

CONSULTANT: PCC Farmland Trust DBA Washington  
Farmland Trust

CONTACT PERSON: Robin Fay

ADDRESS: PO Box 2206  
Seattle, WA 98111-2206

FEDERAL TAX ID NUMBER/U.B.I. NUMBER: 91-2021165/601998610

TELEPHONE/FAX NUMBER: (206) 547-9855

COUNTY DEPT: Conservation and Natural Resources/  
Surface Water Management

DEPT. CONTACT PERSON: Jessica Hamill

TELEPHONE NUMBER: (425) 388-6476

PROJECT: Snohomish County's Floodplains Solution  
FloodPlains by Design

AMOUNT: \$1,600,000

FUND SOURCE: SEAFBD-2123-SnCoPW-00013

CONTRACT DURATION: Execution through June 30, 2025

#### AGREEMENT SWMCC03-23 FOR PROFESSIONAL SERVICES

THIS AGREEMENT (the "Agreement") is made by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the "County") and PCC FARMLAND TRUST DBA WASHINGTON FARMLAND TRUST, a Washington Corporation (the "Contractor"). In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. Purpose of Agreement; Scope of Services. The purpose of this Agreement is to acquire farmland conservation easements in the Snohomish Watershed. The scope of services is as defined in Schedule A attached hereto and by this reference made a part hereof. This Agreement is the product of County RFP No. 22-28SB.

The services shall be performed in accordance with the requirements of this Agreement and with generally accepted practices prevailing in the western Washington region in the occupation or industry in which the Contractor practices or operates at the time the services are performed. The Contractor shall perform the work in a timely manner and in accordance with the

terms of this Agreement. Any materials or equipment used by the Contractor in connection with performing the services shall be of good quality. The Contractor represents that it is fully qualified to perform the services to be performed under this Agreement in a competent and professional manner.

The Contractor will prepare and present status reports and other information regarding performance of the Agreement as the County may request.

2. Term of Agreement; Time of Performance. This Agreement shall be effective upon Execution (the “Effective Date”) and shall terminate on June 30, 2025. The Contractor shall commence work upon the Effective Date and shall complete the work required by this Agreement no later than June 30, 2025, PROVIDED, HOWEVER, that the County’s obligations after December 31, 2023 are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with the County Charter and applicable law.

3. Compensation.

a. Services. The County will pay the Contractor for services as and when set forth in Schedule B, which is attached hereto and by this reference made a part of this Agreement.

b. Overhead and Expenses. The Contractor’s compensation for services includes overhead but does not include specific reimbursable expenses, which will be allowed only as and to the extent set forth in Schedule C attached hereto and by this reference made a part of this Agreement.

c. Invoices. The Contractor shall submit properly executed invoices to the County no more frequently than monthly. Each invoice shall include an itemization of the dates on which services were provided, including the number of hours and a brief description of the work performed on each such date. Each invoice shall also include an itemization of any reimbursable expenses incurred by the Contractor during the time period covered by the invoice, together with reasonable documentation substantiating such expenses, all in accordance with this Section 3 and Schedule C. Subject to Section 8 of this Agreement, the County will pay such invoices within thirty (30) calendar days of receipt.

**All invoices must be sent for Contract Compliance review to**

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

**Or**

**Snohomish County Surface Water Management  
Attn: Connie Price  
3000 Rockefeller, M/S 303  
Everett, WA 98201**

d. Payment. The County's preferred method of payment under this contract is electronic using the County's "e-Payable" system with Bank of America. The Contractor is highly encouraged to take advantage of the electronic payment method.

In order to utilize the electronic payment method, the Contractor shall email [SnocoEpayables@snoco.org](mailto:SnocoEpayables@snoco.org) and indicate it was awarded a contract with Snohomish County and will be receiving payment through the County's e-Payable process. The Contractor needs to provide contact information (name, phone number and email address). The Contractor will be contacted by a person in the Finance Accounts Payable group and assisted with the enrollment process. This should be done as soon as feasible after County award of a contract or purchase order, but not exceeding ten (10) business days.

Department approved invoices received in Finance will be processed for payment within seven calendar days for e-Payable contractors. Invoices are processed for payment by Finance two times a week for contractors who have selected the e-Payable payment option.

In the alternative, if the Contractor does not enroll in the electronic ("e-Payable") payment method described above, contract payments will be processed by Finance with the issuance of paper checks or, if available, an alternative electronic method. Alternative payment methods, other than e-Payables, will be processed not more than 30 days from receipt of department approved invoices to Finance.

