney

EXHIBIT A

to

ORDINANCE NO. 22-035

INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE
TULALIP TRIBES OF WASHINGTON TO IMPLEMENT PORTIONS OF THE
COMMUNITY FLOODPLAIN SOLUTIONS – PHASE II PROJECT

[See Attached]

INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND
THE TULALIP TRIBES OF WASHINGTON TO IMPLEMENT PORTIONS OF
THE COMMUNITY FLOODPLAIN SOLUTIONS – PHASE II PROJECT

Execution through June 30, 2025

This Interlocal Agreement Between Snohomish County and the Tulalip Tribes of Washington to Implement Portions of the Community Floodplains Solution – Phase II Project (this “Agreement”), is made and by and between Snohomish County, a political subdivision of the State of Washington (the “County”), and the Tulalip Tribes of Washington, a federally-recognized Indian Tribe (the “Tribes”).

RECITALS

- A. Snohomish County was awarded grant funds from the Washington State Department of Ecology (“Ecology”) Floodplains by Design (FbD) program in Ecology Grant Agreement #SEAFBD-2123-SnCoPW-00013 (the “County Grant”) to implement the Community Floodplain Solutions – Phase II Project;
- B. The goal of the County Grant is to advance the implementation of integrated floodplain management in the Snohomish Watershed, with focus on the lower Skykomish River, the Snohomish River mainstem, and the Snohomish Estuary. Community Floodplain Solutions (CFS) aims to increase ecological function, reduce impact from flooding, and protect and enhance farmland productivity, through property acquisition, farmland conservation, implementation of agricultural viability and floodway projects, and design of large-scale integrated floodplain projects;
- C. The County Grant identifies the Tribes as a project partner and requires the County and the Tribes to enter into an Interlocal Agreement to conduct a feasibility analysis to identify drainage improvements and fish habitat restoration projects for Riley and Haskel Sloughs. The County Grant also identifies that the Tribes will complete conceptual design for a future restoration project on Haskel Slough;
- D. The Tribes’ goals include development of potential connectivity alternatives, associated geomorphic analyses, hydraulic modeling, a drainage inventory, extensive community outreach, and conceptual designs for a future restoration project on Haskel Slough to modify the existing inlet dike to promote increased connectivity, water quantity, and water quality;
- E. Chapter 39.34 RCW, the Interlocal Cooperation Act, authorizes public agencies, including the County and the Tribes, to enter into cooperative agreements to make the most efficient use of their respective resources; and
- F. This Agreement is made pursuant to and shall be governed by the Interlocal Cooperation Act.

AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Tribes agree as follows:

1. PURPOSES OF AGREEMENT

The County received funding from Ecology to implement the Community Floodplain Solutions – Phase II Project, which is a cooperative effort between watershed partners working collectively to achieve multi-benefit integrated floodplain management objectives in the Lower Skykomish River Reach Scale Plan and the Snohomish River and Estuary Reach Scale Plan. CFS aims to address chronic flooding-risk issues, improve salmon habitat, enhance agricultural viability, and protect open space for future restoration of natural river processes and long-term agricultural viability. The purpose of this Agreement is for the County to contract with the Tribes for services described in Appendix A (the “Scope of Work”), attached hereto and incorporated herein by this reference. The source of funds for this Agreement is the County Grant.

2. DURATION OF AGREEMENT

- A. The term of this Agreement is execution through June 30, 2025, (the “Term”) unless terminated sooner as provided herein. The County’s obligations after December 31, 2022, are contingent upon local legislative appropriation of necessary funds in accordance with applicable laws and the Snohomish County Charter. In the event funding becomes unavailable for work to be performed pursuant to this Agreement, all work shall terminate in accordance with provisions of this Agreement upon the last day of funding.
- B. As provided by RCW 39.34.080, this Agreement shall not take effect unless and until it has (i) been duly executed by both parties, and (ii) either filed with the County Auditor or posted on the County’s Interlocal Agreements website.

3. SCOPE OF WORK

- A. The Tribes shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of the work set forth in Appendix A, attached hereto and incorporated herein.
- B. The Tribes will not be required to perform work for the County in excess of work specified in Appendix A to this Agreement except by mutual agreement in a written amendment to this Agreement.
- C. If there are any conflicts between the County Grant and Appendix A of this Agreement, the County Grant shall control. The County Grant is attached to this Agreement as Appendix D and incorporated herein to the extent referenced by this Agreement.

4. PERFORMANCE

The Tribes agree to complete all work described in Appendix A in a timely and professional

manner. The Tribes may use subconsultants or subcontractors, with prior County approval, to complete any portion of the work described in Appendix A. If at any time the Tribes cannot fulfill its responsibilities under this Agreement, the Tribes shall notify the County thereof in writing, together with an explanation of why said responsibilities cannot be fulfilled.

5. ADMINISTRATION OF AGREEMENT

Each party to this Agreement shall designate an individual who may be designated by title or position to oversee and administer such party's participation in this Agreement. The parties' Administrators shall be the following individuals:

County's Administrator:
Surface Water Management Director
Snohomish County Conservation &
Natural Resources
3000 Rockefeller Ave, M/S 303
Everett, WA 98201

Tribe's Administrator:
Environmental Manager
Tulalip Tribes of Washington
P.O. Box 277
Tulalip, WA 98271

Any notice required by a party to this Agreement shall be provided to the other party's Administrator.

6. MONITORING & REPORTING

The County shall be responsible for monitoring the performance of the Tribe's work under this Agreement.

7. COMPENSATION

The budget for work to be performed under the Agreement is seven hundred seventy-three thousand, two hundred ninety-four dollars (\$773,294), as set forth in Appendix B to the Agreement, attached hereto and incorporated herein. Of this budget, one hundred twenty-eight thousand, eight hundred and eighty-two dollars (\$128,882) shall consist of match funding provided by the Tribes. The County shall have no obligation to pay any invoice from the Tribes that would cause the total payments made to the Tribes by the County under this Agreement to exceed six hundred forty-four thousand, four hundred and twelve dollars (\$644,412) as set forth in Appendix B. The County shall compensate the Tribes only for such costs that are: 1) incurred during the term of this Agreement; and 2) are necessary to perform the work described in Appendix A of this Agreement.

The County shall have the right to withhold payment of all or any portion of an invoice provided under Section 8 below if the County has a reasonable good faith basis to believe that the work performed by the Tribes is not consistent with the Scope of Work defined in Appendix A. In such an event the County shall provide the Tribes a written statement identifying and describing problems or deficiencies it perceives on or before the date such payment is due. Upon receipt of such notice the Tribes shall have twenty (20) days to either correct the problem or object to the County's determination. In the event the Tribes objects, the matter shall be submitted to a consulting engineer for review to determine whether work performed by the Tribes is consistent with the Scope of Work, and if not, what remedial action is required to bring the work into

compliance. The consulting engineer will be mutually agreed upon by both parties. The County's right to withhold payment shall last until the work has been brought into compliance or the work is deemed consistent with the approved scope and task.

8. INVOICING AND PAYMENT

The Tribes shall submit a quarterly invoice to the County no later than the 15th of the month following the end of the quarter. The invoice shall accurately and completely document all labor costs, materials costs, equipment costs and other reimbursable costs for services that meet the requirements of this Agreement and the County Grant. The County shall pay each quarterly invoice within thirty (30) days of receipt unless it objects under Section 7 of this Agreement.

9. AUDIT AND INSPECTION

The Tribes and the County shall maintain records pursuant to this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The Tribes and County's records shall be available for inspection and audit by one another, the State Auditor, federal auditors, and any persons duly authorized by the parties. The Tribes and County shall preserve and make such records available to said parties until expiration of six (6) years from the date of final payment under this Agreement.

10. ENTIRETY OF AGREEMENT

This Agreement constitutes the entire agreement between the Tribes and the County and supersedes all proposals, oral and written, and all other communication between the parties in relation to the subject matter of this Agreement. No other agreement exists between the Tribes and the County with regards to the instant subject matter except as expressly set forth in this instrument. Except as otherwise provided herein, no modification of this Agreement shall be effective until reduced to writing and executed by both parties.

11. AGREEMENT ALTERATIONS AND AMENDMENTS

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

12. TERMINATION

Either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

- A. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, the County may terminate this Agreement by providing written notice to the Tribes fifteen (15) days prior to the effective date of such withdrawing, reduction or limitation of funding. The termination shall be effective on the date specified in the termination notice. The Tribes shall continue to

perform its obligations through the date of termination. The obligation of the County to make final payment shall survive the termination of this Agreement.

