

INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE  
TULALIP TRIBES OF WASHINGTON TO IMPLEMENT PORTIONS OF THE  
SHORELANDS FLOODPLAINS BY DESIGN PHASE III AGREEMENT

Execution through June 30, 2027

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This Interlocal Agreement Between Snohomish County and the Tulalip Tribes of Washington to Implement Portions of the Shorelands Floodplains by Design Phase III Agreement (this “Agreement”) is made 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. The Washington State Department of Ecology (“Ecology”) awarded Shorelands Floodplains by Design Grant funds to Snohomish County under Award No. SEAFBD-2325-SnCoCN-00046 (the “Grant”) beginning July 1, 2023, for work on the Community Floodplain Solutions program to advance implementation of integrated floodplain management in the Snohomish Watershed; and

B. The Grant identifies the Tribes as a project partner for portions of Tasks 3 and 4 and the Tribes is willing and able to implement those tasks; and

C. 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

D. 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. PURPOSE OF AGREEMENT**

The County received funding from Ecology to perform work under the Community Floodplain Solutions program. The source of funds for this Agreement is the Grant. The purpose of this Agreement is for the County to contract with the Tribes for those professional services described in Appendix A to this Agreement, attached hereto and incorporated herein by this reference, which consist of some of the activities required by the Grant.

## **2. DURATION OF AGREEMENT**

- A. The term of this Agreement (the “Term”) shall commence upon the Effective Date and shall expire on June 30, 2027, unless terminated sooner as provided herein. The County’s obligations after December 31, 2023, 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 39.34.040, this Agreement shall not take effect 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 (the “Effective Date”).

## **3. SCOPE OF WORK**

The Tribes shall perform the work described in Appendix A to this Agreement, attached hereto and incorporated by this reference herein, and shall furnish the personnel, equipment, and materials necessary to perform such work. If there are any conflicts between Appendix A and the Grant, the Grant shall control. The Grant is attached to this Agreement as Appendix D.

## **4. PERFORMANCE**

The Tribes agree to perform under this Agreement in a timely and professional manner. The Tribes shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Agreement. The Tribes shall comply with all conditions, terms, and requirements of the Grant, attached hereto as Appendix D and incorporated herein by this reference.

## **5. SUBCONTRACTING**

- A. The Tribes shall not enter into any subcontracts for any of the work contemplated under this Agreement without the written prior approval of the County. In no event shall the existence of any subcontract operate to release or reduce the liability of the Tribes to the County for any breach in the performance of the Tribes’ duties under this Agreement. This clause does not include contracts of employment between the Tribes and personnel assigned to work under this Agreement.
- B. The Tribes is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Agreement are carried forward to any subcontracts. The Tribes and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the County and Ecology or as provided by law.
- C. If, at any time during the progress of the work, the County determines in its sole judgment that any subcontractor is incompetent, the County shall notify the Tribes, and the Tribes shall take immediate steps to terminate the subcontractor’s involvement in the work. The

rejection or approval by the County of any subcontractor or the termination of a subcontractor shall not relieve the Tribes of any of its responsibilities under this Agreement, nor be the basis for additional charges to the County.

## 6. 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:

Department of Conservation and Natural Resources  
Surface Water Management Director  
3000 Rockefeller Ave M/S 303  
Everett, WA 98201

Tribes Administrator:

Environmental Manager  
Tulalip Tribes of Washington  
PO Box 277  
Tulalip, WA 98271

Either party may change its administrator at any time by delivering written notice of such party's new administrator to the other party's administrator.

## 7. RIGHTS AND RESPONSIBILITIES OF THE COUNTY

### A. Monitoring.

- (1) The County shall monitor the performance of the Tribes' work under this Agreement. The County shall examine work product, quarterly reports, and invoices submitted by the Tribes, and shall render decisions concerning acceptability of work and payment of invoices. In the event the Tribes makes a written request for information from the County relative to completion of the Tribes' work, the County shall respond either by providing such information, if available, within a reasonable time period, or by providing a rationale for the County's inability to provide such information.
- (2) Upon the Tribes' submittal of any report, invoice, or other information required under this Agreement, the County may accept, reject, request modifications to, or request additions to the work, as the County deems appropriate.

### B. Compensation.

- (1) The budget for work to be performed under the Agreement is **\$2,812,500**, which includes \$150,000 of match funding as set forth in Appendix B to the Agreement, attached hereto and incorporated herein. 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 **\$2,662,500** as set forth in Appendix B.
- (2) The County shall compensate the Tribes only for such costs that are: 1) incurred during the term of this Agreement; 2) are necessary to perform the work described in Appendix A of this Agreement; and 3) are costs specified in Appendix B to the Agreement.

- (3) The County will compensate the Tribes according to the hourly rates set forth in Appendix B to this Agreement. The Tribes may request an increase in hourly rates, which may be approved by the Director of the Department of Conservation and Natural Resources in their sole discretion, as long as any rate increase would not cause total compensation under the Agreement to exceed **\$2,812,500**, including the Tribes' \$150,000 match funding. Any hourly rate increase will be applied prospectively only. The Tribes may charge an additional overhead rate of 21.49% of such hourly rates. Compensation for work performed under this Agreement will not be made until the work is accepted by the County. Requests for compensation by the Tribes shall consist of an invoice and a progress report. Invoicing requirements are described in Section 8 of this Agreement. The progress report must describe the work completed within the invoice period, and must itemize the Tribes' work with an hourly rate apportioned amongst the various tasks set forth in Appendix A.
- (4) The County will pay the Tribes within thirty (30) days of accepting work detailed in a written invoice, provided the progress report that accompanies the invoice clearly identifies work performed during the invoice period. Funds will be deposited with the Tribes.
- (5) The source of funds for this Agreement is the Grant. Such funds shall be used only in fulfilling work specified in Appendix A. If a reduction of funds occurs, the County may unilaterally terminate all or part of this Agreement or may reduce the scope of work detailed in Appendix A consistent with Section 12 of this Agreement.

## 8. INVOICES

The Tribes shall submit all invoices quarterly, to:

**Email to: [SWMContracts@snoco.org](mailto:SWMContracts@snoco.org) (preferred)**

**OR**

Snohomish County Department of Conservation and Natural Resources  
Attn: Connie Price, Contract Specialist  
3000 Rockefeller Ave., M/S 303  
Everett, WA 98201

Invoices shall be submitted within thirty (30) days of the end of the first three quarters, and within ten (10) days of the end of the last quarter. Said invoices shall be for services performed in fulfillment of this Agreement and shall include an accounting of time spent on tasks identified in Appendix A. Invoices will not be approved until the Progress Reports are uploaded to the SharePoint site at the "Quarterly Reporting" page of the CFS homepage [Community Floodplain Solutions - Home \(sharepoint.com\)](http://CommunityFloodplainSolutions-Home.sharepoint.com) or sent directly to Jessica Hamill at [Jessica.Hamill@snoco.org](mailto:Jessica.Hamill@snoco.org). Upon expiration of this Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

**9. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION**

A. Funding for this Agreement is provided through federal funding sources.

B. The following terms and conditions apply:

- (1) The Tribes, 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.
- (2) The Tribes shall provide immediate written notice to Ecology if at any time the Tribes 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 Section 9 of this Agreement, have the meaning set out in the Definitions and Coverage sections of federal rules implementing federal Executive Order 12549.
- (4) The Tribes 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 Tribes 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 2 CFR 180.330, the Tribes is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
- (7) The Tribes 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) The Tribes agree 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. The Tribes must run a search in <<http://www.sam.gov>> and print a copy of completed searches to document proof of compliance.

