

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.  
202401021

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	Natural Resources Salmon Recovery 907010
Contract or Grant Administrator:	John Thompson
Contractor's / Agency Name:	Washington State Department of Fish and Wildlife
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval?    Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, grantor agency contract number(s): <u>23-24027</u> CFDA#: <u>66.123</u>	
Is this contract grant funded? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process?    Contract Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____    Cost Center: <u>823004</u>	
Is this agreement excluded from E-Verify?    No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>(800,250)</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope: The purpose of this grant agreement is to expedite WRIA 1 fish passage barrier remediation. This agreement supports building staff capacity, coordinating prioritization with other WRIA 1 partners, providing fish passage and habitat assessment training, completing pre-design for 5 priority fish passage barriers, and sharing project information with community members and other professionals in the Puget Sound region.	
Term of Contract:	<u>11/01/2023-12/30/25</u> Expiration Date: <u>December 30, 2025</u>

Contract Routing:	1. Prepared by: <u>E. Douglas</u>	Date: <u>12/15/23</u>
	2. Attorney signoff: <u>Chris Quinn</u>	Date: <u>01/12/24</u>
	3. AS Finance reviewed: <u>Amy Martin</u>	Date: <u>01/10/24</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: <input checked="" type="checkbox"/>	Date: <u>2/12/24</u>
	6. Executive contract review: _____	Date: _____
	7. Council approved (if necessary): <u>AB2024-102</u>	Date: <u>2/06/24</u>
	8. Executive signed: <input checked="" type="checkbox"/>	Date: <u>2/12/24</u>
	9. Original to Council: _____	Date: _____



## GRANT AGREEMENT - EPA FUNDS

**TITLE:** Capacity to Expedite WRIA 1 Culvert and Fish Barrier Prioritization, Design & Implementation

**WDFW NUMBER:** 23-24027

**GRANTEE:** Whatcom County

**CONTRACT PERIOD:** 11/01/2023 to 12/30/2025

**TYPE:** Payable / Grant / Sub-Recipient Fed EPA

**CONTRACT AMOUNT:** \$800,250.00

### **A. PARTIES TO THIS CONTRACT**

This contract is entered into between the Washington State Department of Fish and Wildlife (WDFW), Post Office Box 43200, Olympia, WA 98504-3200; and Whatcom County (Grantee), 322 Commercial St #110, Bellingham, WA 98225; and shall be binding upon the agents and all persons acting by or through the parties.

### **B. PURPOSE OF CONTRACT**

The purpose of this contract is to provide a grant award to the Grantee for the project specified herein. For this contract the Environmental Protection Agency is the Federal awarding agency, WDFW is the pass-through entity, and the Grantee is the subrecipient.

### **C. DESCRIPTION OF PROJECT**

The Grantee shall perform the project as described in Attachments, which are incorporated herein by this reference:

Attachment - A - General Terms and Conditions

Attachment - B - Contract/Project Summary

Attachment - C - Special Terms and Conditions

Attachment - D - Statement of Work

The Grantee is a subrecipient of federal funds as identified under "Federal Funding Information" in Attachment B.

### **D. PERIOD OF PERFORMANCE**

The performance period under this contract shall commence on 11/01/2023 and terminate on 12/30/2025. No expenditures made before or after this period are eligible for reimbursement unless incorporated by written amendment into this contract. The contract may be terminated or the performance period extended pursuant to terms set forth in Attachment A.

### **E. COMPENSATION / PAYMENT**

The total dollars provided by WDFW for this contract shall not exceed \$800,250.00 minus any matching requirements identified in this contract. The Grantee shall be responsible for all project costs exceeding this amount. Only eligible reimbursement activities that are in direct support of the project deliverables identified in this contract will be reimbursed. Any additional services provided by the Grantee must have prior written approval of WDFW.

Compensation for services rendered shall be payable upon receipt of properly completed invoices, which shall be submitted to the Project Manager by the Grantee not more often than monthly. The invoices shall describe the document to WDFW's satisfaction, a description of work performed, activities accomplished, or the progress of the project. The rates shall be in accordance with those herein agreed to.

Payment shall be considered timely if made by WDFW within 30 days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Grantee. WDFW may, in its sole discretion, terminate the contract or withhold payments claimed by the Grantee for the services rendered if the Grantee fails to satisfactorily comply with any term or conditions of this contract.

### **F. RIGHTS AND OBLIGATIONS**

All rights and obligations of the parties of this contract are subject to this contract, including the Attachments, which are incorporated herein by this reference. By signing this contract the Grantee acknowledges that they have read, fully understand, and agree to be bound by all terms and conditions set forth in this contract.

**G. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND WDFW POLICIES**

The Grantee shall comply with, all applicable state, federal, and local laws and regulations, including published WDFW policies, while performing under this contract

**H. ORDER OF PRECEDENCE**

In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

Applicable Federal and State of Washington statutes and regulations.

Attachment - A - General Terms and Conditions.

Attachment - C - Special Terms and Conditions

Attachment - D - Statement of Work, and

Any other provision, term or material incorporated herein by reference or otherwise incorporated.