- B. If for any cause either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

13. RIGHTS AND REMEDIES

In no event shall any payment by the County to the Tribes constitute a waiver by the County of any breach of covenant or any default that may exist on the part of the Tribes. The making of any such payment by the County while any such breach or default exists shall in no way impair or prejudice any of the County's rights and remedies, hereby expressly recognized, to recover payments or portions thereof, to which the Tribes was not entitled under this Agreement, where any payments were made by mistake, or to pursue any other remedy available to the County with respect to breach or default of this Agreement.

14. INSURANCE

Either party shall maintain its own General Liability insurance and/or self-insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, for its liabilities from damage to property and/or injuries to persons arising out of its activities associated with this Agreement. The maintenance of, or lack thereof insurance and/or self-insurance shall not limit the liability of the indemnifying party to the indemnified party.

15. HOLD HARMLESS

The Tribes agrees to protect, defend and hold harmless the County, its elected and appointed officials, employees and agents, from and against all claims, demands and causes of action of any kind or character, including any cost of defense and attorney's fees, arising out of any actions, errors or omissions of the Tribes, its officials, employees and agents in performing this Agreement except for those arising out of the sole negligence of the County.

The County agrees to protect, defend and hold harmless the Tribes, its elected and appointed officials, employees and agents, from and against all claims, demands and causes of action of any kind or character, including any cost of defense and attorney's fees, arising out of any actions, errors or omissions of the County, its officials, employees and agents in performing this Agreement except for those arising out of the sole negligence of the Tribes.

In no event shall either party be responsible for indemnifying the other party for damages caused by or resulting from the sole negligence of that party, and its elected officials, officers, employees, agents, contractors and/or subcontractors.

16. VENUE, WAIVER OF SOVEREIGN IMMUNITY, AND INTERPRETATION

The venue of any claim or suit arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County.

Limited Waiver of Sovereign Immunity. The Tribe expressly reserves all of its inherent sovereign rights as a federally recognized Indian tribe, including sovereign immunity from suit in any state, federal or tribal court without the Tribe's consent. By entering into this Agreement, the Tribe hereby grants a limited waiver of sovereign immunity to the County only, subject to and conditioned on the following:

- a. This limited waiver of immunity shall not extend to interpretation of the Treaty of Point Elliott, 12 Stat. 927, or the rights reserved by the Tribe under that Treaty. This waiver of immunity shall not extend to or be used for or to the benefit of any other person or entity of any kind or description whatsoever, including any successor or assign of the County.
- b. To the extent that jurisdiction obtains, this limited waiver of immunity shall be deemed a consent to jurisdiction only of the Snohomish County Superior Court.
- c. This limited waiver of immunity in favor of the County shall commence and become effective as of the effective date of this Agreement and shall remain in effect and extend for three (3) years from the ending date under Section 2 or three (3) years from earlier termination of this Agreement as set forth in Section 12 herein. Notwithstanding any applicable statute of limitations or other law, upon expiration of the above three (3) year period that extends from the ending date or early termination of this Agreement under Section 12, this limited waiver of immunity shall be deemed withdrawn without further action by the Tribe or notice to the County.
- d. Nothing contained in this Agreement shall be deemed a consent to levy of any judgment, lien or attachment upon any assets, property or interest of the Tribe except as specifically described herein.
- e. Nothing in this Agreement nor any activity of the Tribe shall implicate or in any way involve the trust assets or credit of the Tribe or any of its members.
- f. The Tribe hereby expressly provides a limited waiver of sovereign immunity to suit with respect to claims made relating to, or arising under, this Agreement by any party, to interpret or enforce the terms of this Agreement, or to a claim of indemnification by the County. The limit for any claim of indemnification will be the insurance limit required by this Agreement. The parties agree that in discharging this indemnification obligation, where the required insurance is procured, the County shall look only to the proceeds of the insurance procured by the Tribe herein and the policy of insurance obtained by the Tribe shall prohibit the insurer from asserting a defense of sovereign immunity to a claim made under the policy. The Tribe warrants its authority to and agrees to assign over to the County, at its request, any and all of its rights against the insurer to effectuate a payment of its indemnification obligation.

Arbitration. Any dispute in relation to the interpretation of this Agreement shall be resolved by arbitration. The County or the Tribes may initiate arbitration by providing written notice of intent to arbitrate to the other parties, together with a statement of the matter in controversy. If the parties

are unable to agree upon a single arbitrator within thirty (30) days of such notice of intent, the County and the Tribes each may appoint an arbitrator and the two arbitrators shall meet promptly and attempt to select a third arbitrator. Once appointed, the three-arbitrator panel shall determine the specified controversy. Each party shall bear the cost of any arbitrator it appoints, and one-half (1/2) of the cost of appointing a third arbitrator and the third arbitrator's fee. Any arbitrator appointed under this provision must be an active member of the Washington State bar. The arbitration rules of the American Arbitration Association shall govern the arbitration. An award or decision rendered by a majority of the arbitrators appointed under this Agreement shall be final and binding on all parties to the proceeding, and judgment upon any award or decision rendered by the arbitrators may be entered in Superior Court of the State of Washington, in and for Snohomish County, and enforced in the same manner as any other judgment.

Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

17. RELATIONSHIP TO EXISTING LAWS

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this 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 or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable state and federal statutes and regulations;
2. Scope of Work (Appendix A); and
3. Any other provisions of the Agreement, including materials incorporated by reference.

18. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the Agreement as determined by the County.

19. PUBLIC RECORDS ACT

This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW.

20. THIRD PARTY BENEFICIARY

The State of Washington is named as an express third-party beneficiary.

21. MISCELLANEOUS

- A. No obligation in this Agreement shall limit the Tribes in fulfilling its responsibilities otherwise defined by law.
- B. No obligation in this Agreement shall limit the County in fulfilling its responsibilities otherwise defined by law.

IN WITNESS WHEREOF, the County and the Tribes have executed this Agreement as of the date of the last party to sign.

THE COUNTY:

THE TRIBE:

Snohomish County, a political subdivision of the State of Washington

Tulalip Tribes of Washington, a federally-recognized Indian Tribe

By Dave Somers Digitally signed by Dave Somers
Date: 2022.10.17 11:42:36 -07'00'
County Executive

By Teri Gobin Digitally signed by Teri Gobin
Date: 2022.08.18 13:15:28 -07'00'
Title: _____

Approved as to Form:

Approved as to Form:

Kisielius, Laura Digitally signed by Kisielius, Laura
Date: 2022.08.16 13:01:22 -07'00'
Snohomish County
Deputy Prosecuting Attorney

Saza Osawa Digitally signed by Saza Osawa
Date: 2022.08.17 15:50:44 -07'00'
Tulalip Tribes
Attorney

APPENDIX A SCOPE OF WORK

This scope of work is intended to more specifically describe Subtask Numbers 2.3, 3.1 and 4.3 of the County Grant. If there are any conflicts between this scope of work and the County Grant, the County Grant governs.

Task 1 – Integration Team Support [County Grant Subtask 2.3]

With FY19 funding and other funding sources, project partners have formed an Implementation/Integration Team (IT) under the umbrella of the Snohomish Sustainable Lands Strategy (SLS) for the County portion of WRIA 7 to clarify goals, resolve issues, and increase the pace and magnitude of integrated floodplain management work in the watershed. The IT will work to implement the overall SLS vision with on-the-ground projects while integrating interests at the site and reach scale. This funding request includes support for continued leadership, coordination, and participation in the IT and other associated integrated floodplain management processes that support this approach. Goals of this task are to improve inter-organization communication and multi-benefit floodplain management and to enhance integration and collaboration in the Snohomish Integration Team and the SLS community, increasing the pace and magnitude of integrated benefits over time.

Task 1 – Expected Outcomes

- The Tribes shall support cross-organizational collaboration and coordination on funding sources outside of the State Floodplain by Design Process. Examples of these include – NOAA Community Based Restoration Partnership grant, America The Beautiful grant, and other new or emerging opportunities to increase funding to the watershed.
- The Tribes shall identify and support coordination and collaboration with other aligned programs and funding sources (such as BAFPBRB, SRFB) that enables ease of implementation in the focus reaches.
- The Tribes shall lead and support Disappearing Task Group’s (DTG’s) for the Tualco Valley effort and other areas.
- The Tribes shall attend and participate in project development work through DTG’s, public meetings/forums, and other places as identified.
- The Tribes shall create and integrate technical information to support collaboration and coordination (such as maps and documents) and help to articulate the fish needs more clearly.
- The Tribes shall participate in regional forums on behalf of the Snohomish IT with a particular focus on integrated floodplain management.