## **10. AUDIT AND INSPECTION**

The Tribes shall maintain records pursuant to this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The Tribes' records shall be available for inspection and audit by the County, the State Auditor, federal auditors, and any persons duly authorized by the parties. The Tribes 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.

## **11. ENTIRETY OF AGREEMENT**

This Agreement constitutes the entire agreement between the County and the Tribes 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 County and the Tribes with regards to the instant subject matter except as expressly set forth in this instrument.

## **12. DELAYS, REVISIONS, AND TERMINATION**

- A. The County shall have cause to terminate or suspend this Agreement or refuse payments hereunder for failure of the Tribes' work or products to fulfill any requirements of the Agreement, for failure of the Tribes to submit products in a timely fashion, or for any delays, errors or omissions attributable to the Tribes. Failure by the County to terminate or suspend the Agreement, or failure by the County to refuse payment of an invoice, shall not constitute a waiver of the County's right to terminate or suspend or to refuse payment nor a forfeiture of the County's future right to terminate, suspend or refuse payment. At the County's option, all finished or unfinished work products prepared by the Tribes under this Agreement shall become property of Ecology, provided the Tribes is compensated as specified in this Agreement and that such products are satisfactory to the County.
- B. The County may terminate this Agreement for a violation of express provisions of this Agreement by the Tribes or for cause. The County will give the Tribes written notice of such violation or failure. The Tribes will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the County to the Tribes. A decision by the County not to terminate after a failure by the Tribes to meet its responsibilities shall not constitute a waiver of the right to terminate based on such failed responsibility nor a forfeiture of the County's right to terminate in the future.
- C. The County may terminate this Agreement at any time without cause by a thirty day (30) written notice to the Tribes. If this Agreement is terminated by the County as provided herein, the Tribes will be paid for services performed prior to the time of termination or work stoppage, whichever comes first, in accordance with the current billing rates, provided that work continues to fulfill all requirements under this Agreement.
- D. The County and Tribes may terminate this Agreement by written mutual consent of both parties.

- E. If a reduction of funds occurs, the County may unilaterally terminate all or part of this Agreement or may reduce the scope of work detailed in Appendix A with written notice to the Tribes.
- F. 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. The Agreement will terminate thirty (30) days after receipt of the Tribes' written notification. The Tribes will be paid for services performed prior to the time of termination or work stoppage, whichever comes first, in accordance with the current billing rates, provided that work continues to fulfill all requirements under this Agreement.
- G. This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
- H. In the event that 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 the Agreement, subject to renegotiation under those new funding limitations and conditions.

### **13. RIGHTS AND REMEDIES**

- A. 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.
- B. In the event the County withdraws from or terminates this Agreement, the County will not be held liable for any monetary loss incurred by the Tribes due to termination.

### **14. HOLD HARMLESS**

- A. 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 reasonable 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 negligence of the County. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of the Tribes, and the Tribes, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, under any industrial insurance act, including Title 51 RCW, other

Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

- B. In the event that the County incurs any judgment, award and/or cost including reasonable attorney's fees arising from the provisions of this subsection, or to enforce the provisions of this subsection, any such judgment, award, fees, expenses and costs shall be recoverable from the Tribes. In the event of litigation between the parties to enforce the rights under this subsection, reasonable attorney fees shall be allowed to the substantially prevailing party.
- C. Nothing contained within this Section shall affect and/or alter the application of any other term or condition of this Agreement. The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

## 15. LIMITED WAIVER OF SOVEREIGN IMMUNITY, DISPUTE RESOLUTION, AND VENUE

- A. Limited Waiver of Sovereign Immunity. The Tribe expressly retains and reserves all rights and benefits of its inherent sovereign rights as a sovereign Tribe, including its rights as a federally-recognized Tribe to sovereign immunity from suit in any state, federal or tribal court without the Tribes' explicit consent. Nothing in this Amendment shall be deemed as a waiver of sovereign immunity or as increasing the Tribes' liability beyond any statutory or other limitation of liability, except as expressly stated herein. The Tribes hereby expressly provides a limited waiver of sovereign immunity, subject to and conditioned on the following:
  - (i) This limited waiver of sovereign 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 assigns of the County;
  - (ii) 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, with the exception that the Tribe consents to the levy of monetary judgments in favor of the County against the Tribe's bank account(s); and
  - (iii) Nothing contained 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.
  - (iv) The Tribe's limited waiver of sovereign immunity to suit is only with respect to claims:
    - 1) brought by the County to enforce the terms of the Agreement; or
    - 2) upon a claim of indemnification by the County due to third party claims against the County relating to, or arising under, the Agreement.

### B. Dispute Resolution.

- (i) This Dispute Resolution section applies only to disputes between the County and the Tribes, as referenced in Subsection A(iv)(1). The County and the Tribes shall, if possible,



first attempt to resolve any disputes through informal negotiations. If that is not possible or is unsuccessful, the County and the Tribe shall elect to resolve the dispute through binding arbitration.

(ii) Informal negotiations shall require the County and the Tribes to attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Either the County or the Tribes may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (1) a statement of each party's position and a summary of arguments supporting that position, and (2) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place. Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of executives described above. Such closure shall not preclude continuing or later negotiations, if desired. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys, are confidential, privileged, and inadmissible for any purposes, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

(iii) Arbitration. In the event the County and the Tribes are unable to resolve any controversy, claim, or dispute under Subsection A(iv)(1) of this Agreement, the County and the Tribes shall resolve any such controversy, claim, or dispute through binding arbitration conducted under Judicial Arbitration and Mediation Services (JAMS) rules. Prior to invoking arbitration, the parties may agree to mediation, in which event the parties will use their best efforts to select a mediation as soon as possible. The mediator's costs and attendant costs of mediation shall be borne equally by the parties. Either party may make a written demand for binding arbitration before a qualified arbitrator in Seattle, Washington, or at another place as the parties may agree in writing. Request for binding arbitration under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute, or completion of any informal negotiations conducted by the parties concerning the disputed action or position, whichever is later. A qualified arbitrator will mean a person generally familiar with the subject matter of the controversy, claim, or dispute with at least five years of arbitration experience, and knowledge of federal Indian law, if federal Indian law is part of the dispute. Each party will pay for its own attorneys' fees and costs. The arbitrator's award shall be binding upon the parties and no appeal shall be permitted, except for a request to vacate under RCW 7.04A.230 or 9 U.S.C. § 10. The parties expressly agree that any arbitration judgment may be enforced in Snohomish County Superior Court.