THE COUNTY MAY MAKE PAYMENTS FOR PURCHASES UNDER THIS CONTRACT USING THE COUNTY'S VISA PURCHASING CARD (PCARD).

Upon acceptance of payment, the Contractor waives any claims for the goods or services covered by the Invoice. No advance payment shall be made for the goods or services furnished by Contractor pursuant to this Contract.

e. Payment Method. In addition to Payment section above, the County may make payments for purchases under this contract using the County's VISA purchasing card (PCARD).

Are you willing to accept PCARD payments without any fees or surcharges?

Yes ☐ No ☐

f. Contract Maximum. Total charges under this Agreement, all fees and expenses included, shall not exceed **\$ 1,600,000** for the initial term of this Agreement (excluding extensions or renewals, if any).

4. Independent Contractor. The Contractor agrees that Contractor will perform the services under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. This Agreement neither constitutes nor creates an employer-employee relationship. The parties agree that the Contractor is not entitled to any benefits or rights enjoyed by employees of the County. The Contractor specifically has the right to direct and control Contractor's 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. Nothing in this Agreement shall be construed to render the parties partners or joint venturers.

The Contractor shall furnish, employ and have exclusive control of all persons to be engaged in performing the Contractor's obligations under this Agreement (the "Contractor

personnel”), and shall prescribe and control the means and methods of performing such obligations by providing adequate and proper supervision. Such Contractor personnel shall for all purposes be solely the employees or agents of the Contractor and shall not be deemed to be employees or agents of the County for any purposes whatsoever. With respect to Contractor personnel, the Contractor shall be solely responsible for compliance with all rules, laws and regulations relating to employment of labor, hours of labor, working conditions, payment of wages and payment of taxes, including applicable contributions from Contractor personnel when required by law.

Because it is an independent contractor, the Contractor shall be responsible for all obligations relating to federal income tax, self-employment or FICA taxes and contributions, and all other so-called employer taxes and contributions including, but not limited to, industrial insurance (workers’ compensation). The Contractor agrees to indemnify, defend and hold the County harmless from any and all claims, valid or otherwise, made to the County because of these obligations.

The Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes, fees, licenses, excises or payments required by any city, county, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Contractor and as to all duties, activities and requirements by the Contractor in performance of the work under this Agreement. The Contractor shall assume exclusive liability therefor, and shall meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

5. Ownership. Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor’s subcontractors or consultants for delivery to the County under this Agreement shall be the sole and absolute property of the County. Such property shall constitute “work made for hire” as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not “work made for hire” within the terms of this Agreement.

6. Changes. No changes or additions shall be made in this Agreement except as agreed to by both parties, reduced to writing and executed with the same formalities as are required for the execution of this Agreement.

7. County Contact Person. The assigned contact person (or project manager) for the County for this Agreement shall be:



Name: Jessica Hamill  
Title: Project Specialist IV  
Department: Conservation and Natural Resources/Surface Water Management  
Telephone: (425) 388-6476  
Email: jessica.hamill@snoco.org

8. County Review and Approval. When the Contractor has completed any discrete portion of the services, the Contractor shall verify that the work is free from errors and defects and otherwise conforms to the requirements of this Agreement. The Contractor shall then notify the County that said work is complete. The County shall promptly review and inspect the work to determine whether the work is acceptable. If the County determines the work conforms to the requirements of this Agreement, the County shall notify the Contractor that the County accepts the work. If the County determines the work contains errors, omissions, or otherwise fails to conform to the requirements of this Agreement, the County shall reject the work by providing the Contractor with written notice describing the problems with the work and describing the necessary corrections or modifications to same. In such event, the Contractor shall promptly remedy the problem or problems and re-submit the work to the County. The Contractor shall receive no additional compensation for time spent correcting errors. Payment for the work will not be made until the work is accepted by the County. The Contractor shall be responsible for the accuracy of work even after the County accepts the work.

If the Contractor fails or refuses to correct the Contractor's work when so directed by the County, the County may withhold from any payment otherwise due to the Contractor an amount that the County in good faith believes is equal to the cost the County would incur in correcting the errors, in re-procuring the work from an alternate source, and in remedying any damage caused by the Contractor's conduct.

9. Subcontracting and Assignment. The Contractor shall not subcontract, assign, or delegate any of the rights, duties or obligations covered by this Agreement without prior express written consent of the County. Any attempt by the Contractor to subcontract, assign, or delegate any portion of the Contractor's obligations under this Agreement to another party in violation of the preceding sentence shall be null and void and shall constitute a material breach of this Agreement.