Task 1 – Required Deliverables by the Tribes to the County

- Quarterly project reports that describe progress toward the outcomes above and billings **DUE to County: Quarterly through duration of Agreement** (April 15th, July 15th, October 15th and January 7th)
- [County Grant Deliverable 2.13] Collaborative presentations to stakeholders/landowners about Community Floodplain Solutions (CFS) efforts/FbD funding. **DUE to County: 6/30/2025**
- [County Grant Deliverable 2.11] Final Report for I/IT Support. **DUE to County: 6/30/2025**

INTERLOCAL AGREEMENT BETWEEN SNOHOMISH
COUNTY AND THE TULALIP TRIBES OF WASHINGTON
TO IMPLEMENT PORTIONS OF THE COMMUNITY FLOODPLAIN
SOLUTIONS – PHASE II PROJECT

Task 1 – FbD grant - \$170,000

Task 2 – Riparian Forest Health Implementation [County Grant Subtask 3.1]

This task will implement the FY19 funded Riparian Forest Health Strategy to remove invasive plants and plant up to 15 acres of native trees and shrubs in subreaches 2-5 of the Lower Skykomish.

Task 2 – Expected Outcomes

- The Tribes shall restore up to 15 acres of riparian area, and a minimum of 5 acres of riparian area. Tree plantings will include 75% conifers, 25% deciduous in both mixed tree stands and single species plantings.

Task 2 – Required Deliverables by the Tribes to the County

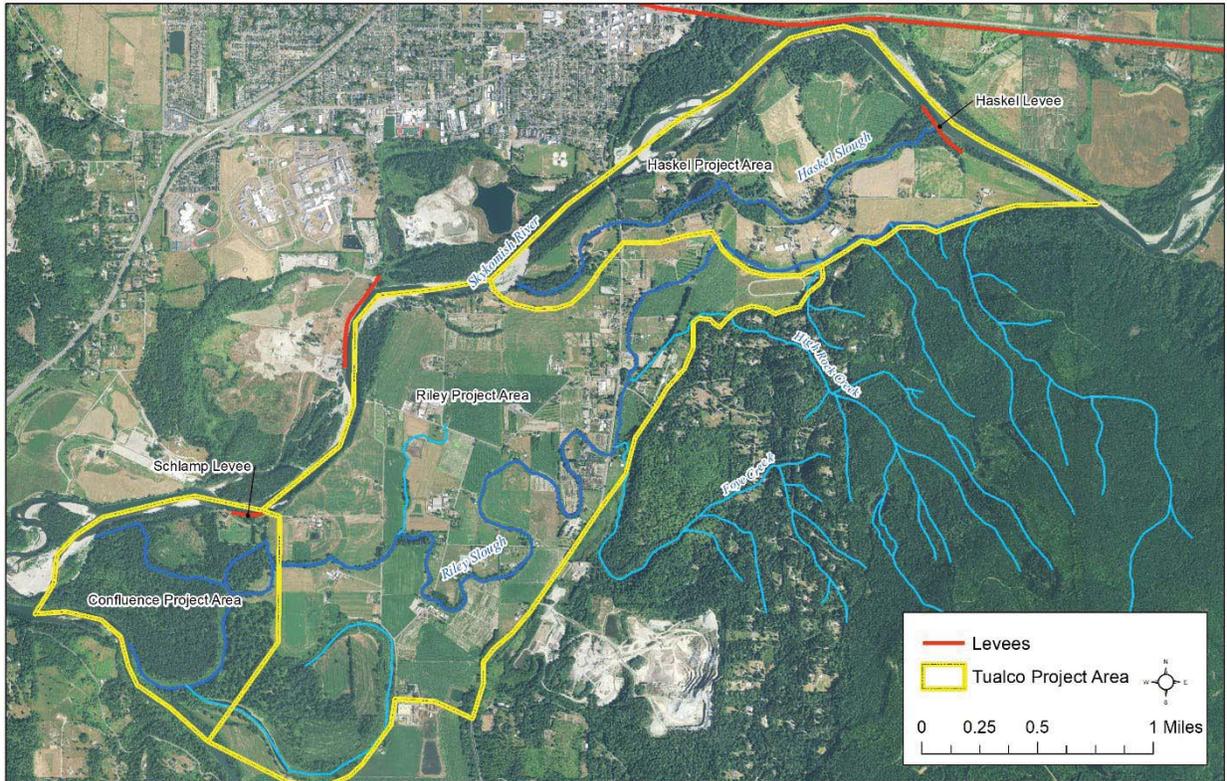
- Quarterly project reports that describe progress toward the outcomes above and billings. **DUE to County: Quarterly through duration of Agreement** (April 15th, July 15th, October 15th and January 7th)
- [County Grant Deliverable 3.4] Annotated before and after photos of plantings. **DUE to County: 1/31/2024**
- [County Grant Deliverable 3.5] Final planting diagram. **DUE to County: 1/31/2024**

Task 2 – FbD grant - \$100,000

Task 3 – Riley and Haskel Slough Water Conveyance and Connectivity Improvements (Design Maps 1 and 2) [County Grant Subtask 4.3]

The Tribes will work with the County and Snohomish Conservation District to conduct a feasibility analysis to identify drainage improvements and fish habitat restoration projects for Riley and Haskel Sloughs. The Riley and Haskel Slough project areas, combined with the Confluence Project Area, comprise the Tualco Valley Project Area shown in the yellow outline in the figure below. This analysis will include development of potential connectivity alternatives, associated geomorphic analyses, hydraulic modeling, a drainage inventory, extensive community outreach, a preferred alternative, and conceptual designs.

The Tribes will utilize the feasibility analysis to complete up to preliminary 30% design for a future restoration project on Haskel Slough, a roughly 2.4-mile-long side channel of the Skykomish River near Monroe. The goal of the restoration project is to enhance juvenile salmon rearing and flood refugia habitat in Haskel Slough by modifying the existing inlet dike to promote increased connectivity, water quantity and water quality.



Task 3 – Expected Outcomes

- The Tribes shall address high priority concerns of landowners by reducing flood pressures on Tualco Valley Farmland
- The Tribes shall develop new salmon habitat
- The Tribes shall increase habitat availability, quality, and accessibility
- The Tribes shall increase drainage and flood protection
- The Tribes shall restore of natural streamflows
- The Tribes shall increase water quantity and quality of priority off-channel habitat

Task 3 – Deliverables – The Tribes shall provide the following deliverables, consistent with the County Grant and the more specific requirements as described below.

Quality Assurance Project Plan

- [County Grant Deliverable 4.19] Riley/Haskel Quality Assurance Project Plan (QAPP) or QAPP Waiver for the collection and analysis of environmental data and submit for review and approval by the County Project Manager prior to sampling. The Tribes will comply with QAPP requirements in the County Grant, General Terms and Conditions, Section 12. Environmental Data Standards. **DUE to County: 9/1/2022**

Technical and outreach plans

[County Grant Deliverable 4.18] Riley/Haskel Feasibility Analysis including description of project site and problems within the context of salmon recovery and identification of specific goals and objectives to address the problems. **DUE to County: 12/1/2022.** The analysis must include the following elements:

- A brief summary of the data reviewed, an assessment of data gaps, and a list of data needs.
- Project Base Map (LiDAR, bathymetry, and topography).
- Groundwater technical memorandum.
- A brief River Reach Characterization Existing Conditions Memorandum.
- [County Grant Deliverable 4.20] Riley/Haskel Hydrology and Hydraulic Modeling. **DUE to County: 12/1/2022**
 - A technical memorandum of the H&H development and model results (10 pages maximum).
 - To inform and be included in alternative analyses.
- [County Grant Deliverable 4.17] Riley/Haskel: Community/Stakeholder Outreach. **DUE to County: 7/1/2023**
 - Including meeting notes, attendance, and outcomes documentation.
- [County Grant Deliverable 4.21] Riley/Haskel: Project Alternatives Analysis. **DUE to County: 3/1/2023**
 - Including identification and conceptual design of alternatives to achieve project objectives and selection of the preferred alternative.
 - A draft and final Alternative Analysis Memorandum describing methodology and rationale behind the alternatives and the evaluation criteria.
- [County Grant Deliverable 4.22] Riley/Haskel: Conceptual (30%) designs. **DUE to County: 7/1/2023**
 - 30% conceptual plans (AutoCAD Civil3d and submitted in PDF format).
 - Design report – the design report will document the investigations performed under this scope of work that form the basis of the design.
 - Including a construction cost estimate of the preferred alternative.