(iv) In disputes between the Tribes and the County, each party shall bear its own attorneys' fees and costs, except as set forth in Section 14.B of this Agreement.

C. Third Party Claims. The Tribes consents to the jurisdiction of a state or federal court of competent jurisdiction upon a claim of indemnification by the County, pursuant to Subsection A(iv)(2), in the event of third party claims against the County relating to, or arising under, the Agreement.

## 16. NONASSIGNMENT

The Tribes shall not assign or delegate any of the rights, duties or obligations covered by this Agreement without prior express written consent by the County.

## 17. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference 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.

## 18. INSURANCE

The Tribes shall carry for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Tribes, its agents, representatives, employees or subcontractors. Annual proof of insurance will be submitted to the County. Such insurance shall name the County as an additional insured and shall not be reduced or canceled without thirty days prior written notice to the County.

**No Limitation.** The Tribes maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Tribes to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

The Tribes shall obtain insurance of the types described below:

A. Minimum Scope and Limits of Insurance. The Tribes shall maintain coverage at least as broad as, and with limits no less than:

- (i) General Liability: \$ 1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$ 2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations;
- (ii) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1;
- (iii) Workers' Compensation: Statutory requirements of the state of residency; and

(iv)Employers' Liability or "Stop Gap" coverage: \$ 1,000,000.

B. Other Insurance Provisions and Requirements. The insurance coverages required in this Agreement for all liability policies except Workers Compensation are to contain, or be endorsed to contain, the following provisions:

- (i) The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Tribes in connection with this Agreement. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2026 11/85" or its equivalent is required. **The County requires this Endorsement to complete the Agreement.**
- (ii) The Tribes insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- (iii) Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Tribes liability to the County and shall be the sole responsibility of the Tribes
- (iv) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after forty-five (45) calendar days' prior written notice, has been given to the County.
- (v) Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time any of the foregoing policies fail to meet minimum requirements, the Tribe shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

C. In the alternative, either party to this Agreement may fulfill the insurance obligation contained herein by maintaining membership in a joint self-insurance program authorized by Chapter 48.62 RCW. In this regard, the parties understand that the party to this Agreement who is a member of such a program is not able to name the other party as "additional insured" under the liability coverage provided by the joint self-insurance program.

## 19. INDEPENDENT CONTRACTOR

The Tribes will perform the services under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. The parties agree that the Tribes is not

entitled to any benefits or rights enjoyed by employees of the County. The Tribes specifically has the right to direct and control the Tribes' own activities in providing the agreed services in accordance with the specifications set out in this Agreement. The County shall only have the right to ensure performance.

**20. 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.

**21. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

**22. 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.

**23. THIRD PARTY BENEFICIARY**

The State of Washington Department of Ecology is expressly named as a third-party beneficiary.

IN WITNESS WHEREOF, the County and the Tribes execute this Agreement on the date set forth under their signatures below.

**SNOHOMISH COUNTY:**

Snohomish County, a political subdivision of the State of Washington

By \_\_\_\_\_  
County Executive Date

**TULALIP TRIBES:**

Tulalip Tribes of Washington, a federally recognized Indian Tribe

By Jeri Golbin  
Date 5/31/24  
Title: Tulalip Tribes chair

**Approved as to Form:**

Kisielius,  
Laura  
Deputy Prosecuting Attorney

Digitally signed by  
Kisielius, Laura  
Date: 2024.05.03  
10:15:12 -07'00'