10. Records and Access; Audit; Ineligible Expenditures. The Contractor shall maintain adequate records to support billings. Said records shall be maintained for a period of seven (7) years after completion of this Agreement by the Contractor. The County or any of its duly authorized representatives shall have access at reasonable times to any books, documents, papers and records of the Contractor which are directly related to this Agreement for the purposes of making audit examinations, obtaining excerpts, transcripts or copies, and ensuring compliance by the County with applicable laws. Expenditures under this Agreement, which are determined by audit to be ineligible for reimbursement and for which payment has been made to the Contractor, shall be refunded to the County by the Contractor.

11. Indemnification.

a. Professional Liability.

The Contractor agrees to indemnify the County and, if any funds for this Agreement are provided by the State, the State and their officers, officials, agents and employees from damages and liability for damages, including reasonable attorneys' fees, court costs, expert witness fees, and other claims-related expenses, arising out of the performance of the Contractor's professional services under this Agreement, to the extent that such liability is caused by the negligent acts, errors or omissions of the Contractor, its principals, employees or subcontractors. The Contractor has no obligation to pay for any of the indemnitees' defense-related cost prior to a final determination of liability or to pay any amount that exceeds Contractor's finally determined percentage of liability based upon the comparative fault of the Contractor, its principals, employees and subcontractors. For the purpose of this section, the County and the Contractor agree that the County's and, if applicable, the State's costs of defense shall be included in the definition of damages above.

b. All Other Liabilities Except Professional Liability.

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 Contractor shall indemnify and hold harmless the County and the State, their officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incidental to the services and/or deliverables provided by or on behalf of the Contractor. In addition, the Contractor shall assume the defense of the County and, if applicable, the State and their officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such services and/or deliverables and shall pay all defense expenses, including reasonable attorneys' fees, expert fees and costs incurred by the County and, if applicable, the State, on account of such litigation or claims.

The above indemnification obligations shall include, but are not limited to, all claims against the County and, if applicable, the State by an employee or former employee of the Contractor or its subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects only the County and, if applicable, the State, 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.

In the event that the County or, if applicable, the State incurs any judgment, award and/or cost including attorneys' fees arising from the provisions of this section, or to enforce the provisions of this section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor.

In addition to injuries to persons and damage to property, the term "claims," for purposes of this provision, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in an unfair trade practice.

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.

12. Insurance Requirements. The Contractor shall procure by the time of execution of this Agreement, and maintain for the duration of this Agreement, (i) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees, and (ii) a current certificate of insurance and additional insured endorsement when applicable.

a. General. Each insurance policy shall be written on an "occurrence" form, except that Professional Liability, Errors and Omissions coverage, if applicable, may be written on a claims made basis. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is the subject of this Agreement.

By requiring the minimum insurance coverage set forth in this Section 12, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

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

c. Minimum Scope and Limits of Insurance. The Contractor 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: To meet applicable statutory requirements for workers' compensation coverage of the state or states of residency of the workers providing services under this Agreement;

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

(v) Professional Liability: \$1,000,000

d. Other Insurance Provisions and Requirements. The insurance coverages required in this Agreement for all liability policies except workers' compensation and Professional Liability, if applicable, must contain, or must 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 Contractor 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 07/04" or its equivalent is required.

(ii) The Contractor's 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 Contractor's liability to the County and shall be the sole responsibility of the Contractor.

(iv) Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by the County.

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.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor 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.

e. Subcontractors. The Contractor shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. **Insurance coverages provided by subcontractors instead of the Contractor as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.**

: 13. County Non-discrimination. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national

origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

[The Contractor shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Contractor of the Contractor's compliance with the requirements of Chapter 2.460 SCC. If the Contractor is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Contractor's obligations under other federal, state, or local laws against discrimination.

14. Federal Non-discrimination. Snohomish County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

15. Employment of County Employees. SCC 2.50.075, "Restrictions on future employment of County employees," imposes certain restrictions on the subsequent employment and compensation of County employees. The Contractor represents and warrants to the County that it does not at the time of execution of this Agreement, and that it shall not during the term of this Agreement, employ a former or current County employee in violation of SCC 2.50.075. For breach or violation of these representations and warranties, the County shall have the right to terminate this Agreement without liability.

16. Compliance with Other Laws. The Contractor shall comply with all other applicable federal, state and local laws, rules, and regulations in performing this Agreement.

17. Compliance with Grant Terms and Conditions. The Contractor shall comply with any and all conditions, terms and requirements of any federal, state or other grant, if any, that wholly or partially funds the Contractor's work hereunder.