Reporting:

- Quarterly project reports that describe progress toward the outcomes above and billings. **DUE to County: Quarterly through duration of Agreement** (April 15th, July 15th, October 15th and January 7th)
- Final project report **DUE to County: 1/31/2024**

Task 3

- *FbD grant - \$374,412*

APPENDIX B BUDGET

The budget for work to be performed under the Agreement is seven hundred seventy-three thousand, two hundred ninety-four dollars (\$773,294). Of this budget, one hundred twenty-eight thousand, eight hundred and eighty-two dollars (\$128,882) shall consist of match funding provided by the Tribes. The County shall have no obligation to pay any invoice from the Tribes that would cause the total payments made to the Tribes by the County under this Agreement to exceed six hundred forty-four thousand, four hundred and twelve dollars (\$644,412).

Charges reported as match and consistent with the Washington Department of Ecology Floodplains by Design Grants Funding Guidelines 2021-23 found on the Washington Department of Ecology’s Floodplains by Design website, will reference the source of match (i.e. local or federal funds), and to assist with verifying match eligibility, invoices will identify the federal program name, CFDA number, and the Tribes’ agreement number. Appendix C is an example of details required with each invoice submittal.

Contract Task and Dollar Summary

Task	Description	County Grant	Match
1	Integration Team Support	\$170,000	
2	Riparian Forest Health Implementation	\$100,000	
3	Riley and Haskel Slough Water Conveyance and Connectivity Improvements	\$374,412	
	Match for Tasks 1-3 of Interlocal Agreement		\$128,882
	Totals	\$644,412	\$128,882
	Interlocal Agreement Grand Total	\$773,294	

APPENDIX C INVOICE DOCUMENTS

The following are examples only of the kind of information needed when billing for reimbursement and reporting match for this Agreement.

Tribe's invoices will clearly communicate Interlocal Agreement task numbers associated with charges, and include sufficient backup documentation for billing and audit purposes, such as:

Task 1 – Integration Team Support

Reimbursement

<i>Payee</i>	<i>Job Title</i>	<i>Description</i>	<i>Date</i>	<i>Hours</i>	<i>Rate</i>	<i>Overhead</i>	<i>Total</i>
J. Doe	Project Manager						

Tribe's match will reference the source of match (i.e. local or federal funds) and identify the federal program name, CFDA number, and the Tribes agreement number. Match will also clearly communicate Interlocal Agreement task numbers associated with charges, and include sufficient backup documentation for billing and audit purposes, such as:

Task 1 – Integrated Team Support

Match Reporting

<i>Federal, NRCS program, CFDA # _____ (federal funds)</i>			<i>Agreement # _____</i>			
<i>Payee</i>	<i>Job Title</i>	<i>Description</i>	<i>Date</i>	<i>Hours</i>	<i>Rate</i>	<i>Total</i>
J. Doe	Project Manager					



Agreement No. SEAFBD-2123-SnCoPW-00013

Exhibit D

SHORELANDS FLOODPLAINS BY DESIGN AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

SNOHOMISH COUNTY CONSERVATION AND NATURAL RESOURCES DEPT

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and Snohomish County Conservation and Natural Resources Dept, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	Community Floodplain Solutions
Total Cost:	\$16,741,845.00
Total Eligible Cost:	\$10,705,220.00
Ecology Share:	\$8,564,176.00
Recipient Share:	\$2,141,044.00
The Effective Date of this Agreement is:	07/01/2021
The Expiration Date of this Agreement is no later than:	06/30/2025
Project Type:	Floodplains by Design

Project Short Description:

Community Floodplain Solutions (CFS) is a project that advances implementation of integrated floodplain management in the Snohomish Watershed, with focus on the Lower Skykomish River. CFS aims to increase ecological function, reduce impact from flooding, and protect and enhance farmland productivity. Actions include property acquisition, farmland conservation, implementation of agricultural viability and floodway projects, and design of large-scale integrated floodplain projects.

Project Long Description:

Phase 2 of CFS is a cooperative effort between many watershed partners aimed at working collaboratively to achieve the following goals:

A. Increase ecological function:

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- B. Reduce impact to local infrastructure from flooding and sediment transport;
- C. Protect and enhance farmland productivity; and
- D. Improve water quality and recreational opportunities in the community.

This scope of work furthers those actions funded in 2019 using funds from grant agreement SEAFBD-2019-SnoCoPW-00051, and expands an integrated floodplain management approach to multiple reaches of the Skykomish and Snohomish Rivers. The current focus of CFS is to advance integrated floodplain management through capital and programmatic actions, including collaborative approaches and engagement with the local community and stakeholders. During the 2021-2025 timeframe, this project will provide ~200 acres of floodplain property with the development rights removed, up to 1,200 acres of area with improved flood protection, over \$60M of property with reduced risk, up to 600 acres of newly restored and/or reconnected habitat, up to 12 river miles of improved ecosystem function, 15-20 acres of riparian and agroforestry that will benefit over 400 acres of farmland implementing best management practices (BMP's), up to 2,000 ft of new setback levee built to a 1 percent annual level of flood protection, and up to 25,000 cubic yds of sediment storage.

The project will build off potential projects identified in key local plans including the Sustainable Lands Strategy (SLS) Lower Skykomish River, and Snohomish River and Estuary Reach-scale Plans, the Agriculture Resilience Plan, and the Snohomish River Basin Salmon Conservation Plan. The project will also continue the support and implement the Integration Team (IT) approach that has been critical to the creation and endorsement of this grant submission and project package.

The project is organized into three primary themes:

1. Enhancing enabling conditions for Integrated Floodplain Management . Actions will firmly establish the foundation of an integrated floodplain management approach in the Snohomish and Skykomish floodplains, including:

- A. Support for the Integration Team, which engages critical partners to scope and design projects and look at project interactions and trade offs.
- B. Communications and outreach to solicit community input and to build understanding and support for integrated floodplain management.

2. Implementation of Capital Actions from Phase I– Partners will advance Phase I funded work by implementing multi-benefit projects in the Sultan Reach of the Lower Skykomish River, including:

- A. Continued acquisition or easements on properties prone to flooding and erosion. Acquisitions will allow for future integrated actions.
- B. Final designs, permits, and implementation for at least one site-specific integrated effort in the Sultan Reach and final designs. This work will provide up to 155 acres of restored or reconnected habitat and up to 200 acres of flood risk reduction.
- C. Final designs and implementation of up to two agriculture resilience projects being identified in Phase I.

3. Developing an integrated project pipeline in the Snohomish and Skykomish Rivers – The Integration Team will work to develop actions for implementation further downstream of the Phase I area.

- A. Property acquisition and easements of up to 300 acres for future agriculture viability, salmon recovery restoration,

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and/or flood hazard reduction actions.

- B. Agricultural resilience projects, fish passage, and drainage improvements.
- C. Feasibility analysis of large-scale integrated floodplain projects.

Overall Goal:

The overall goal of this proposal is to advance integrated floodplain management with actions that support flood risk reduction, salmon recovery, and agricultural viability in the Snohomish Co. portion of the Snohomish Watershed.

Specific goals are to:

- A. Advance projects and actions funded by grant no. SEAFBD-2019-SnCoPW-00051 for the CFS in the Sultan Reach, including final design of a large-scale integrated floodplain project, implementing agriculture resilience projects, and protecting floodplain habitat in alignment with the Acquisition Strategy currently being developed.
- B. Develop a pipeline of integrated floodplain management projects in other reaches of the Lower Skykomish River to accelerate implementation of priority habitat, flood reduction, and agricultural projects.
- C. Support enabling conditions at the Snohomish Watershed scale by supporting the Integration Team and completing a high priority agriculture resilience project in the Estuary Reach.