**Approved as to Insurance Provision:**

\_\_\_\_\_  
Risk Management

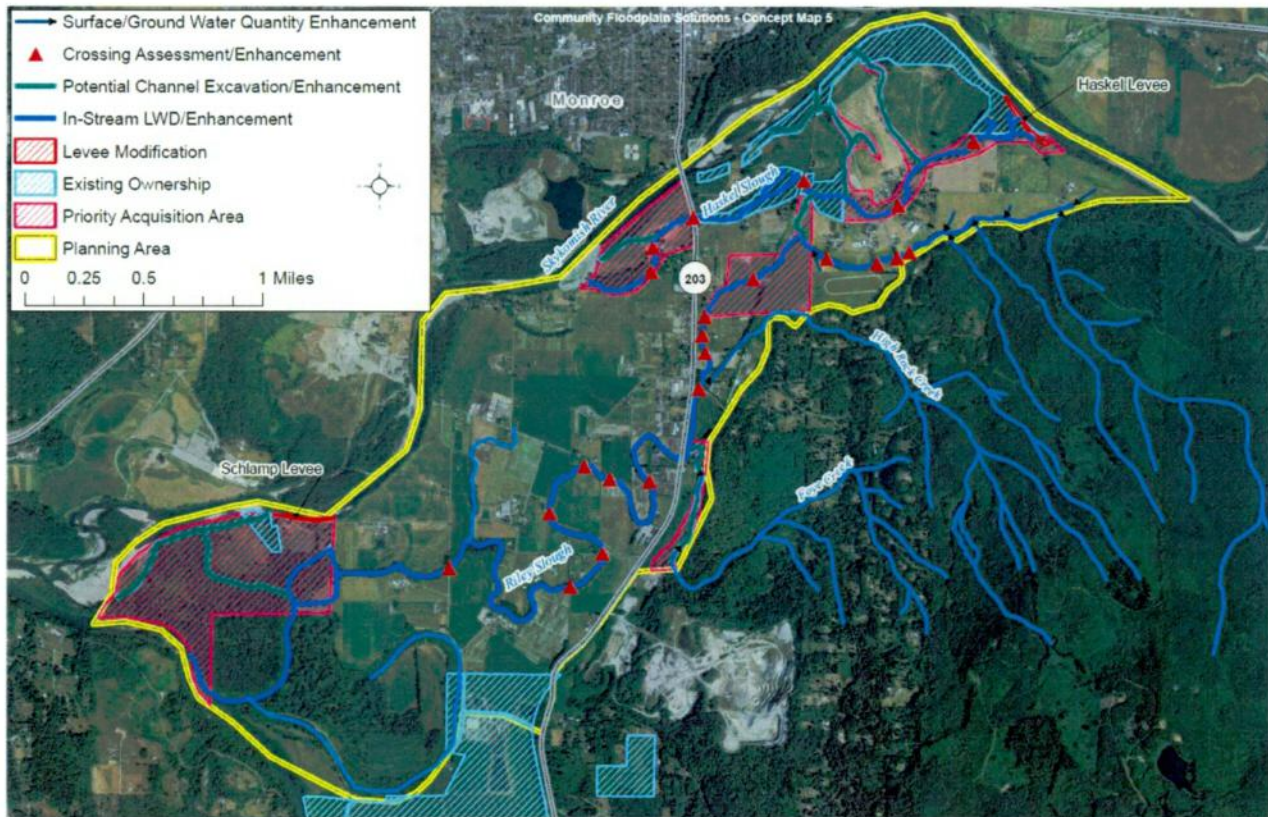
## APPENDIX A SCOPE OF WORK

This scope of work is intended to more specifically describe those portions of Tasks 3 and 4 of the County Grant that will be performed by the Tribes under the Interlocal Agreement Between Snohomish County and the Tulalip Tribes of Washington to Implement Portions of the Shorelands Floodplains by Design Phase III Agreement (“Agreement”). If there are any conflicts between this scope of work and the County Grant (# SEAFBD-2325-SnCoCN-00046), the County Grant governs. This scope of work is intended to protect land for permanent flood risk reduction and future restoration of natural river processes while supporting agricultural viability.

### Task 1 –Tualco Valley Acquisitions [Portion of County Grant Task 3]

This task would permanently preserve habitat and agricultural land through property acquisition and easements. Preserving land in the floodplain is critical to preventing new development at risk from flooding, securing the land base for multi-benefit project implementation. This task entails property acquisition of a minimum of 50 acres in the Tualco Valley area (see “Planning Area” in Image #1 below) and up to 30 additional acres within the broader Snohomish Estuary/Snohomish River and/or Lower Skykomish Subreaches 1-5. Acquisitions shall be guided by the Lower Skykomish Floodplain Land Strategy, completed in June 2021.

### Image #1 – Tualco Valley Project Area



### **Task 1 – Expected Outcome**

- The Tribes shall acquire, through fee simple ownership and/or conservation easements, a minimum of 50 acres in the Tualco Valley area and up to 30 additional acres within the broader Snohomish Estuary/Snohomish River and/or Lower Skykomish Subreaches 1-5 for the purpose of protecting in perpetuity floodplain connectivity and natural process function and/or for the purpose of facilitating restoration goals including the connection and enhancement of side channel habitat.
- If applicable, the Tribes will relocate tenants in accordance with the Federal Uniform Relocation Act (URA) requirements. Once properties are vacated, the Tribes will conduct cultural or environmental studies when determined needed by the Tribes, 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.

### **Task 1 – Required Deliverables by the Tribes to the County**

- **[County Grant Deliverable 1.1]** Quarterly project reports that describe progress toward the outcomes above and billings **DUE to County: Quarterly through duration of Agreement** (April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup> and January 7<sup>th</sup>)
- **[County Grant Deliverable 3.1]** Complete Acquisition Report for each property and/or conservation easement purchased. Submit to ECOLOGY Project Manager and upload electronic acquisition forms in EAGL. **DUE to County: June 30, 2027**
- **[County Grant Deliverable 3.2]** Cultural Resource Review documents, including Inadvertent Discovery Plan and survey (when required), for each property purchased. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager. **DUE to County: Prior to any property acquisition.**
- **[County Grant Deliverable 3.5]** Project area GIS shapefiles showing the location of acquisitions and easements. Save the shapefiles in a .zip file and upload to EAGL. Notify ECOLOGY Project Manager. **DUE to County: June 30, 2027**

### **Task 1 – FbD grant - \$1,500,000**

### **Task 2 – Riparian Forest Health Implementation [Portion of County Grant Task 4]**

This task will implement the FY19 funded Riparian Forest Health Strategy to remove invasive plants and plant a minimum of 15 acres of native trees and shrubs adjacent to and within the floodplain of the Skykomish River and associated oxbows/side channels.

### **Task 2 – Expected Outcomes**

- The Tribes shall remove invasive plants, including knotweed, and plant a minimum of 15 acres of riparian area, consisting of native trees, shrubs, and other appropriate vegetation consistent with the Riparian Forest Health Strategy. Replanting shall occur adjacent to and within the floodplain of the Skykomish River and associated oxbows/side channels. This includes thinning of overstocked timber stands, invasive weed control, and the planting.

### **Task 2 – Required Deliverables by the Tribes to the County**

- **[County Grant Deliverable 1.1]** Quarterly project reports that describe progress toward the outcomes above and billings. **DUE to County: Quarterly through duration of Agreement** (April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup> and January 7<sup>th</sup>)
- **[County Grant Deliverable 4.1]** Planting plan, including species and quantity for plantings. Tulalip Tribes will monitor. **DUE to County: June 30, 2026**
- **[Portion of County Grant Deliverable 4.2]** Collaboration with County and grant partners on *Monitoring, Maintenance and Adaptive Management Plan* which will cover all planting projects. **DUE to County: 6/30/2025**
- **[County Grant Deliverable 4.3]** Annotated before and after photos of the planting phase. **DUE to County: June 30, 2027**

### **Task 2 – FbD grant - \$225,000**

### **Task 3 – Tualco Valley Final Design and Permitting [Portion of County Grant Task 4]**

Juvenile salmon rearing and flood refugia habitat will be enhanced in Haskel and Riley Sloughs by modifying the Haskel inlet dike and implementing a variety of flow conveyance and connectivity projects in Haskel and Riley Sloughs to promote increased connectivity, drainage, flood risk reduction, water quantity, and water quality. This task is a continuation of the preliminary 30% design developed under Task 3 of the Interlocal Agreement Between Snohomish County and the Tulalip Tribes of Washington to Implement Portions of the Community Floodplain Solutions – Phase II Project (“Phase II ILA”). This task will focus on final design, permitting, and outreach for the Tualco Valley project. This project phase will build off preliminary design currently underway to produce a final design and conduct continued community outreach to produce a shovel ready project for the subsequent project phase.

### **Task 3 – Expected Outcomes**

- The Tribes shall complete final design and permitting for the Tualco Valley project for which a preliminary design was developed under the Phase II ILA.

### **Task 3 – Required Deliverables by the Tribes to the County**

- **[County Grant Deliverable 1.1]** Quarterly project reports that describe progress toward the outcomes above and billings. **DUE to County: Quarterly through duration of Agreement** (April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup> and January 7<sup>th</sup>)
- **[County Grant Deliverable 4.5]** Cultural Resource Review documents, including Inadvertent Discovery Plan and survey (when required) for Tualco Valley. **DUE TO COUNTY: June 30, 2027**
- **[County Grant Deliverable 4.6]** Copy of all required local, state, or federal permits. **DUE to County: June 30, 2027**
- **[County Grant Deliverable 4.10]** Final design and site map of Tualco Valley project, signed and stamped by a Washington State-licensed engineer. **DUE to County: June 30, 2027**

### **Task 3 – FbD grant - \$937,500**



**APPENDIX B  
BUDGET**

The budget for work to be performed under the Agreement is Two Million Eight Hundred Twelve Thousand Five Hundred Dollars (\$2,812,500). Of this budget, One Hundred Fifty Thousand Dollars (\$150,000) 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 Two Million Six Hundred Sixty-Two Thousand Five Hundred Dollars (\$2,662,500).