**I. CONTRACT REPRESENTATIVES**

The below named representatives for each of the parties shall be the contact people for all communications and billings regarding the performance of this contract. All written communications regarding this contract shall be sent to the designated representatives at the addresses below unless notified in writing of any change.

**Grantee's Representative**

John Thompson, [jnthomps@co.whatcom.wa.us](mailto:jnthomps@co.whatcom.wa.us)

**WDFW's Project Manager**

Jennifer Griffiths, [Jennifer.Griffiths@dfw.wa.gov](mailto:Jennifer.Griffiths@dfw.wa.gov)

**J. ENTIRE CONTRACT**

This contract, along with all attachments and exhibits, constitutes the entire agreement of the parties. No other understandings, verbal or otherwise, regarding this contract shall exist or bind any of the parties.

**K. APPROVAL**

This contract shall be subject to the written approval of WDFW'S authorized representative and shall not be binding until so approved. This contract may be altered, amended, or waived only by a written amendment executed by both parties.

IN WITNESS WHERE, WDFW and the Grantee have signed this contract.

**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:**

**WASHINGTON DEPARTMENT OF FISH AND WILDLIFE**

Recommended for Approval:

Elizabeth Kosa 2/8/2024 | 3:01 PM PST  
ELIZABETH KOSA, PUBLIC WORKS DIRECTOR DATE

DocuSigned by:

Jeffrey Hugdahl 2/12/2024 | 2:59 PM PST  
JEFFREY HUGDAHL  
SIGNATURE AND DATE

Approved as to form only:

Christopher Quinn 2/12/2024 | 9:30 AM PST  
CHRISTOPHER QUINN, DATE  
SENIOR DEPUTY PROSECUTING ATTORNEY – CIVIL DIVISION

Jeffrey Hugdahl Contracts Manager  
JEFFREY HUGDAHL  
PRINTED NAME AND TITLE

Approved:

Accepted for Whatcom County Flood Control Zone District

DocuSigned by:  
Satpal Sidhu 2/12/2024 | 9:32 AM PST  
By: Satpal Singh Sidhu, Whatcom County Executive, DATE  
acting for the Whatcom County  
Flood Control Zone District Board of Supervisors

**Attachment A -**

**GENERAL TERMS AND CONDITIONS  
Grant Agreement - EPA Funds**

**DEFINITIONS**

As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "AGENCY" or "WDFW" shall mean the **Department of Fish and Wildlife** of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- B. "AGENT" shall mean the AGENCY Director, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "ARCHAEOLOGIST" shall mean an individual meeting the Secretary of the Interior's Professional Qualifications Standards as it relates to Archaeology.
- D. "CFR" shall mean the Code of Federal Regulations. All references in the contract to CFR chapters or sections shall include any successor, amended or replacement regulations.
- E. "EPA" shall mean the Environmental Protection Agency.
- F. "GRANTEE" shall mean any organization or individual that is performing service(s) under this contract, and shall include all employees of the GRANTEE.
- G. "RCW" shall mean the Revised Code of Washington. All references in the contract to RCW chapters or sections shall include any successor, amended or replacement statutes.
- H. "Subcontractor" shall mean one not in the employment of the GRANTEE, who is performing all or part of those services under this contract under a separate contract with the GRANTEE. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.
- I. "USC" shall mean United States Code. All references in the contract to USC chapters or sections shall include any successor, amended or replacement statutes.

**ACCESS TO DATA**

In compliance with RCW 39.26.180, the GRANTEE shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, the State Auditor, and Federal auditors at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the GRANTEE'S reports, including computer models and methodology for those models.

**ADVANCE PAYMENTS PROHIBITED**

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

**AMENDMENTS**

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

**AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35**

Both parties shall comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

**ARCHAEOLOGICAL AND CULTURAL RESOURCES**

The work conducted by the GRANTEE is subject to Compliance with all applicable local, state, and federal cultural resources laws and regulations. These may include, but are not limited to, Governor's Executive Order 21-02 (EO 21-02), the State Environmental Policy Act, the National Historic Preservation Act, and the National Environmental Policy Act. Compliance must be completed and documentation provided by the GRANTEE to WDFW prior to the start of any work on project site(s).

- A. Notice of Cultural Resources Completion. No work shall commence in the project area until WDFW has provided a notice of cultural resources completion. WDFW may require on-site monitoring for impacts to cultural resources during any demolition, construction, land clearing, restoration, or repair work, and may direct that work stop to minimize, mitigate, or avoid cultural resource impacts or concerns. All cultural resources requirements for non-ground disturbing projects (such as acquisition or planning projects) must be met prior to final reimbursement. WDFW will not reimburse the GRANTEE for any deliverables or other invoices requiring a notice of cultural resources completion until the GRANTEE has demonstrated compliance.
- B. Discovery of Human Remains. If *human skeletal remains* are found while conducting work under this contract, the GRANTEE shall immediately stop any



activity that may cause further disturbance. The area of the find will be secured and protected from further disturbance until WDFW provides notice to proceed.