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Recipient Name: Snohomish County Conservation and Natural Resources Dept

RECIPIENT INFORMATION

Organization Name: Snohomish County Conservation and Natural Resources Dept

Federal Tax ID: 91-6001368

DUNS Number: 079247979

Mailing Address: 3000 Rockefeller Ave, M/S 607
Everett, WA 98201

Physical Address: 3000 Rockefeller Ave.
Everett, Washington 98201

Organization Email: spw-grantadministration@snoco.org

Organization Fax: (425) 388-6455

Contacts

Agreement No: SEAFBD-2123-SnCoPW-00013
 Project Title: Community Floodplain Solutions
 Recipient Name: Snohomish County Conservation and Natural Resources Dept

<p>Project Manager</p>	<p>Jessica Hamill Project Specialist IV</p> <p>3000 Rockefeller Ave. Everett, Washington 98201 Email: jessica.hamill@snoco.org Phone: (425) 388-3253</p>
<p>Billing Contact</p>	<p>Darcey Hughes Funding Coordinator</p> <p>3000 Rockefeller Ave. Everett, Washington 98201 Email: darcey.hughes@snoco.org Phone: (425) 262-2859</p>
<p>Authorized Signatory</p>	<p>Gregg Farris Surface Water Utility Director</p> <p>3000 Rockefeller Ave, M/S 303 Everett, Washington 98201 Email: gfarris@snoco.org Phone: (425) 388-3464</p>

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Recipient Name: Snohomish County Conservation and Natural Resources Dept

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
Shorelands
PO BOX 47600
Olympia, WA 98504-7600

Physical Address: Shorelands
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	Lisa Nelson PO Box 330316 Shoreline, Washington 98133-9716 Email: LNEL461@ecy.wa.gov Phone: (425) 466-8732
Financial Manager	Cindy James PO Box 47600 Olympia, Washington 98504-7600 Email: cjam461@ecy.wa.gov Phone: (360) 280-8645

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Recipient Name: Snohomish County Conservation and Natural Resources Dept

AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology’s authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

Washington State
Department of Ecology

Snohomish County Conservation and Natural Resources Dep

By: Joenne McGerr 11/4/2021

E-SIGNED by Gregg Farris
By: on 2021-11-03 16:04:51 GMT

Joenne McGerr Date
Shorelands
Program Manager

Gregg Farris Date
Surface Water Utility Director

Template Approved to Form by
Attorney General's Office

Agreement No: SEAFBD-2123-SnCoPW-00013
Project Title: Community Floodplain Solutions
Recipient Name: Snohomish County Conservation and Natural Resources Dept

Kelly Snyder

E-SIGNED by Kelly Snyder
on 2021-11-03 22:11:57 GMT

Public Works Director

Date

Agreement No: SEAFBD-2123-SnCoPW-00013
 Project Title: Community Floodplain Solutions
 Recipient Name: Snohomish County Conservation and Natural Resources Dept

SCOPE OF WORK

Task Number: 1 Task Cost: \$312,500.00

Task Title: 1. Project Administration/Management

Task Description:

A. The RECIPIENT will administer the project. Responsibilities will include, but not be limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports and recipient closeout report (including photos); compliance with applicable procurement, contracting, and inter-local agreement requirements; application of, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

B. The RECIPIENT must manage the project. Efforts will include: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designee; the ECOLOGY; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT must carry out this project in accordance with any completion dates outlined in this agreement. Budget deviations are allowed between budget objects, e.g., the RECIPIENT may spend less money on one task and more on another, but under no circumstances may the RECIPIENT exceed the total project cost. The approval of the ECOLOGY Project Manager is required for this deviation.

Task Goal Statement:

Properly managed project that meets agreement and ECOLOGY's administrative requirements.

Task Expected Outcome:

- *Timely and complete submittal of requests for reimbursement, quarterly progress reports and recipient closeout report.
- *Properly maintained project documentation.

Recipient Task Coordinator: Jessica Hamill

1. Project Administration/Management

Deliverables

Number	Description	Due Date
1.1	Payment Requests/Progress Reports (PRPR)	
1.2	Recipient Close Out Report (RCOR)	06/30/2025
1.3	Project Outcome Summary Report	06/30/2025

Agreement No: SEAFBD-2123-SnCoPW-00013

Project Title: Community Floodplain Solutions

Recipient Name: Snohomish County Conservation and Natural Resources Dept

SCOPE OF WORK

Task Number: 2 Task Cost: \$1,187,038.00

Task Title: 2. Project Development and Scoping

Task Description:

This task supports the development of integrated floodplain projects to: reduce flood risk & improve habitat restoration & agricultural viability; increase the enabling conditions for integrated floodplain restoration by supporting collaboration between stakeholders within the Snohomish Integration Team; advancing public outreach for all tasks in this application.

Task 2.1 Lower Skykomish Capital Project Feasibility & 30% Design. The RECIPIENT will work with landowners and the IT to select 5-10 locations along the Lower Skykomish to develop conceptual designs and feasibility assessments. This task will develop 30% designs for at least one integrated capital project to “give the river room” in the Lower Sky, integrating multiple benefits in the best locations on the floodplain. This is the next step to bring in the new modeling & flood hazard results identified in the reach scale hydraulic/hydrologic & geomorphic analyses from the FY19 Community Floodplain Solutions grant toward project implementation. These projects will create significant flood risk reduction using process-based approaches.

Task 2.2 Agricultural Resilience Programmatic & Cost-Share Support. This task will advance several initiatives identified in the Ag Resilience Plan for Snohomish Co. to improve the agricultural community's ability to adapt & be resilient to climate change. The RECIPIENT, via an interlocal agreement with the Snohomish Conservation District (SCD), will advance these initiatives, including: innovative approaches to providing irrigation water for farming (winter storage, collective water rights management), research on-farm drainage techniques (drain tile capping, ditch water storage), improved flood warning system, cost-share funding for landowners to install drought resilience BMPs (cover cropping, biochar, agroforestry), and a system to compensate landowners for flood water storage. Decisions about where and how to invest cost-share funding would be consistent with SCD policies, and discussed collaboratively through the Integration Team.

Task 2.3 Integration Team Support. With FY19 funding and other funding sources, project partners have formed an integration/Implementation Team (I/IT) for the Snohomish Co. portion of WRIA 7 to clarify goals, resolve issues, and increase the pace and magnitude of integrated floodplain management work in the watershed. The I/IT will work to implement the overall SLS vision with on-the-ground projects while integrating interests at the site and reach scale. This funding request includes support for continued leadership, coordination of the I/IT, and development and maintenance of tools that support integrated floodplain management.

Task 2.4 Communications and Outreach. This task covers outreach and engagement for all tasks to support project-level community outreach, stakeholder engagement, and communication tools. The task will implement and adapt the CFS and SLS Communications and Engagement Plan developed under FY19 funding, which is a broad community relations strategy for SLS. The CFS strategy supports events outlining conditions and resources for residents living in the floodplain. The more focused reach-scale effort will be focused on design charrettes and other public engagement opportunities to solicit feedback on project concepts and designs. Additional community engagement activities near the cities of Monroe and Sultan will build community involvement in and support for habitat restoration.

Task Goal Statement:

The goals of Task 2 are to:

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- A. Inform future high-quality integrated floodplain restoration projects through a comprehensive and inclusive feasibility process to identify and advance projects that “give the river room” while integrating multiple benefits. The feasibility process will identify cost-effective projects with significant benefits.
- B. Continue and increase collaboration and integration between stakeholders in the Snohomish Watershed, including but not limited to Snohomish County, the Tulalip Tribes, the Snohomish Conservation District, local jurisdictions, and non-profit organizations (including PCC Farmland Trust, Ducks Unlimited, and Forterra).
- C. Increase public awareness and support of multiple-benefit floodplain projects and solicit public input to improve project designs.
- D. Support local land owners who are primarily farmers and address community agricultural needs through cost-share and programmatic support.
- E. Find locations where significant flood hazards can be lowered that also provide benefits to agricultural viability and habitat, rather than trying to manage for farms, fish, and floods independently.
- F. Accelerate the pace and scale of multi-benefit projects (farm, fish, flood) in the Snohomish River Basin.
- G. Increase community engagement and interest in fundable solutions.
- H. Create a network of engaged practitioners and land owners who share a common vision.

Task Expected Outcome:

- A. Feasibility analysis for 5-10 potential multi-benefit floodplain restoration sites that have the potential to result in up to 3,000 acre-feet of flood inundation reduction, up to 150 acres of restored side channel habitat, over 100 acres of sediment conveyance, up to 4,000 feet of improved or new levee, over and reduced flood impacts to adjacent agricultural lands and public infrastructure.
- B. 30% design for at least one multi-benefit floodplain restoration project.
- C. Acceleration of SLS multi-benefit floodplain management actions.
- D. Improved inter-organization communication and multi-benefit floodplain management action tracking.
- E. Enhanced integration and collaboration in the Snohomish Integration Team, increasing the pace and magnitude of integrated benefits over time.
- F. Provided cost-share for BMPs such as cover cropping and agroforestry.
- G. Implementation of innovative agricultural resilience practices, potentially including innovative approaches to providing irrigation water for farming, research on drainage techniques, improved flood warning system, and a system to compensate landowners for floodwater storage.