18. Prohibition of Contingency Fee Arrangements. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or

resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

19. Force Majeure. If either party is unable to perform any of its obligations under this Agreement as a direct result of an unforeseeable event beyond that party's reasonable control, including but not limited to an act of war, act of nature (including but not limited to earthquake and flood), embargo, riot, sabotage, labor shortage or dispute (despite due diligence in obtaining the same), or governmental restriction imposed subsequent to execution of the Agreement (collectively, a "force majeure event"), the time for performance shall be extended by the number of days directly attributable to the force majeure event. Both parties agree to use their best efforts to minimize the effects of such failures or delays.

20. Suspension of Work. The County may, at any time, instruct the Contractor in writing to stop work effective immediately, or as directed, pending either further instructions from the County to resume the work or a notice from the County of breach or termination under Section 21 of this Agreement.

21. Non-Waiver of Breach; Termination.

a. 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.

b. If the Contractor breaches any of its obligations hereunder, and fails 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 Contractor only for the services and corresponding reimbursable expenses, if any, accepted by the County in accordance with Sections 3 and 8 hereof.

c. The County may terminate this Agreement upon twenty (20) business days' written notice to the Contractor for any reason other than stated in subparagraph b above, in which case payment shall be made in accordance with Sections 3 and 8 hereof for the services and corresponding reimbursable expenses, if any, reasonably and directly incurred by the Contractor in performing this Agreement prior to receipt of the termination notice.

d. Termination by the County hereunder shall not affect the rights of the County as against the Contractor provided under any other section or paragraph herein. The County does not, by exercising its rights under this Section 21, 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 Contractor (i) any damages, expenses or costs arising out of any such violations, breaches or non-performance and (ii) any



other set-offs or credits including, but not limited to, the costs to the County of selecting and compensating another contractor to complete the work of the Agreement.

22. Notices. All notices and other communications shall be in writing and shall be sufficient if given, and shall be deemed given, on the date on which the same has been mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the County:                      Snohomish County Department of Conservation and  
Natural Resources  
Surface Water Management  
3000 Rockefeller Ave, M/S 303  
Everett, Washington 98201  
Attention: Jessica Hamill

If to the Contractor:                Washington Farmland Trust  
1501 East Madison St #520  
Seattle, WA 98122  
Attn: Robin Fay

The County or the Contractor may, by notice to the other given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

23. Confidentiality. The Contractor shall not disclose, transfer, sell or otherwise release to any third party any confidential information gained by reason of or otherwise in connection with the Contractor's performance under this Agreement. The Contractor may use such information solely for the purposes necessary to perform its obligations under this Agreement. The Contractor shall promptly give written notice to the County of any judicial proceeding seeking disclosure of such information.

24. 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 Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County. If the Contractor 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 Contractor 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 Contractor 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 Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor 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 Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

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

26. Complete Agreement. The Contractor was selected through the County's RFP or RFQ identified in Section 1. The RFP or RFQ and the Contractor's response are incorporated herein by this reference. To the extent of any inconsistency among this Agreement, the RFP or RFQ, and the Contractor's response, this Agreement shall govern. To the extent of any inconsistency between the RFP or RFQ and the Contractor's response, the RFP or RFQ shall govern.

27. Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

28. No Third Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the County and the Contractor. This Agreement shall not be deemed to have conferred any rights, express or implied, upon any third parties.

29. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County.

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

31. Authority. Each signatory to this Agreement represents that he or she has full and sufficient authority to execute this Agreement on behalf of the County or the Contractor, as the case may be, and that upon execution of this Agreement it shall constitute a binding obligation of the County or the Contractor, as the case may be.

32. Survival. Those provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive.

33. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

SNOHOMISH COUNTY:

**Lacey Harper** Digitally signed by Lacey Harper  
Date: 2023.05.11 11:43:50 -07'00'

County Executive Director Date

WASHINGTON FARMLAND TRUST:

**Melissa Campbell** Digitally signed by Melissa Campbell  
Date: 2023.02.27 09:52:13 -08'00'

Date

Approved as to insurance  
and indemnification provisions:

**Barker, Sheila** Digitally signed by Barker, Sheila  
Date: 2023.03.21 14:08:05 -07'00'

Risk Management Date

Approved as to form only:

Legal Counsel to the Contractor Date

Approved as to form only:

**Hart, Alethea** Digitally signed by Hart, Alethea  
Date: 2023.02.14 15:21:18 -08'00'

Deputy Prosecuting Attorney Date

COUNCIL USE ONLY	
Approved	<u>5/10/2023</u>
ECAF #	<u>2023-0309</u>
MOT/ORD	<u>Motion 23-128</u>

## Schedule A Scope of Services

This scope of work is intended to more specifically describe Subtask Number 3.2 of the County Grant. If there are any conflicts between this scope of work and the County Grant, the County Grant governs.

