

**SNOHOMISH COUNTY EMERGENCY RAPID RESPONSE  
SUB-AWARD AGREEMENT**

THIS SUB-AWARD AGREEMENT (the "Agreement") is made and entered into March 18, 2024 (the "Effective Date"), by and between Snohomish County (the "County"), a political subdivision of the State of Washington, and Aqua Hills Estates Homeowners Association, a Washington nonprofit corporation (the "HOA").

**RECITALS**

WHEREAS, the Washington State Department of Commerce ("Commerce") has entered into a Grant Agreement through the Washington State Emergency Rapid Response Grant Program under Contract Number: 24-62511-005 with Snohomish County (the "County") to administer state funds ("Grant Funds") for the Mission Creek Waterway (MCW) Project (the "Project"); and

WHEREAS, the only safe ingress and egress to a part of the Aqua Hills neighborhood was cut off when a bridge and culvert crossing Mission Creek at 12th Avenue NW were destroyed in a storm on March 1, 2024; and

WHEREAS, the County proclaimed a state of emergency on March 18, 2024, because of the environmental damage and inability to provide emergency response; and

WHEREAS, the County intends to facilitate replacement of the destroyed bridge and culvert that will allow, vehicle access for the provision of emergency services, ingress and egress to homes within the HOA, protect water quality of Mission Creek waterway, and improve fish passage.

**NOW THEREFORE**, in consideration of the mutual benefits and covenants contained herein, the HOA and the County (each a "Party" and jointly referred to as "the Parties") agree as follows:

**1 PURPOSE**

The purpose of this Agreement is to commit funds awarded by Commerce towards completion of the Project. Any costs in excess of the funds committed pursuant to this Agreement shall be the sole responsibility of the HOA.

**2 COUNTY RESPONSIBILITIES**

The County shall pay all contractor invoices incurred in performing the work contemplated by this Agreement, as they become due and payable, on the HOA's behalf, up to an amount not exceeding \$210,000, so long as the HOA and its contractors fully satisfy all of the requirements of this Agreement.

### 3 HOA RESPONSIBILITIES

3.1 SCOPE OF WORK. The HOA shall be responsible for acquiring and installing a permanent bridge, acquiring all permits necessary for installation of the bridge, performing all required water work and mitigation of creek bed, repairing the damaged water line, and installing mitigation and bank stabilization measures as needed, in order to replace the bridge over Mission Creek at 12<sup>th</sup> Avenue NW that was destroyed in a storm on March 1, 2024.

3.2 SEPA COMPLIANCE. The HOA, or its contractors, shall complete the environmental review and prepare an environmental review record in compliance with State Environmental Policy Act (SEPA) requirements (chapter 43.21C RCW).

3.3 HISTORICAL OR CULTURAL ARTIFACTS. The HOA, or its contractors, shall comply with the Washington State Governor's Executive Order 21-02.

Prior to approval and disbursement of any funds awarded under this Agreement, the HOA shall complete the requirements of Governor's Executive Order 21-02, where applicable, or the HOA shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. The HOA agrees that the HOA is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless the County, the Washington State Department of Commerce and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the Project funded by this Agreement.

In addition to the requirements set forth in this Agreement, the HOA shall, in accordance with Governor's Executive Order 21-02, coordinate with the Washington State Department of Commerce and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. The HOA agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Agreement.

The HOA agrees that, unless the HOA is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the HOA shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the Washington State Department Commerce. If human remains are uncovered, the HOA shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The HOA shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work.

In addition to the requirements set forth in this Agreement, the HOA agrees to comply with chapter 27.44 RCW regarding Indian Graves and Records; chapter 27.53 RCW regarding Archaeological Sites and Resources; chapter 68.60 RCW regarding Abandoned and Historic Cemeteries and Historic Graves; and chapter 25-48 WAC regarding Archaeological Excavation and Removal Permit.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02. In the event that the HOA finds it necessary to amend the Scope of Work the HOA may be required to re-comply with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act.

### 3.4 INVOICING.

3.4.1 The HOA shall submit invoices that shall describe and document, to the County's satisfaction, a description of the work performed, the progress of the project, and costs. The HOA shall evidence the costs claimed on each voucher by including copies of each invoice received from vendors providing goods or services covered by the work contemplated under this Agreement.

Payment shall be considered timely if made by County within thirty (30) calendar days after receipt of properly completed invoices.

The County shall make no payments in advance or in anticipation of services or supplies to be provided under this Agreement.

3.4.2 Invoices are due on the 20<sup>th</sup> of the month following the provision of services. The HOA must invoice for all expenses from the beginning of the Agreement through May 31, 2024.