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Project Title: Community Floodplain Solutions

Recipient Name: Snohomish County Conservation and Natural Resources Dept

Recipient Task Coordinator: Jessica Hamill**2. Project Development and Scoping****Deliverables**

Number	Description	Due Date
2.1	Project Development Phase: Outreach for Project Sites, Project Screening Checklist, 5 to 10 Conceptual Designs for Lower Skykomish River. Upload copies in EAGL and notify ECOLOGY Project Manager.	
2.2	Project Prioritization Phase: Cost benefit analysis (CBA) of 5-10 sites, prioritized and sequenced list of sites and concept designs, signed landowner acknowledgement forms for project locations. Upload copies in EAGL and notify ECOLOGY Project Manager.	
2.3	Project Design Phase: Based on CBA trade-offs, develop scope, schedule, and budget, 30% designs and specs, and stakeholder meetings. Upload copies in EAGL and notify ECOLOGY Project Manager.	
2.4	The RECIPIENT will complete and submit a final report regarding the Lower Skykomish Capital Project Feasibility to ECOLOGY.	
2.5	List of priority BMPs and approaches. Upload copies in EAGL and notify ECOLOGY Project Manager.	
2.6	Notes on landowner outreach and landowner agreements. Upload copies in EAGL and notify ECOLOGY Project Manager.	
2.7	Develop and design 1-2 BMP pilot projects. Upload copies in EAGL and notify ECOLOGY Project Manager.	
2.8	Provide signed landowner cost-share agreements, planting plans, and before and after photos. Upload copies in EAGL and notify ECOLOGY Project Manager.	
2.9	Final report for the Agricultural Resilience Programmatic and Cost-Share Support. Upload in EAGL and notify ECOLOGY Project Manager.	
2.10	Snohomish Integration/Implementation Team Progress support documents such as meeting notes, list of attendees, agendas, and draft project lists.	
2.11	Final Report for I/IT Support. Upload copy to EAGL and notify ECOLOGY Project Manager	
2.12	Create web based and print products that communicate risk and resources for Projects. Upload copies in EAGL and notify ECOLOGY Project Manager.	
2.13	Agenda, presentations and event materials for up to 5 community events. Upload copies in EAGL and notify ECOLOGY Project Manager.	
2.14	Create video storytelling for each interest. Upload copies in EAGL and notify ECOLOGY Project Manager.	

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2.15	Create watershed and salmon ecology lesson description. Upload copies in EAGL and notify ECOLOGY Project Manager.	
2.16	Event summaries for each volunteer event held. Upload copies in EAGL and notify ECOLOGY Project Manager.	

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SCOPE OF WORK

Task Number: 3 Task Cost: \$5,625,000.00

Task Title: 3. Easements and Acquisitions

Task Description:

Task 3.1 Property Acquisition for Integrated Opportunities. Working with willing landowners, the RECIPIENT and partners will acquire at least ~200 acres of property along the Lower Skykomish River. The RECIPIENT will use strategies to include conservation easements, CREP buffers, fee simple acquisition, and channel migration zone easements. Additionally, this task will implement the FY19-funded Riparian Forest Health Strategy to remove invasive plants and plant up to 90 acres of native trees and shrubs in subreaches 2-5 of the Lower Skykomish.

Task 3.2 Snohomish Floodplain Farmland Conservation. Project partners will work to prioritize easement acquisitions that protect farmland that supports a diversity of agriculture, and where continued agricultural use is viable and complementary to other natural resource protection goals.

Complete cultural resources requirements under Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act. Complete Inadvertent Discovery Plan (IDP), provided to ECOLOGY, and kept on site for all ground-disturbing activities during the grant period of performance.

If applicable, RECIPIENT will relocate tenants in accordance with the Federal Uniform Relocation Act (URA) requirements. Once properties are vacated, the RECIPIENT will conduct cultural or environmental studies as needed, terminate electrical utilities, demolish man-made structures including buildings, decommission and remove wells and septic systems, and remove any man-made debris in an environmentally acceptable manner.

The RECIPIENT will submit a complete Acquisition Report to ECOLOGY and upload all electronic forms in EAGL prior to the reimbursement request of each acquisition and easement. Allow sufficient time for ECOLOGY and the Office of the State Treasurer to process documentation (a minimum of three weeks prior to closing). If there are questions about the Acquisition Report requirements, ask the ECOLOGY Project Manager.

Escrow Process (if applicable): if the RECIPIENT requires funds to acquire a property prior to closing, the RECIPIENT can request (an exception to ECOLOGY's reimbursement policy) by going through the escrow process. This process allows ECOLOGY to pay a RECIPIENT's grant funds in advance for the property acquisition through the title/escrow company.

The RECIPIENT, working through an established title company, will provide ECOLOGY with supporting documents including:

Face Sheet for acquisitions; EAGL Payment Request/Progress Report; Title company's "Wire Transfer Request" with routing number, and wiring instructions for specific property referenced; Settlement Statement; Closing date of transaction.

† When the estimated property value does not exceed \$25,000, and the acquisition is not complex, the RECIPIENT may be exempt from meeting appraisal and review appraisal standards. Such exemptions must be requested in writing and approved by the ECOLOGY Project Manager before the closing on the property. The RECIPIENT must follow the appraisal waiver

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standards in 44 C.F.R. § 24.102.

Task Goal Statement:

The goals of Task 3 are to protect land for flood risk reduction, for ag viability and future restoration through acquisition or easements, improve water quality and habitat, conserve ag land, and continue landowner outreach.

Task Expected Outcome:

1. Protect and preserve at least 200 acres of floodplain protected through property acquisition;
2. Permanently conserve an additional ~200 acres of farmland for continued agricultural use preventing future development;
3. Once property is acquired and structures are removed within acquisition areas, potential to:
 - a. Reconnect ~200 acres of floodplain area and historic side channels.
 - b. Restore up to 90 acres of riparian area Tree plantings will include 75% conifers, 25% deciduous in both mixed tree stands and single species plantings. Riparian shrubs will be planted within roughly 50 ft of the water’s edge.
 - c. Increase floodplain storage for high water events. Maintain river connectivity to the floodplain, increase water quality, and reduce temperatures due to increased connectivity.

Recipient Task Coordinator: Jessica Hamill

3. Easements and Acquisitions

Deliverables

Number	Description	Due Date
3.1	Signed landowner agreement. Upload copies in EAGL and notify ECOLOGY Project Manager.	
3.2	Cultural Resources Review Documents required prior to transfer of acquisition funds. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	
3.3	Complete Acquisition Report for each easement and/or acquired property. *Note, no funds will be transferred for acquisitions unless a Cultural Resources Review has been conducted, per Executive Order 21-02. Upload copies in EAGL and notify ECOLOGY Project Manager.	
3.4	Annotated before and after photos of plantings, upload copies in EAGL and notify ECOLOGY Project Manager.	
3.5	Final planting diagram, uploaded into EAGL and notify ECOLOGY Project Manager.	

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 Recipient Name: Snohomish County Conservation and Natural Resources Dept

SCOPE OF WORK

Task Number: 4 Task Cost: \$3,580,682.00

Task Title: 4. Project Design and Construction

Task Description:

This task involves project design and/or construction at multiple sites in the Lower Skykomish Reach and Snohomish Watershed.

Subtask 4.1 Sultan Reach Agricultural Resilience Projects. As part of the integrated floodway planning effort funded by grant no. SEAFBD-2019-SnCoPW-00051, the RECIPIENT, via an ILA with SCD, is working with partners to develop 30% designs for projects that address the high priority concerns of agricultural landowners in this reach. This will likely include projects that reduce flood pressures on actively eroding farmland or improve agricultural drainage. This task will fund final design and implementation of these projects.

Subtask 4.2 Swans Trail Slough Restoration and Agricultural Resilience Project. The RECIPIENT, via an ILA with SCD, will re-connect Swans Trail Slough with the Snohomish River and separate the slough from the managed drainage system. This will slow down flood waters in the area, create increased drainage for ag land, and offer new habitat for young salmon. This will also entail restoring approximately 72 acres of floodplain to its natural state and improve flood protection and drainage on up to 500 acres of agricultural land. The task also includes two culvert capacity upgrades to improve drainage and upgrades to a pump station to improve fish passage, and will fund final design and some implementation.