### **Purpose of the Project**

Snohomish County was awarded grant funds from the Washington State Department of Ecology (“Ecology”) Floodplains by Design (FbD) program in Ecology Grant Agreement #SEAFBD-2123-SnCoPW-00013 (the “County Grant”) to implement the Community Floodplain Solutions – Phase II Project. A copy of the County Grant is attached to this Agreement as Schedule E.

As defined below, PCC Farmland Trust DBA Washington Farmland Trust (WFT or the “Contractor”) will undertake certain activities under the County Grant and will collaborate with project partners on these and other activities. Project partners include, but are not limited to, the Tulalip Tribes, Snohomish County, Snohomish Project Implementation Team (IT), County Agricultural Coordinator, Snohomish Conservation District (SCD), Sustainable Lands Strategy (SLS), Farmland Conservation Working Group, and area landowners.

### **Activities**

#### **TASK 1 – Agricultural Conservation Implementation**

- A. WFT 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 Agreement requirements; application of, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project.
- B. WFT will manage the project. Efforts will include conducting, coordinating, and scheduling project activities and assuring quality control. WFT will carry out this project in accordance with any completion dates outlined in this Agreement. Budget deviations are allowed between budget objects (e.g., WFT may spend less money on one task and more on another), but under no circumstances may WFT exceed the total project cost. Approval of the County Project Manager is required in advance of any budget deviation.

#### **Task 1 – Expected Outcomes**

- WFT will complete timely submittal of quarterly progress reports, billing, and recipient closeout report, and will properly maintain project documentation.
- WFT will conduct outreach to and engagement with landowners, including meetings, phone calls, site visits, etc., working with landowners and any legal counsel they may have to negotiate agricultural conservation easement terms and conditions.
- WFT will conduct due diligence for agricultural conservation easements, including, but not limited to, working with appraisers, review appraisers, surveyors, and title and escrow companies.

- WFT will attend monthly meetings with the County to provide project updates, collaborate on project elements, and discuss any project issues.
- WFT will participate in the Snohomish Project Implementation Team (IT) meetings to further collaboration efforts with stakeholders across the Snohomish Basin.

#### **Task 1 – Deliverables by WFT to the County**

- [County Grant Deliverable 3.1] Signed landowner agreement (for each easement acquisition). **DUE to County: upon landowner signature.**
- [County Grant Deliverable 3.3] Task progress report and billing will be submitted quarterly to Snohomish County on the following schedule, to allow for FbD Project Manager review, approval, and submittal to Ecology. Progress reports will communicate in memo style Task 1 and Task 2 activities completed and underway during the reporting quarter and issues encountered, activities anticipated for the next quarter, and lessons learned. This information will be included with County progress reporting to Ecology. **DUE to County: Quarterly through duration of Agreement (April 15th, July 15th, October 15th and January 7th)**

#### **Task 1 – FbD Grant - \$100,000**

#### **TASK 2 – Agricultural Conservation Easement Acquisitions**

The goal of this task is to work with the community on agricultural resiliency efforts such as the purchase of easements, with a goal of protecting up to 200 acres of agricultural land in perpetuity. Acquisitions will employ a reach-scale approach to help advance habitat restoration and flood risk reduction goals while promoting the viability of continued low-impact agricultural activities. WFT will collaborate with County staff as well as project partners, and SLS stakeholders as appropriate, to prepare a long-term stewardship plan for each landowner that includes adherence to the terms of the conservation easement and/or acquisition covenant. Actions will be closely coordinated with the County and the Snohomish Project Implementation Team (IT) and be consistent with the SCD's Agriculture Resilience Plan, which identifies priority agricultural resilience needs throughout the watershed. The Agriculture Resilience Plan is intended to help the local agricultural sector prepare for and adapt to changing climatic conditions by incorporating sea level rise, groundwater level, saltwater intrusion, flooding, and crop impact predictions into packages of landscape-scale resilience projects at high priority agricultural areas.

#### **Task 2 – Expected Outcomes**

- WFT will permanently conserve up to 200 acres of farmland for continued agricultural use preventing future development.