3.4.3 The HOA is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its contractors.

The County may, in its sole discretion, withhold the final ten percent (10%) of the total amount of funds under this agreement until acceptance by the Washington State Department of Commerce of project completion.

3.5 OWNERSHIP. The HOA understand and acknowledges that neither the County nor the State of Washington shall have any interest in the Project or the bridge itself and that the HOA shall be responsible in perpetuity for all on-going maintenance and ownership obligations over the bridge and associated infrastructure, including performing regular maintenance as needed, providing hazard and liability insurance as needed, and establishing and maintaining a replacement and repair reserve for the bridge.

3.6 CODE REQUIREMENTS. The Project must satisfy the requirements of all applicable local, state, and federal codes and regulations. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

3.7 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION.

3.7.1 “Confidential Information” as used in this section includes:

3.7.1.1 All material provided to the HOA by County that is designated “confidential” by County; and

3.7.1.2 All material produced by HOA that that is designated “confidential” by County; and

3.7.1.3 All personal information in the possession of HOA that may not be disclosed under state or federal law.

3.7.2 The HOA shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The HOA shall use Confidential Information solely for the purposes of this Agreement and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of County or as may be required by law. The HOA shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the HOA shall provide County with its policies and procedures on confidentiality. County may require changes to such policies and procedures as they apply to this Agreement whenever County reasonably determines that changes are necessary to prevent unauthorized disclosures. The HOA shall make the changes within the time period specified by County. Upon request, the HOA shall immediately to return to County any Confidential Information that County reasonably determines has not been adequately protected by the HOA against unauthorized disclosure.

3.7.3 The HOA shall notify County within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

### 3.8 COPYRIGHT.

Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by County. County shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the HOA hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to County effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, the HOA hereby grants to County a nonexclusive, royaltyfree, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The HOA warrants and represents that the HOA has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to County.

The HOA shall exert all reasonable effort to advise County, at the time of delivery of Materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement.

The HOA shall provide County with prompt written notice of each notice or claim of infringement received by the HOA with respect to any Materials delivered under this Agreement. County shall have the right to modify or remove any restrictive markings placed upon the Materials by the HOA.

3.9 DISALLOWED COSTS. The HOA is responsible for any audit exceptions or disallowed costs incurred by its own organization or by its contractors.

3.10 INDEPENDENT CAPACITY OF HOA. The parties intend that an independent HOA relationship will be created by this Agreement. The HOA and its employees, agents, or contractors performing under this Agreement are not employees or agents of the State of Washington or County. The HOA will not hold itself out as, or claim to be, an officer or employee of County or of the state of Washington by reason hereof, nor will the HOA make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the HOA.

3.11 NONCOMPLIANCE WITH NONDISCRIMINATION LAWS. During the performance of this Agreement, the HOA shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the HOA's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part, and the HOA may be declared ineligible for further contracts with County. The HOA shall, however, be given a reasonable time in which to cure this noncompliance. The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this Agreement.

3.12 RECAPTURE. In the event that the HOA fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of this Agreement, County reserves the right to recapture funds in an amount to compensate County for the noncompliance in addition to any other remedies available at law or in equity. Repayment by the HOA of funds under this recapture provision shall occur within the time period specified by County. In the alternative, County may recapture such funds from payments due under this Agreement.

3.13 RECORDS MAINTENANCE. The HOA shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

The HOA shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the agreement, shall be subject at all reasonable times to inspection, review or audit by County, personnel duly authorized by County, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

3.14 SUBCONTRACTING. The HOA may subcontract work under this Agreement. HOA shall be solely responsible for the acts and omissions of subcontractors.

Every subcontract shall bind the subcontractor to follow all applicable terms of this Agreement. The HOA is responsible to County if the subcontractor fails to comply with any applicable term or condition of this Agreement. The HOA shall appropriately monitor the activities of the subcontractor to assure fiscal conditions of this Agreement. In no event shall the existence of a subcontract operate to release or reduce the liability of the HOA to County for any breach in the performance of the HOA's duties.

Every subcontract shall include a term that County and the State of Washington are not liable for claims or damages arising from a subcontractor's performance of the subcontract.

3.15 TAXES. All payments accrued on account of payroll taxes, unemployment contributions, the HOA's income or gross receipts, any other taxes, insurance or expenses for the HOA or its staff shall be the sole responsibility of the HOA.

3.16 PREVAILING WAGES. The HOA and its subcontractors shall be responsible for the payment of prevailing wages under chapter 39.12 RCW for all work associated with this Agreement.