Subtask 4.3 Riley and Haskel Slough Water Conveyance and Connectivity Improvements. The RECIPIENT, via an ILA with Tulalip Tribes and SCD, will conduct a feasibility analysis to identify drainage improvements and fish habitat restoration projects for Riley and Haskel Sloughs. This analysis will include development of potential connectivity alternatives, associated geomorphic analyses, hydraulic modeling, a drainage inventory, extensive community outreach, a preferred alternative, and conceptual designs.

SCD and local farmers will develop a long-term approach to managing Riley Slough that includes sediment removal, culvert upgrades, and beaver control to improve agricultural drainage. The RECIPIENT will design and construct two culvert/crossing projects. In addition, The RECIPIENT will complete riparian planting on five acres which will improve fish habitat as well as improve sediment and water conveyance to support ag viability. Tulalip Tribes will complete conceptual design for a future restoration project on Haskel Slough, a roughly 2.4 mile long side channel of the flood refugia habitat in Haskel Slough by modifying the existing inlet dike to promote increased connectivity, water quantity, and water quality.

Subtask 4.4 Final Design(s) for Integrated Project(s) in the Lower Skykomish. The RECIPIENT will complete final designs, permitting, and some implementation for integrated floodplain project(s) in the Lower Skykomish. Specific locations could include Shinglebolt Slough, South Slough, and one additional area identified in subreaches 3-5 of the Lower Skykomish. Specific locations will be determined based on the conceptual design and feasibility work currently being conducted under the 2019 grant. Implementation will result in up to 200 acre-feet of flood inundation reduction, up to 74 acres of newly restored and/or reconnected habitat, up to 3 miles of side channel reconnection, and up to 15,000 cubic yards of sediment waste.

Task Goal Statement:

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Recipient Name: Snohomish County Conservation and Natural Resources Dept

The goals of Task 4 are to:

- A. Begin on-the-ground implementation of priority actions identified in the Agriculture Resilience Plan for Snohomish County. The Agriculture Resilience Plan was developed with extensive input from farmers around the County and based on technical studies of future conditions for flooding, groundwater, saltwater intrusion, and crops. The agriculture resilience projects in this project package are integrated projects that will provide benefits for agriculture and flood protection as well.
- B. Implement actions identified in the reach scale plans that promote floodplain water storage and prevent safety risks and infrastructure damage resulting from catastrophic flood control infrastructure failure.
- C. Complete final design and permitting for a large-scale integrated floodplain project in the Lower Skykomish River. When constructed, the project will provide significant flood risk reduction and habitat restoration benefits without negatively impacting agriculture. The purpose of the project will be to give the river room, increasing connectivity and flood storage.
- D. Increase community support for project implementation through community outreach to adjacent landowners, the local community, and stakeholders.

Task Expected Outcome:

The RECIPIENT will:

- A. Restore up to 3 miles of sides channels;
- B. Restore up to 20 acres of riparian area in the Shinglebolt Slough area;
- C. Increase connectivity to an estimated 40 acres in the Shinglebolt Slough area;
- D. Increase and enhance protection to public infrastructure;
- E. Install up to 26 large woody debris jams/structures;
- F. Final designs, permits, and some implementation actions in the subreach 4 and 5 area (possibly including Shinglebolt etc);
- G. Increase connectivity of 71 Acres (2.4 miles) of priority off-channel habitat;
- H. Increase water quantity and quality of priority off-channel habitat;
- I. Increase safety resulting from engineered dike modification;
- J. Increase protection of infrastructure from engineered dike modification;
- K. Advance 30% designs of 1-2 projects from the 2019 grant to final design and implementation;
- L. Address high priority concerns of landowners by reducing erosion and flood pressures on Sultan Reach farmland;
- M. The successful partial or full reconnection of Swan's Trail Slough;
- N. Development of new salmon habitat;
- O. Increased habitat availability, quality, and accessibility;
- P. Increased drainage and flood protection;
- Q. Restoration of natural streamflows;
- R. Replacement or removal of two fish passage barrier stream crossings;
- S. Revegetation of 5 acres of stream or shoreline with native riparian forest buffer planting; and
- T. Completion of preliminary designs (30%) for drainage infrastructure improvements.

Agreement No: SEAFBD-2123-SnCoPW-00013
 Project Title: Community Floodplain Solutions
 Recipient Name: Snohomish County Conservation and Natural Resources Dept

Recipient Task Coordinator: Jessica Hamill

4. Project Design and Construction

Deliverables

Number	Description	Due Date
4.1	Sultan Reach Ag Resilience Project design and Implementation workplan. Upload copy to EAGL and notify ECOLOGY Project Manager.	
4.2	Sultan Reach Ag Resilience Project Bid documents and signed consultant and contractor contract(s), including design, construction, and construction management contracts. Upload copy to EAGL and notify ECOLOGY Project Manager.	
4.3	Sultan Reach Ag Resilience Project Inadvertent Discovery Plan (IDP). Upload copy in EAGL and notify ECOLOGY Project Manager.	
4.4	Sultan Reach Ag Resilience Project Cultural Resources Review Documents. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	
4.5	Sultan Reach Ag Resilience Project Environmental Compliance. Local, state, and federal environmental permits; landowner agreement(s); and list of the permits obtained. Upload in EAGL and notify ECOLOGY Project Manager.	
4.6	Sultan Reach Ag Resilience Project schedule, including project milestones. Update and include with each quarterly Progress Report/Payment Request for ECOLOGY Project Manager review.	
4.7	Sultan Reach Ag Resilience Final design, signed and sealed by Washington State-licensed engineer. Upload copy in EAGL and notify ECOLOGY Project Manager.	
4.8	Final Report for the Sultan Reach Agricultural Resilience Projects. Upload copy in EAGL and notify ECOLOGY Project Manager."	
4.9	Project design and Implementation workplan for the Swans Trail Slough Restoration and Ag Resilience Project. Upload copy to EAGL and notify ECOLOGY Project Manager.	
4.10	Swans Trail Slough Restoration and Ag Resilience Project Bid documents and signed consultant and contractor contract(s), including design, construction, and construction management contracts. Upload copy to EAGL and notify ECOLOGY Project Manager.	
4.11	Swans Trail Slough Restoration and Ag Resilience Project Inadvertant Discovery Plan (IDP). Upload copy in EAGL and notify ECOLOGY Project Manager.	
4.12	Swans Trail Slough Restoration and Ag Resilience Project Cultural Resources Review Documents. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	

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4.13	Swans Trail Slough Restoration and Ag Resilience Project Environmental Compliance. Local, state, and federal environmental permits; landowner agreement(s); and list of the permits obtained. Upload in EAGL and notify ECOLOGY Project Manager.	
4.14	Swans Trail Slough Restoration and Ag Resilience Project schedule, including project milestones. Update and include with each quarterly Progress Report/Payment Request for ECOLOGY Project Manager review.	
4.15	Swans Trail Slough Restoration and Ag Resilience Final design, signed and sealed by Washington State-licensed engineer. Upload copy in EAGL and notify ECOLOGY Project Manager.	
4.16	Final report for the Trail Slough Restoration and Ag Resilience Project. Upload copy in EAGL and notify ECOLOGY Project Manager	
4.17	Riley/Haskel Community/Stakeholder Outreach including meeting notes, attendance, and Outcomes documentation. Upload in EAGL and notify ECOLOGY Project Manager.	
4.18	Riley/Haskel Feasibility Analysis including description of project site and problems within the context of salmon recovery and identification of specific goals and objectives to address the problems.	
4.19	Riley/Haskel Quality Assurance Project Plan (QAPP) or QAPP Waiver for the collection and analysis of environmental data, and submit for review and approval by the Project Manager prior to sampling. The RECIPIENT will comply with QAPP requirements in Section 12. Environmental Data Standards of the Agreement General Terms and Conditions.	
4.20	Riley/Haskel Geomorphic analyses and hydraulic modelling to inform and be included in feasibility and alternative analyses.	
4.21	Riley/Haskel Alternatives Analysis including identification and conceptual design of alternatives to achieve project objectives and selection of the preferred alternative.	
4.22	Riley /Haskel conceptual and 30% design including construction cost estimates. Upload copy to EAGL and notify ECOLOGY Project Manager.	
4.23	Riley/Haskel Fish Passage Environmental Compliance. Local, state, and federal environmental permits; landowner agreement(s); and list of the permits obtained. Upload in EAGL and notify ECOLOGY Project Manager.	
4.24	Riley/Haskel Fish Passage Bid documents and signed consultant and contractor contract(s), including design, construction, and construction management contracts. Upload copy to EAGL and notify ECOLOGY Project Manager.	
4.25	Riley/Haskel Inadvertant Discovery Plan (IDP) to cover all project areas. Upload copy in EAGL and notify ECOLOGY Project Manager.	