#### **Task 2 – Deliverables by WFT to the County**

- [County Grant Deliverable 3.3] *FOR ACQUISITIONS REQUIRING REIMBURSEMENT:* WFT will submit a complete Acquisition Face Sheet for a Conservation Easement (for each easement acquisition) (Schedule D) and provide that document, plus all other

required documents listed on the Face Sheet, to the County for uploading to EAGL prior to the reimbursement request of each acquisition. **DUE to County: upon completion of each easement acquisition.**

- [County Grant Deliverable 3.3] *FOR ACQUISITIONS THROUGH ESCROW*: If WFT requires funds to acquire an easement prior to closing, WFT can request an exception to Ecology's reimbursement policy by going through the escrow process. This process allows Ecology to pay WFT's grant funds in advance for the easement acquisition through a title/escrow company. Working through an established title company, WFT will provide the County and Ecology with a complete Acquisition Face Sheet for a Conservation Easement (for each easement acquisition); Title company's "Wire Transfer Request" with routing number, and wiring instructions for specific property referenced; Settlement Statement; and Closing date of transaction. The County will work with WFT and Ecology to generate a Payment Request/Progress Report for the payment of grant funds to escrow. **DUE to County: at least three (3) weeks prior to closing to allow sufficient time for Ecology and the Office of the State Treasurer to process documentation.**

## **Task 2 – FbD Grant - \$1,500,000**



Schedule B  
Compensation

The budget for work to be performed under the Agreement is one million six hundred thousand dollars (\$1,600,000). The County shall have no obligation to pay any invoice from WFT that would cause the total payments made to WFT by the County under this Agreement to exceed one million six hundred thousand dollars (\$1,600,000).

**Contract Task and Dollar Summary**

<b>Task</b>	<b>Description</b>	<b>County Grant</b>
<b>1</b>	Project Management and Administration	\$100,000
<b>2</b>	Agricultural Conservation Implementation	\$1,500,000
	<b>Totals</b>	\$1,600,000
	<b>Professional Services Agreement Grand Total</b>	<b>\$1,600,000</b>

**Table 1 – Contractor Hourly Rates**

	<b><u>Job Classification/Title</u></b>	<b><u>Maximum Comp Rate</u></b>
<b><u>1</u></b>	<b>Conservation Director</b>	<b>\$74.10</b>
<b><u>2</u></b>	<b>Stewardship Manager</b>	<b>\$50.71</b>
<b><u>3</u></b>	<b>Conservation Manager</b>	<b>\$60.40</b>
<b><u>4</u></b>	<b>Operations Manager</b>	<b>\$45.74</b>
<b><u>5</u></b>	<b>Associate Director</b>	<b>\$78.46</b>

Only Labor Classifications listed in this Schedule B are eligible for payment and must be invoiced exactly as stated above. Rates may only include salary and benefits and invoices will use the actual hourly rate, including salary and benefits, of each employee up to the Maximum Comp Rate shown in Table 1 above.

The Contractor Hourly Rates listed in Table 1 above shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the Contractor or the County. The Contractor may submit proposed maximum rate increases, together with a detailed explanation of such proposed increases, to the County for approval. Increases may only reflect vacation, benefits, cost-of-living, merit raise and tax changes. If negotiations are not conducted for the second or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this Agreement, shall be utilized.

Schedule C  
Invoice Documents

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

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

**Task 1 – Project Management and Administration**

***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						

Reimbursable Expenses

Subconsultant Services and Other Direct Costs (ODC) will be reimbursed at the Actual Cost to the Consultant with no markup. These charges may include, but are not limited to, the following items:

<b>Reimbursable Classifications</b>	<b>Rates</b>
Mileage	Current IRS Rate
Postage/Courier	At Cost
Outside Vendor Costs	At Cost

Any ODC not included in the above list shall not be eligible for payment without prior written consent of the County. All reimbursable charges must be necessary for the services provided under this Agreement.

Schedule D  
Acquisition Face Sheet for a Conservation Easement



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

“Grantor”: \_\_\_\_\_

Recipient: \_\_\_\_\_

Grant No: \_\_\_\_\_

**Acquisition Face Sheet for a Conservation Easement**  
to be completed by Grant Recipient

Address of Property: \_\_\_\_\_

Parcel No: \_\_\_\_\_ Closing Date: \_\_\_\_\_ Appraised Value: \$ \_\_\_\_\_

When a land acquisition project is awarded funding; the recipient is required to provide the following documentation prior to closing:

- \_\_\_\_\_ 1. Appraisal
  - \_\_\_\_\_ Name/Address of “Grantor”
  - \_\_\_\_\_ General Vicinity Map
  - \_\_\_\_\_ Site Specific Map
  - \_\_\_\_\_ Legal Description
  - \_\_\_\_\_ Title Report
- \_\_\_\_\_ 2. Settlement Statement
- \_\_\_\_\_ 3. Property Assessment Checklist
- \_\_\_\_\_ 4. Photographic documentation<sup>1</sup> of each property before acquisition in sufficient quantity / quality to effectively illustrate the acquisition. Each image will be labeled as to location and what features it represents.