Charges reported as match and consistent with the Washington Department of Ecology Floodplains by Design Grants Funding Guidelines 2023-25 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**

<b>Task</b>	<b>Description</b>	<b>County Grant</b>	<b>Match</b>
<b>1</b>	Tualco Valley Acquisitions	\$1,500,000	
<b>2</b>	Riparian Forest Health Implementation	\$225,000	
<b>3</b>	Tualco Valley Final Design and Permitting	\$937,500	
	Match for Tasks 1-3 of Interlocal Agreement		\$150,000
	<b>Totals</b>	\$2,662,500	\$150,000
	<b>Interlocal Agreement Grand Total</b>	<b>\$2,812,500</b>	

**Salary Rates**

	<b>Job Classification/Title</b>	<b>Maximum Comp Rate</b>
1	Senior Scientist	\$70/hour
2	Conservation Advisor	\$70/hour
3	Restoration Biologist	\$65/hour
4	Restoration Ecologist	\$60/hour
5	Stewardship Ecologist	\$55/hour

*\*Rate includes salary and benefits only.*

Reimbursable project costs include mileage at the current GSA rate. Reimbursable expenses will be listed on invoices as task expenses and will be reimbursed based on actual costs. Backup documentation of expenses must be included with the invoices and is required prior to reimbursement.

Indirect will be charged at a rate of 21.49% and apply to salaries and benefits only.

**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.

**Tribes' invoices** will clearly communicate ILA task numbers associated with charges, and include sufficient backup documentation for billing and audit purposes, such as:

**Task 1 –Tualco Valley Acquisitions [Portion of County Grant Task 3]**

***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						

**APPENDIX D**  
**AGREEMENT NO. SEAFBD-2325-SNCOCN-00046**



## Agreement No. SEAFBD-2325-SnCoCN-00046

### SHORELANDS FLOODPLAINS BY DESIGN AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

SNOHOMISH COUNTY

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, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

#### GENERAL INFORMATION

Project Title:	Community Floodplain Solutions - Phase 3 Implementation
Total Cost:	\$26,593,925.00
Total Eligible Cost:	\$12,382,500.00
Ecology Share:	\$9,906,000.00
Recipient Share:	\$2,476,500.00
The Effective Date of this Agreement is:	07/01/2023
The Expiration Date of this Agreement is no later than:	06/30/2027
Project Type:	Floodplains by Design

#### Project Short Description:

Community Floodplain Solutions (CFS) is a program that advances implementation of integrated floodplain management in the Snohomish Watershed. Snohomish County (RECIPIENT) will use CFS to increase ecological function, reduce impacts from flooding, and protect and enhance farmland productivity. Actions include design and construction of large-scale integrated floodplain projects, property acquisition, farmland conservation and efficiency enhancements, and project development.

#### Project Long Description:

Phase 3 of CFS is focused on implementing the projects that were designed and permitted as part of Floodplains by Design (FbD) funding for Phases 1 and 2, but also continue the development of a pipeline for new projects in the Snohomish Watershed. It is a cooperative effort between many partners aimed at working collaboratively to: increase ecological function; reduce impact to local infrastructure from flooding and sediment transport; protect and enhance

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-SnCoCN-00046

Project Title: Community Floodplain Solutions - Phase 3 Implementation

Recipient Name: Snohomish County

farmland productivity; and, improve water quality and recreational opportunities in the community.

This agreement advances 13 capital actions aimed at improving emergency access during flood events, reducing flood risk, restoring habitat for federal Endangered Species Act (ESA) listed salmon, and enhancing agricultural resiliency.

- Three of the 13 capital projects (Shinglebolt, Thomas' Eddy, Swans Trail Slough) are being advanced to construction.
- Two projects (Tualco Valley, Sultan Reach Agriculture Resiliency) are being advanced from scoping and land use agreements through the final design and stakeholder engagement process.
- Two projects (Agriculture Landowner BMPs, Agriculture Conservation Easements) are continuing ongoing outreach and engagement with landowners to advance BMPs and conservation easements.
- One project (Chinook Marsh) is leveraging significant local and regional investments to complete 30% designs for feasibility analyses for restoration and water line or energy transmission line relocation activities.
- Seven projects (Bear Creek, Invasive Species Control and Riparian Plantings, IFM Framework and Program Initiative, High Bridge Project, Farm 2 Project, Advanced Farm Technology for Food Resiliency, and the Upland Agriculture Conservation study) are poised for implementation.
- Two projects (Tualco Valley, Woods Creek/Al Borlin Park) are advancing to feasibility and design.

Overall Goal:

To advance Integrated Flood Management (IFM) with actions that support flood risk reduction, salmon recovery, and agricultural viability in the Snohomish Watershed.

- Continue to implement and advance projects funded by the 2019-2021 and 2021-2023 FbD grants for the Community Floodplain Solutions Program in the Snohomish Watershed, including advancing projects to construction, continuing projects in feasibility and design, implementing agricultural resilience projects, and protecting floodplain habitat in alignment with the Acquisition Strategy collaboratively developed.
- Develop a pipeline of integrated floodplain management projects in the Snohomish Watershed to accelerate implementation of priority habitat, flood reduction, and agricultural projects.
- Support the enabling conditions at the Snohomish Watershed scale by supporting a countywide IFM program and the Snohomish Integration Team, and enabling projects for new partners engaged through collaborative processes.

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-SnCoCN-00046

Project Title: Community Floodplain Solutions - Phase 3 Implementation

Recipient Name: Snohomish County

**RECIPIENT INFORMATION**

Organization Name: Snohomish County

Federal Tax ID: 91-6001368

UEI Number: LG8NG8JNJD83

Mailing Address: 3000 Rockefeller Ave, M/S 303  
Everett, WA 98201

Physical Address: 3000 Rockefeller Ave, M/S 303  
Everett, Washington 98201

Organization Email: surfacewater@snoco.org

Organization Fax: (425) 388-6455

**Contacts**

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-SnCoCN-00046

Project Title: Community Floodplain Solutions - Phase 3 Implementation

Recipient Name: Snohomish County

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

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-SnCoCN-00046

Project Title: Community Floodplain Solutions - Phase 3 Implementation

Recipient Name: Snohomish County

**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**

<b>Project Manager</b>	Lisa Nelson  PO Box 330316 Shoreline, Washington 98133-9716 Email: LNEL461@ecy.wa.gov Phone: (425) 213-4843
<b>Financial Manager</b>	Cindy James  PO Box 47600 Olympia, Washington 98504-7600 Email: cjam461@ecy.wa.gov Phone: (360) 280-8645



State of Washington Department of Ecology  
Agreement No: SEAFBD-2325-SnCoCN-00046  
Project Title: Community Floodplain Solutions - Phase 3 Implementation  
Recipient Name: Snohomish County

**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

By: DocuSigned by:  
Joenne McGerr 1/17/2024  
131D85610AF6416...