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4.26	Riley/Haskel Cultural Resources Review Documents for all project areas under construction. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	
4.27	Riley/Haskel Fish Passage Project schedule, including project milestones. Update and include with each quarterly Progress Report/Payment Request for ECOLOGY Project Manager review.	
4.28	Riley/Haskel Fish Passage final design, signed and sealed by Washington State-licensed engineer. Upload copy in EAGL and notify ECOLOGY Project Manager.	
4.29	Riley/Haskel Fish Passage As-built drawings. Upload copy in EAGL and notify ECOLOGY Project Manager.	
4.30	Riley/Haskel Fish Passage Annotated before and after photos of the construction phase and plantings. Upload in EAGL and notify ECOLOGY Project Manager.	
4.31	Riley/Haskel Drainage infrastructure improvements Preliminary Designs.	
4.32	Lower Skykomish Environmental Compliance. Local, state, and federal environmental permits; landowner agreement(s); and list of the permits obtained. Upload in EAGL and notify ECOLOGY Project Manager.	
4.33	Lower Skykomish Bid documents and signed consultant and contractor contract(s), including design, construction, and construction management contracts. Upload copy to EAGL and notify ECOLOGY Project Manager.	
4.34	Lower Skykomish Inadvertant Discovery Plan (IDP) to cover all project areas. Upload copy in EAGL and notify ECOLOGY Project Manager.	
4.35	Lower Skykomish Cultural Resources Review Documents for all project areas under construction. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	
4.36	Lower Skykomish Project schedule, including project milestones. Update and include with each quarterly Progress Report/Payment Request for ECOLOGY Project Manager review.	
4.37	Lower Skykomish final design, signed and sealed by Washington State-licensed engineer. Upload copy in EAGL and notify ECOLOGY Project Manager.	
4.38	Signed Interlocal Agreement with Snohomish Conservation District. Upload copy in EAGL and notify ECOLOGY Project Manager.	
4.39	Signed Interlocal Agreement with the Tulalip Tribe. Upload a copy in EAGL and notify ECOLOGY Project Manager	

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Funding Distribution Summary**Recipient / Ecology Share**

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
Floodplains by Design	20.00 %	\$ 2,141,044.00	\$ 8,564,176.00	\$ 10,705,220.00
Total		\$ 2,141,044.00	\$ 8,564,176.00	\$ 10,705,220.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS**Floodplains by Design and Flood Control Assistance Account Program - Special Terms and Conditions**

1. **Local Decision:** This grant is made in response to a request for financial assistance from the RECIPIENT to undertake flood damage prevention projects. The choice of floodplain management activities addressed by this grant is a local decision made solely by the RECIPIENT. The RECIPIENT is not acting as an agent of the State of Washington.
2. **Lawsuits:** Ecology shall not be responsible for any non-contractual damage or inverse condemnation claims resulting from the structures or works constructed, repaired, restored, maintained, or improved pursuant to this grant.
3. **Indemnification, Hold Harmless and Duty to Defend**
 - a. Ecology shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the scope of work.
 - b. This paragraph applies to negligence based claims only. All other claims are governed by paragraph 4 of this section (item 3.d). To the extent the constitution and laws of the State of Washington permit, RECIPIENT shall indemnify, defend and hold harmless the State, its agencies, officers and employees, from all claims, suits or actions brought for any or all injuries to persons or property arising from, or as a consequence of, negligent acts or omissions related to the construction, restoration, repair, maintenance, improvement or operation of the structures or works for which this grant is provided. If the structures or works for which this grant is received are a portion of an integrated flood protection system, RECIPIENT agrees to indemnify, defend and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the operation, maintenance, or repair of that integrated flood protection system; PROVIDED, however, that this provision is not intended to and shall not be construed as a waiver by RECIPIENT of any immunities conferred upon the RECIPIENT by RCW 86.12.037 nor is it intended to, and it shall not be construed to, confer any rights upon third parties.
 - c. The RECIPIENT will not be required to indemnify, defend, or save harmless the State, its agencies, officers or employees as provided in the preceding paragraph of this section if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the State. Where such claims, suits, or actions result from the concurrent negligence of (a) the State, or the State's agents or employees and (b) the RECIPIENT or the RECIPIENT's agents or employees, the indemnity provisions provided in the preceding paragraphs of this section shall be valid and enforceable only to the extent of the RECIPIENT's negligence or the negligence of its agents and employees.
 - d. To the extent that the constitution and laws of the State of Washington permit, RECIPIENT shall indemnify and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the continued operation, maintenance, or repair of the structures or works constructed, restored, repaired, maintained or improved as a result of this grant. If the structures or works for which this grant is received are portions of an integrated flood protection

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system, RECIPIENT agrees to indemnify, defend and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the operation, maintenance, or repair of that integrated flood protection system; PROVIDED, however, that the indemnity provisions of this paragraph are not intended to and shall not be construed as a waiver by Recipient of any immunities conferred upon the Recipient by RCW 86.12.037 nor are they intended to, and they shall not be construed to, confer any rights upon third parties. This agreement applies to all non-negligent, non-contractually based claims including, but not limited to, inverse condemnation, contribution, indemnification, trespass and/or nuisance.

4. Any development activity funded by this grant which occurs in the Federal Emergency Management Agency (FEMA)-mapped regulatory floodplain, also known as the Special Flood Hazard Area (SFHA), may trigger the need for a floodplain development permit from the local agency with floodplain management jurisdiction. "Development" is defined at 44 CFR 59.1 as " ... any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials." Further, any activity funded by this grant may change the base flood elevations from physical changes affecting the floodplain. Communities are required by 44 CFR 65.3 to submit new data to FEMA in the event their actions affect the base flood elevation and the regulatory map (the SFHA).

5. ECOLOGY waives property acquisition report appraisal requirements for properties valued at \$25,000 or less. When the estimated property value does not exceed \$25,000, and the acquisition is not complex, the RECIPIENT may be exempt from meeting appraisal and review appraisal standards. Such exemptions must be requested in writing and approved by the ECOLOGY Project Manager before the closing on the property. The RECIPIENT must follow the appraisal waiver standards in 44 C.F.R. § 24.102.

6. Some RECIPIENTS are required to provide grant match. Match is made up of three different types of contributions: cash expenditures, in kind other, and in kind interlocal. Cash match expenditures are eligible costs paid by the RECIPIENT and are not reimbursed by ECOLOGY. In kind contributions are property or services that benefit a project and are contributed to the RECIPIENT by a third party without direct monetary compensation. In kind other is a type of contribution where the third party making the contribution is not a government entity. In kind interlocal is a type of contribution where both the grant RECIPIENT and the third party making the contribution are both government entities and have a signed Inter-local agreement between them.

7. RECIPIENTS are required to submit a copy of the original invoice in the Payment Request backup documentation if an invoice number is referenced on a primary or subcontractor invoice.

8. To be eligible for reimbursement, RECIPIENTS must provide documentation of how an expenditure is directly related to the project. Ecology will not reimburse any expenditure that is already included in the indirect rate. At Ecology's sole discretion, ECOLOGY may approve reimbursement for the percentage of an expenditure that is directly related to the project.

FLOODPLAINS BY DESIGN FUNDING PROGRAM AND FCAAP GRANTS SPECIAL TERMS AND
 CONDITIONS LAST UPDATED MAY 2021.

GENERAL FEDERAL CONDITIONS

If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements

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contained in the certification, they must provide an explanation as to why they cannot.

2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at www.fsr.gov <http://www.fsr.gov> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <http://www.usaspending.gov>.

For more details on FFATA requirements, see www.fsr.gov <http://www.fsr.gov>.

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE

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SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#) <<https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](#) <<https://sam.gov/SAM/>> exclusion list.

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GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

06/24/2021 Version

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
- * For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

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- For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
- Make the IDP readily available to anyone working at the project site.
- Discuss the IDP with staff, volunteers, and contractors working at the project site.
- Implement the IDP when Cultural Resources or human remains are found at the project site.
- c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
 - Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
 - Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

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j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this 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.

9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

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The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

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16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

20. PROGRESS REPORTING

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- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
 1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

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22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
 - b) Be kept in a common file to facilitate audits and inspections.
 - c) Clearly indicate total receipts and expenditures related to this Agreement.
 - d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.
- RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

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27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,

<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no

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event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

End of General Terms and Conditions