(Note: “after” photos will be needed if site is subsequently cleared of Human elements such as structures or fencing, etc.)

- \_\_\_\_\_ 5. Recorded deed with restrictions  
EXAMPLE: The purpose of this conservation easement is to maintain the land in open space and provide opportunity for agricultural activity on the subject property in perpetuity. Pierce County (“Grantee”) has a 20-year option to build a 15’ wide recreational and educational trail for hiking, fishing, horseback riding and other forms of recreation that do not accommodate motorized, mechanical or electronic accessories. There is no general public access intended other than the trail.

\_\_\_\_\_



## **Agreement No. SEAFBD-2123-SnCoPW-00013**

Schedule E - Grant Agreement

### **SHORELANDS FLOODPLAINS BY DESIGN AGREEMENT**

**BETWEEN**

**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

**AND**

**SNOHOMISH COUNTY CONSERVATION AND NATURAL RESOURCES DEPT**

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

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#### **GENERAL INFORMATION**

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

#### Project Short Description:

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

#### Project Long Description:

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

A. Increase ecological function:



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Project Title: Community Floodplain Solutions

Recipient Name: Snohomish County Conservation and Natural Resources Dept

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

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

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

The project is organized into three primary themes:

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

A. Support for the Integration Team, which engages critical partners to scope and design projects and look at project interactions and trade offs.

B. Communications and outreach to solicit community input and to build understanding and support for integrated floodplain management.

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

A. Continued acquisition or easements on properties prone to flooding and erosion. Acquisitions will allow for future integrated actions.

B. Final designs, permits, and implementation for at least one site-specific integrated effort in the Sultan Reach and final designs. This work will provide up to 155 acres of restored or reconnected habitat and up to 200 acres of flood risk reduction.

C. Final designs and implementation of up to two agriculture resilience projects being identified in Phase I.

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

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



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Recipient Name: Snohomish County Conservation and Natural Resources Dept

and/or flood hazard reduction actions.

B. Agricultural resilience projects, fish passage, and drainage improvements.

C. Feasibility analysis of large-scale integrated floodplain projects.

Overall Goal:

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

Specific goals are to:

A. Advance projects and actions funded by grant no. SEAFBD-2019-SnCoPW-00051 for the CFS in the Sultan Reach, including final design of a large-scale integrated floodplain project, implementing agriculture resilience projects, and protecting floodplain habitat in alignment with the Acquisition Strategy currently being developed.

B. Develop a pipeline of integrated floodplain management projects in other reaches of the Lower Skykomish River to accelerate implementation of priority habitat, flood reduction, and agricultural projects.

C. Support enabling conditions at the Snohomish Watershed scale by supporting the Integration Team and completing a high priority agriculture resilience project in the Estuary Reach.



Agreement No: SEAFBD-2123-SnCoPW-00013

Project Title: Community Floodplain Solutions

Recipient Name: Snohomish County Conservation and Natural Resources Dept

## RECIPIENT INFORMATION

Organization Name: Snohomish County Conservation and Natural Resources Dept

Federal Tax ID: 91-6001368

DUNS Number: 079247979

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

Physical Address: 3000 Rockefeller Ave.  
Everett, Washington 98201

Organization Email: spw-grantadministration@snoco.org

Organization Fax: (425) 388-6455

## Contacts

Agreement No: SEAFBD-2123-SnCoPW-00013

Project Title: Community Floodplain Solutions

Recipient Name: Snohomish County Conservation and Natural Resources Dept

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

Agreement No: SEAFBD-2123-SnCoPW-00013

Project Title: Community Floodplain Solutions

Recipient Name: Snohomish County Conservation and Natural Resources Dept

**ECOLOGY INFORMATION**

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

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

**Contacts**

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

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

## AUTHORIZING SIGNATURES

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

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

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

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

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

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

Washington State  
Department of Ecology

Snohomish County Conservation and Natural Resources Dept

By: Joenne McGerr 11/4/2021

Joenne McGerr Date  
Shorelands  
Program Manager

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

Gregg Farris Date  
Surface Water Utility Director

Template Approved to Form by  
Attorney General's Office

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

Kelly Snyder

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

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Public Works Director

Date



Agreement No: SEAFBD-2123-SnCoPW-00013

Project Title: Community Floodplain Solutions

Recipient Name: Snohomish County Conservation and Natural Resources Dept

**SCOPE OF WORK**

Task Number: 1

Task Cost: \$312,500.00

Task Title: 1. Project Administration/Management

Task Description:

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

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

Task Goal Statement:

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

Task Expected Outcome:

\*Timely and complete submittal of requests for reimbursement, quarterly progress reports and recipient closeout report.