By: DocuSigned by:  
Gregg Farris 12/21/2023  
0DA9847305104E3...

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-2325-SnCoCN-00046  
 Project Title: Community Floodplain Solutions - Phase 3 Implementation  
 Recipient Name: Snohomish County

## SCOPE OF WORK

Task Number: 1 **Task Cost: \$250,000.00**

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**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
1.1	Payment Requests/Progress Reports (PRPR)	
1.2	Recipient Close Out Report (RCOR)	06/30/2027
1.3	Project Outcome Summary Report	06/30/2027

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-SnCoCN-00046

Project Title: Community Floodplain Solutions - Phase 3 Implementation

Recipient Name: Snohomish County

**SCOPE OF WORK**Task Number: 2 **Task Cost: \$1,550,000.00**

Task Title: 2. Project Development/Scoping/Feasibility

Task Description:

The RECIPIENT will support the development of integrated floodplain projects, support collaboration between stakeholders within the Snohomish Integration Team, and advance public outreach for all tasks in this grant by performing the following actions:

- A. The RECIPIENT will improve communication and outreach by updating existing webpages and conducting program presentations. The RECIPIENT will submit copies of draft updated webpage content and draft program presentations to ECOLOGY Project Manager for review prior to distribution.
- B. The RECIPIENT will submit communications products for CFS program projects included in this agreement, which may include factsheets, interactive online tools, and video-storytelling, to ECOLOGY Project Manager for review prior to public distribution.
- C. The RECIPIENT will submit agendas and attendance logs for a minimum of 1 community event and will support the implementation of the annual Focus on Farming conference centering on farming and forestry.
- D. The RECIPIENT will conduct 10 agricultural (ag) landowner best practices outreach and assistance efforts. The RECIPIENT will create a summary of these efforts including sub-basin location (including, but not limited to, the Sultan Reach sub-basin area), resource of concern, and outcome (site visit, Technical Assistance letter, Best Management Practice (BMP) design, etc.).
- E. The RECIPIENT will support facilitation and coordination of the Snohomish Integration/Implementation Team (SIT). The RECIPIENT will create meeting agendas, attendance logs and a summary report.
- F. The RECIPIENT will support the Chinook Marsh restoration preliminary design feasibility analysis, including the development of a minimum of 2 alternatives, and conduct outreach to get input on the feasibility analysis and alternatives. The RECIPIENT will create meeting agendas and attendance logs.
- G. The RECIPIENT will complete an Upland Ag Conservation Study and Implementation Analysis which will identify upland Ag acreage (minimum of 1,000 acres and up to 10,000 acres) and implementation steps [potential site(s) analysis and landowner outreach].
- H. The RECIPIENT will write a Comprehensive Flood Hazard Management Plan (CFHMP) Planning Analysis and Position Description for the IFM Coordinator, as recommended in Ecology's 2021 guidance document for CFHMP development.
- I. Light refreshments (not meals) for meetings, as defined by ECOLOGY's Administrative Requirements of Ecology's Grants and Loans (2023 Yellow Book), may be eligible for reimbursement. Prior to each public meeting, the RECIPIENT must request and receive approval by ECOLOGY's Project Manager for light refreshment reimbursement(s). The ECOLOGY

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Agreement No: SEAFBD-2325-SnCoCN-00046

Project Title: Community Floodplain Solutions - Phase 3 Implementation

Recipient Name: Snohomish County

Project Manager can send a copy of the light refreshment request form. Approved request forms must be submitted with the corresponding Payment Request/Progress Report (PRPR).

Task Goal Statement:

The goal of this task is to accelerate and track Sustainable Lands Strategy multi-benefit actions; improve inter-agency communication and enhanced project integration through the Snohomish Integration/Implementation Team; increase public awareness of and support for multi-benefit projects, including agricultural preservation projects, and solicit public input to improve designs; identify a minimum of 1,000 acres of potential area with appropriate soil conditions for agricultural production; continue engagement with the County's Land Conservation Initiative as it is developed; and advance integrated floodplain management based on input from stakeholders and the community.

Task Expected Outcome:

The expected advancements of this task include coordinated CFS program communications supporting integrated floodplain management; acceleration of Sustainable Lands Strategy multi-benefit projects and project tracking; improved inter-agency communication; farm plans, technical assistance letters, and BMP designs that will improve agriculture resilience and contribute to water quality improvements; project alternatives for Chinook Marsh to restore critical habitat while protecting critical infrastructure; and increased understanding of landowner interest in agricultural preservation. Another outcome of this task includes full time capacity (IFM Coordinator position) to coordinate IFM across plans, policies and projects in the County; coordinate between county departments and stakeholders; and conduct a planning analysis intended to help the Floodplain Management Advisory Committee (FMAC) determine the scope and scale of an IFM program and any associated CFHMP component.

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-SnCoCN-00046

Project Title: Community Floodplain Solutions - Phase 3 Implementation

Recipient Name: Snohomish County

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

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
2.1	A summary list of outreach updates conducted; final version of outreach and education materials and presentations; and link to webpage. Submit to ECOLOGY Project Manager for review prior to distribution. Upload to EAGL and notify ECOLOGY Project Manager via email.	
2.2	Communications products for CFS program projects, which may include factsheets, interactive online tools, and video-storytelling. Upload to EAGL and notify ECOLOGY Project Manager via email.	
2.3	Agendas and attendance logs for a minimum of 1 community event. Upload to EAGL and notify ECOLOGY Project Manager via email.	
2.4	Conduct a minimum of 10 ag landowner site visits and provide a summary including sub-basin location, resource of concern, and outcome (site visit, Technical Assistance letter, BMP design, etc.). Upload to EAGL and notify ECOLOGY Project Manager via email.	
2.5	Agendas, attendance logs and a progress summary report for quarterly SIT meetings. Upload to EAGL and notify ECOLOGY Project Manager via email.	
2.6	Agendas, attendance logs and any materials for the Chinook Marsh Restoration Design meetings. Upload to EAGL and notify ECOLOGY Project Manager via email.	
2.7	Feasibility analysis report, benefit cost analysis, and outreach strategy report for the Chinook Marsh Restoration Preliminary Design. Upload to EAGL and notify ECOLOGY Project Manager via email.	
2.8	Upland Ag Conservation Study and Implementation Analysis that provides a strategy to identify upland Ag acreage and implementation steps [potential site(s) analysis and landowner outreach]. Upload to EAGL and notify ECOLOGY Project Manager via email.	
2.9	CFHMP Planning Analysis and Position Description for IFM Coordinator. Upload to EAGL and notify ECOLOGY Project Manager via email.	
2.10	"Focus on Farming" agendas, attendance roster, and Ecology conference approval forms. Upload to EAGL and notify ECOLOGY Project Manager via email.	
2.11	Light Refreshments Meeting Request Form for each meeting held under this agreement, if applicable. Upload to EAGL and notify ECOLOGY Project Manager via email.	