#### **4 HOA PROJECT SCOPE UNDERSTANDING**

By initialing below, the HOA acknowledges and understands the following:

4.1 S.H. It acknowledges and understands that it is responsible for any costs in excess of the funds awarded under this Agreement (\$210,000).

4.2 S.H. It hereby expressly disclaims all liability of County and the State of Washington in tort or contract for any claims related to the work contemplated under this Agreement.

#### **5 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 (the "Act"). To the extent that public records then in the custody of the HOA are needed for the County to respond to a request under the Act, as determined by the County, the HOA agrees to make them promptly available to the County. If the HOA considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the HOA shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the HOA and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the HOA (a) of the request and (b) of the date that such information will be released to the requester unless the HOA obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the HOA fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the HOA to claim any exemption from disclosure under the Act. The County shall not be liable to the HOA for releasing records not clearly identified by the HOA as confidential or proprietary. The County shall not be liable to the HOA for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

## 6 INDEMNIFICATION

To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County and, if any funds for this Agreement are provided by the State, the State, the HOA shall protect, defend, indemnify, and hold harmless the County and the State, their officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of or in any way resulting from the HOA's officers, employees, agents and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Agreement, to the maximum extent permitted by law or as defined by RCW 4.24.115, now enacted or as hereinafter amended. The Homeowner Association's obligations under this section shall include, but not be limited to:

- 6.2 The duty to promptly accept tender of defense and provide defense to the County and, if applicable, the State, at the HOA's own expense.
- 6.3 The duty to indemnify and defend the County, and, if applicable, the State, from any claim, demand and/or cause of action brought by or on behalf of any of its employees, former employees, subcontractors or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the Homeowner Association's immunity under Washington's Industrial Insurance Act, RCW Title 51, , other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction as respects the County and, if applicable, the State, which would otherwise be applicable in the case of such claim with a full and complete indemnity and defense of claims made by the Homeowner Association's employees. The parties acknowledge that these provisions were mutually negotiated upon by them.
- 6.4 To the maximum extent permitted by law, the HOA shall indemnify and defend the County, and, if applicable, the State, from and be liable for all damages and injury which shall be caused to owners of property on or in the vicinity of the work or which shall occur to any person or persons or property whatsoever arising out of the performance of this Agreement, whether or not such injury or damage is caused by negligence of the HOA or caused by the inherent nature of the work specified.

The indemnification, protection, defense, and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

Nothing contained within this provision shall affect or alter the application of any other provision contained within this Agreement.



## **7 INSURANCE**

The HOA will maintain appropriate insurance coverage throughout any period in which reimbursable activities are conducted and require subcontractors to maintain appropriate insurance coverage. The intent of the required insurance is to protect the County and the state of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the HOA or its agents, while performing under the terms of this Agreement.

## **8 NON-WAIVER OF BREACH; TERMINATION**

8.1 The failure of the County to insist upon strict performance of any of the covenants or agreements contained in this Agreement, or to exercise any option conferred by this Agreement, in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

8.2 If the HOA breaches any of its obligations hereunder, and fails to cure or substantially begin to cure the same within ten (10) business days of written notice to do so by the County, the County may terminate this Agreement, in which case the County shall pay the HOA only for the services and corresponding reimbursable expenses, if any, accepted by the County.

8.3 Termination by the County hereunder shall not affect the rights of the County as against the HOA provided under any other section or paragraph herein. The County does not, by exercising its rights under this Section 8, waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provisions of this Agreement. At its sole option, the County may deduct from the final payment due the HOA (i) any damages, expenses or costs arising out of any such violations, breaches or non-performance and (ii) any other set-offs or credits.

## **9 GOVERNING LAW AND VENUE**

This Agreement shall be governed by the laws of the State of Washington. The parties stipulate that any lawsuit regarding this Agreement must be brought in Snohomish County, Washington.

## **10 SEVERABILITY**

Should any clause, phrase, sentence, or paragraph of this contract be declared invalid or void, the remaining provisions of this contract shall remain in full force and effect.

**11 ENTIRE AGREEMENT**

This contract constitutes the entire understanding of the parties. Any written or verbal agreements not set forth in this contract or incorporated by reference are expressly excluded.

Steve Hall - HOA President

\_\_\_\_\_  
HOMEOWNER ASSOCIATION REPRESENTATIVE Name(s)

E-SIGNED by Steve Hall  
on 2024-04-30 16:25:56 GMT

\_\_\_\_\_  
HOMEOWNER ASSOCIATION REPRESENTATIVE Signature(s)

\_\_\_\_\_  
Date

\_\_\_\_\_  
SNOHOMISH COUNTY Signature

\_\_\_\_\_  
Date