\*Properly maintained project documentation.

Recipient Task Coordinator: Jessica Hamill**1. Project Administration/Management****Deliverables**

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



Agreement No: SEAFBD-2123-SnCoPW-00013

Project Title: Community Floodplain Solutions

Recipient Name: Snohomish County Conservation and Natural Resources Dept

## SCOPE OF WORK

Task Number: 2

Task Cost: \$1,187,038.00

Task Title: 2. Project Development and Scoping

### Task Description:

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

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

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

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

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

### Task Goal Statement:

The goals of Task 2 are to:



Agreement No: SEAFBD-2123-SnCoPW-00013

Project Title: Community Floodplain Solutions

Recipient Name: Snohomish County Conservation and Natural Resources Dept

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

Task Expected Outcome:

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



Agreement No: SEAFBD-2123-SnCoPW-00013

Project Title: Community Floodplain Solutions

Recipient Name: Snohomish County Conservation and Natural Resources Dept

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

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

Agreement No: SEAFBD-2123-SnCoPW-00013

Project Title: Community Floodplain Solutions

Recipient Name: Snohomish County Conservation and Natural Resources Dept

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



Agreement No: SEAFBD-2123-SnCoPW-00013

Project Title: Community Floodplain Solutions

Recipient Name: Snohomish County Conservation and Natural Resources Dept

## SCOPE OF WORK

Task Number: 3

Task Cost: \$5,625,000.00

Task Title: 3. Easements and Acquisitions

### Task Description:

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

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

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

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

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

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

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

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

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



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standards in 44 C.F.R. § 24.102.

**Task Goal Statement:**

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

**Task Expected Outcome:**

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

**Recipient Task Coordinator:** Jessica Hamill**3. Easements and Acquisitions****Deliverables**

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



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## SCOPE OF WORK

Task Number: 4

Task Cost: \$3,580,682.00

Task Title: 4. Project Design and Construction

### Task Description:

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

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

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

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

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

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

### Task Goal Statement:



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The goals of Task 4 are to:

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

Task Expected Outcome:

The RECIPIENT will:

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



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

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



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



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

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**BUDGET****Funding Distribution EG220231**

**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

Funding Type: Grant

Funding Effective Date: 07/01/2021

Funding Expiration Date: 06/30/2025

Funding Source:

Title: State Building Construction Account (SBCA)

Fund: 057

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? No

Floodplains by Design	Task Total
1. Project Administration/Management	\$ 312,500.00
2. Project Development and Scoping	\$ 1,187,038.00
3. Easements and Acquisitions	\$ 5,625,000.00
4. Project Design and Construction	\$ 3,580,682.00

**Total: \$ 10,705,220.00**



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

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
Floodplains by Design	20.00 %	\$ 2,141,044.00	\$ 8,564,176.00	\$ 10,705,220.00
<b>Total</b>		<b>\$ 2,141,044.00</b>	<b>\$ 8,564,176.00</b>	<b>\$ 10,705,220.00</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 provided in the preceding paragraphs of this section shall be valid and enforceable only to the extent of the RECIPIENT's negligence or the negligence of its agents and employees.

d. To the extent that the constitution and laws of the State of Washington permit, RECIPIENT shall indemnify and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the continued operation, maintenance, or repair of the structures or works constructed, restored, repaired, maintained or improved as a result of this grant. If the structures or works for which this grant is received are portions of an integrated flood protection



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

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

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

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

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

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

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

## GENERAL FEDERAL CONDITIONS

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

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

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



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

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

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

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

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

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

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at [www.fsrs.gov](http://www.fsrs.gov) <http://www.fsrs.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.fsrs.gov](http://www.fsrs.gov) <http://www.fsrs.gov>.

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

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**SERVICES OR EQUIPMENT:**

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

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

06/24/2021 Version

#### 1. ADMINISTRATIVE REQUIREMENTS

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

#### 2. AMENDMENTS AND MODIFICATIONS

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

#### 3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

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

#### 4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

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

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

RECIPIENT shall:

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



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

RECIPIENT shall:

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

## 5. ASSIGNMENT

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

## 6. COMMUNICATION

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

## 7. COMPENSATION

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

Schedule E  
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