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-SnCoCN-00046

Project Title: Community Floodplain Solutions - Phase 3 Implementation

Recipient Name: Snohomish County

**SCOPE OF WORK**Task Number: 3 **Task Cost:** \$2,507,500.00

Task Title: 3. Easements/Acquisitions

Task Description:

This task is designed to permanently preserve habitat and agricultural land through property acquisition and easements, which is critical to preventing new development in areas known to be at risk from flooding, securing the land base for multi-benefit project implementation, and conserving agriculture. This task will be accomplished by performing the following actions:

A. The RECIPIENT shall acquire a minimum of 50 acres in the Tualco Valley area as well as develop a pipeline of farmland conservation easements in strategic locations in the watershed. Acquisitions shall be guided by the Lower Skykomish Floodplain Land Strategy that was completed in June 2021. The RECIPIENT will submit a full Acquisition Report for each fee-simple acquisition and conservation or agricultural easement purchased.

† 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.

B. 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. Allow sufficient time for ECOLOGY and the Office of the State Treasurer to process documentation (a minimum of three weeks prior to closing).

C. Prior to acquisition, the RECIPIENT will complete the cultural resources review in accordance with Section 106 and Governor's Executive Order 21-02 requirements. Due to confidentiality, email surveys to the ECOLOGY Project Manager and do not upload in EAGL.

D. The RECIPIENT will submit an Inadvertent Discovery Plan (IDP) to ECOLOGY. The RECIPIENT will ensure that all contractors have a copy of the completed IDP prior to and while working on-site in each project area.

E. The RECIPIENT will relocate tenants in accordance with the Uniform Relocation Act (URA) as federal and state laws require Ecology to comply with the URA and Real Property Acquisition Policies Act of 1970.

F. The RECIPIENT will subcontract with Washington Farmland Trust and the Tulalip Tribes. The RECIPIENT will provide a position description for a Washington Farmland Trust Conservation Manager.

G. Upon completion of acquisitions and easements, the RECIPIENT will submit GIS-compatible project area data in an ECOLOGY-approved format to ECOLOGY, and upload it to EAGL.

Task Goal Statement:

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-SnCoCN-00046

Project Title: Community Floodplain Solutions - Phase 3 Implementation

Recipient Name: Snohomish County

The goal of this task is to continue advancement in permanently protecting land for flood risk reduction, future restoration of natural river processes, water quality benefits, and habitat restoration; as well as permanently protecting agricultural land, and preventing development in high-risk floodplain areas. This includes pursuing property acquisitions and agricultural conservation easements in a coordinated way to allow project partners to select the right conservation tool for each property.

#### Task Expected Outcome:

The expected advancements of this task include acquiring and protecting priority floodplain habitat in perpetuity for floodplain connectivity and natural process function, and connection and enhancement of side channel habitat, as well as permanent protection of farmland for continued agricultural use. Another expected outcome of this task is providing agricultural landowners with incentives in order to accept integrated floodplain management as an approach, while maintaining the viability of their operation, and provide options for landowners living in high-risk areas.

Recipient Task Coordinator: Snohomish County, Jessica Hamill

### **3. Easements/Acquisitions**

#### **Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
3.1	Complete Acquisition Report for each property and/or conservation easement purchased. Upload to EAGL and notify ECOLOGY Project Manager via email.	
3.2	Cultural Resource Review documents, including Inadvertent Discovery Plan and when required, a survey, for each property purchased. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager via email.	
3.3	Copy of signed subcontract with Washington Farmland Trust and signed subcontract with Tulalip Tribes. Upload to EAGL and notify ECOLOGY Project Manager via email.	
3.4	Position Description for Washington Farmland Trust Conservation Manager. Upload to EAGL and notify ECOLOGY Project Manager via email.	
3.5	Project area GIS shapefiles showing the location of acquisitions and easements. Save the shapefiles in a .zip file and upload to EAGL. Notify ECOLOGY Project Manager via email.	
3.6	In accordance with the URA, relocation services will be provided, if applicable. Upload signed contracts with relocation agencies and submit reimbursements to ECOLOGY as applicable.	

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-SnCoCN-00046

Project Title: Community Floodplain Solutions - Phase 3 Implementation

Recipient Name: Snohomish County

## SCOPE OF WORK

Task Number: 4 **Task Cost: \$8,075,000.00**

Task Title: 4. Project Design and Construction

### Task Description:

This task includes project designs, plantings and construction on several projects.

A. The RECIPIENT will complete planting plans for each property undergoing restoration (including, but not limited to, Shinglebolt Slough, Thomas' Eddy, Swans Trail Slough, and Bear Creek). If this work will be completed by a contractor, services will be secured in accordance with the state of Washington procurement procedures.

B. The RECIPIENT will submit a Monitoring, Maintenance and Adaptive Management Plan for all restoration areas (including, but not limited to, Shinglebolt Slough, Thomas' Eddy, Swans Trail Slough, and Bear Creek), and before and after photos of the plantings.

C. The RECIPIENT will hire contractors to complete construction of Shinglebolt Slough, Thomas' Eddy, the first phase of Swans Trail Slough, and Advanced Farm Technology for Food Resiliency projects. Services will be secured in accordance with the state of Washington procurement procedures.

D. The RECIPIENT will complete the cultural resources review for constructions in accordance with Section 106 and Governor's Executive Order 21-02 requirements. Due to confidentiality, email surveys to the ECOLOGY Project Manager and do not upload in EAGL.

The RECIPIENT will submit an Inadvertent Discovery Plan (IDP) to ECOLOGY. The RECIPIENT will ensure that all contractors have a copy of the completed IDP prior to and while working on-site in each project area.

E. The RECIPIENT will submit permits, preliminary and final designs and as-builts as listed in Deliverables 4.1 - 4.16 below.

F. The RECIPIENT will submit feasibility report, engagement results, and conceptual designs for the Woods Creek/Al Borlin project.

G. Upon completion of construction, the RECIPIENT will submit before and after photos and GIS-compatible project area data in an ECOLOGY-approved format to ECOLOGY, and upload it to EAGL.

H. After completion of any public meetings regarding the projects in this task, the RECIPIENT will create a summary document that will include the date, location, number of participants, agenda, a brief description of the outcomes, and photos.

I. Light refreshments (not meals) for meetings, as defined by ECOLOGY's Administrative Requirements of Ecology's Grants and Loans (Yellow Book), may be eligible for reimbursement. Prior to each public meeting, the RECIPIENT must request and receive approval by ECOLOGY's Project Manager for light refreshment reimbursement(s). The ECOLOGY Project Manager can send a copy of the light refreshment request form. Approved request forms must be submitted with the corresponding Payment Request/Progress Report (PRPR).



State of Washington Department of Ecology

Agreement No: SEAFBD-2325-SnCoCN-00046

Project Title: Community Floodplain Solutions - Phase 3 Implementation

Recipient Name: Snohomish County

Task Goal Statement:

This task will advance capital actions to reduce flood risk to people and infrastructure; increase floodplain connectivity, conveyance and, where possible, storage; restore habitat for ESA-listed salmon; and enhance agricultural resiliency. This task will also continue on-the-ground implementation of priority actions identified in the Agricultural Resilience Plan for the County, including on-farm technology improvements. This task will also enhance knowledge about new on-farm technology improvements available.

Task Expected Outcome:

Outcomes include advancing overall goals including: Invasive control and native plantings, implementing riparian forest health strategy, permitting and final designs for Shinglebolt Slough, Thomas' Eddy, Tualco Valley, Swans Trail and Woods Creek/Al Borlin projects; High Bridge and Farm 2 surveys, 60% Designs and Implementation Plans; installed on-farm weather stations and remote sensors with public access; and improved wetland functions, farm reliability, and water quality on working farmland for the Advanced Farm Technology for Food Resiliency projects.

State of Washington Department of Ecology

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Project Title: Community Floodplain Solutions - Phase 3 Implementation

Recipient Name: Snohomish County

Recipient Task Coordinator: Jessica Hamill**4. Project Design and Construction****Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
4.1	Planting plan, including species and quantity for plantings at sites including, but not limited to, Shinglebolt Slough, Thomas' Eddy, Swans Trail Slough, and Bear Creek. Upload in EAGL and notify ECOLOGY Project Manager via email.	
4.2	Monitoring, Maintenance and Adaptive Management Plan which will cover all planting projects including, but not limited to, Shinglebolt Slough, Thomas' Eddy, Swans Trail Slough, and Bear Creek. Upload copy to EAGL and notify ECOLOGY Project Manager via email.	
4.3	Annotated before and after photos of the planting phase for sites including, but not limited to, Shinglebolt Slough, Thomas' Eddy, Swans Trail Slough, and Bear Creek. Upload in EAGL and notify ECOLOGY Project Manager via email.	
4.4	Copy of bid documents and signed construction contracts for Shinglebolt Slough, Thomas' Eddy, Swans Trail Slough, and Advanced Farm Technology for Food Resiliency projects to be included with the first invoice seeking reimbursement on relevant work. Upload to EAGL and notify ECOLOGY Project Manager via email.	
4.5	Cultural Resource Review documents, including Inadvertent Discovery Plan and survey (when required), for Shinglebolt Slough, Thomas' Eddy, Bear Creek, and Swans Trail Slough, Tualco Valley, and Advanced Farm Technology for Food Resiliency projects. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager via email.	
4.6	Copy of all required local, state, or federal permits. Upload documentation to EAGL prior to implementation on Shinglebolt Slough, Thomas' Eddy, Swans Trail Slough, and Tualco Valley projects and notify ECOLOGY Project Manager via email.	
4.7	60% Design and survey results, and Implementation Plan for the High Bridge and Farm 2 projects, Upload to EAGL and notify ECOLOGY Project Manager via email.	
4.8	Feasibility report and engagement results for Woods Creek/Al Borlin project. Upload to EAGL and notify ECOLOGY Project Manager via email.	
4.9	Conceptual Designs for the Woods Creek/Al Borlin project. Upload to EAGL and notify ECOLOGY Project Manager via email.	

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4.10	Final design and site map of Shinglebolt Slough, Thomas' Eddy, Tulaco Valley, and Swans Trail Slough, signed and stamped by a Washington State-licensed engineer. Upload to EAGL and notify ECOLOGY Project Manager via email.	
4.11	As-built construction plan set for Shinglebolt Slough, Thomas' Eddy, and Swans Trail Slough signed and stamped by a Washington State licensed engineer. Upload to EAGL and notify ECOLOGY Project Manager via email.	
4.12	Annotated digital photographs showing conditions before, during, and after construction on Shinglebolt Slough, Thomas' Eddy, and Swans Trail. Upload to EAGL and notify ECOLOGY Project Manager via email.	
4.13	Landowner Agreement(s) for the Swans Trail project. Upload in EAGL and notify ECOLOGY Project Manager via email.	
4.14	Project area GIS shapefiles showing the location of all final constructed project elements and area of reconnected floodplain. Save the shapefiles in a .zip file and upload to EAGL. Notify ECOLOGY Project Manager via email.	
4.15	Agriculture Technology Improvements conference agenda and summary of what was learned and how it will be applied to advance agricultural viability while preserving or protecting natural resources. Upload in EAGL and notify ECOLOGY Project Manager via email.	

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**BUDGET****Funding Distribution EG240466**

**NOTE:** The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.

Funding Title: Floodplains by Design 23-25

Funding Type: Grant

Funding Effective Date: 07/01/2023

Funding Expiration Date: 06/30/2027

Funding Source:

Title: State Building Construction Account (SBCA)

Fund: FD

Type: State

Funding Source %: 100%

Description: State Building Construction Account (SBCA)

Approved Indirect Costs Rate: Approved State Indirect Rate: 0%

Recipient Match %: 20%

InKind Interlocal Allowed: Yes

InKind Other Allowed: Yes

Is this Funding Distribution used to match a federal grant? Yes

<b>Floodplains by Design 23-25</b>	<b>Task Total</b>
1. Project Administration/Management	\$ 250,000.00
2. Project Development/Scoping/Feasibility	\$ 1,550,000.00
3. Easements/Acquisitions	\$ 2,507,500.00
4. Project Design and Construction	\$ 8,075,000.00

**Total: \$ 12,382,500.00**

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**Funding Distribution Summary****Recipient / Ecology Share**

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
Floodplains by Design 23-25	20.00 %	\$ 2,476,500.00	\$ 9,906,000.00	\$ 12,382,500.00
<b>Total</b>		<b>\$ 2,476,500.00</b>	<b>\$ 9,906,000.00</b>	<b>\$ 12,382,500.00</b>

**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

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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 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.

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**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 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

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top executives using the FFATA Data Collection Form.

- Receives more than \$30,000 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 Unique Entity Identifier in [www.sam.gov](http://www.sam.gov) <<http://www.sam.gov>> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <<http://www.usaspending.gov>>.

For more details on FFATA requirements, see [www.fsrc.gov](http://www.fsrc.gov) <<http://www.fsrc.gov>>.

### C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE 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) <<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) <<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

07/01/2023 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/2301002.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](mailto: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