The GRANTEE or their subcontractors must immediately notify WDFW, the Washington State Department of Archaeology and Historic Preservation (DAHP) and either the Cultural Resources Program Manager or Tribal Historic Preservation Officer of all affected Tribes. The GRANTEE will also report the finding of *human skeletal remains* to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the *human skeletal remains* and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the *human skeletal remains* are non-forensic, then they will report that finding to DAHP, who will then take jurisdiction over the remains.

DAHP will notify any appropriate cemeteries and all affected Tribes of the find. The Washington State Physical Anthropologist will make a determination of whether the *human skeletal remains* are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected Tribes. DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the *human skeletal remains* (RCWs 68.50.645, 27.44.055, and 68.60.055).

- C. Discovery of Cultural Resources. If suspected *cultural resources* are found while conducting work under this contract, the GRANTEE shall immediately stop any activity that may cause further disturbance. The GRANTEE or their Contractors must immediately notify the WDFW Project Manager. WDFW will contact DAHP and the Cultural Resources Program Manager or Tribal Historic Preservation Officer of all affected Tribes to alert them to a possible identification of cultural resources. The GRANTEE'S ARCHAEOLOGIST will confirm the find represents archaeological material(s) or feature(s) and notify the GRANTEE, WDFW Project Manager, and the WDFW ARCHAEOLOGIST. The GRANTEE's ARCHAEOLOGIST will provide photos of the archaeological material(s) or feature(s) with an appropriate scale. The WDFW Project Manager, in cooperation with the WDFW ARCHAEOLOGIST, will contact DAHP and affected Tribes to identify appropriate points of contact and send the provided photos. WDFW, DAHP, and affected Tribes will consult to determine next steps.

If it can be determined at this step that the material(s) or feature(s) represent a potentially significant archaeological site, the GRANTEE will be advised of interim protective measures. Work may resume outside the affected area plus any necessary buffer, unless the WDFW ARCHAEOLOGIST directs otherwise.

WDFW will initiate Tribal and DAHP consultation regarding evaluation of the find's significance, potential for effects caused by the project, and subsequent treatment plans or Memoranda of Agreement (MOA)s.

Wherever possible, the preferred treatment of significant archaeological resources and historic sites will be in situ preservation. If a treatment plan requires that such resources be excavated or removed, an agreement must first be reached between WDFW, the GRANTEE, and the consulting parties before work can proceed. Failure to abide by this section can result in immediate termination of this contract in addition to any other remedies allowed by law.

#### **ASSIGNMENT**

The work to be provided under this contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

#### **ATTORNEYS' FEES**

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

#### **BUILD AMERICA, BUY AMERICA**

The GRANTEE is subject to the Buy America Sourcing requirements under the Build America, Buy America provisions of the [Infrastructure Investment and Jobs Act \(IIJA\)](#) (P.L. 117-58, §§70911-70917) for the types of infrastructure projects under the EPA program and activities specified in the chart, "Environmental Protection Agency's Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America Buy America Provisions of the [Infrastructure Investment and Jobs Act](#)." None of the funds provided under this contract may be used for a project of infrastructure unless all iron and steel, manufactured products, and construction materials that are consumed in, incorporated into, or affixed to an infrastructure project are produced in the United States. The Buy America preference requirement applies to an entire infrastructure project, even if it is funded by both Federal and non-Federal funds. The GRANTEE must implement these requirements in its procurements, and these requirements must flow down to all subawards and contracts at any tier. For legal definitions and sourcing requirements, the recipient must consult EPA's [Build America, Buy America website](#) and the Office of Management and Budget's (OMB) [Memorandum M-22-11, Initial](#)

Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure. The GRANTEE may submit a waiver request to the AGENCY. A list of approved EPA waivers (general applicability and project specific) is available on the EPA [Build America, Buy America website](#).

#### **CENTRAL CONTRACTOR REGISTRATION AND UNIQUE ENTITY IDENTIFIER**

Unless exempt under 2 CFR 25.110, the GRANTEE shall comply with 2 CFR 25 and be registered in the federal System for Award Management Registration (SAM); and maintain an active registration with current information at all times during the period of performance for this contract; and provide its Unique Entity Identifier (UEI) number to the AGENCY.

#### **CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

The GRANTEE shall not use or disclose any information concerning the AGENCY, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law.

#### **CONSULTANT CAP**

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by the GRANTEE shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the GRANTEE will pay these in accordance with their normal travel reimbursement practices). Subcontracts with firms for services which are awarded using the procurement requirements in Subpart D of 2 CFR 200, are not affected by this limitation unless the terms of the subcontract provide the GRANTEE with responsibility for the selection, direction and control of the individuals who will be providing services under the subcontract at an hourly or daily rate of compensation.

#### **CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the GRANTEE terminate this contract if it is found after due notice and examination by the AGENT that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the GRANTEE in the procurement of, or performance under this contract. In the event this contract is terminated as provided above, the AGENCY shall be entitled to pursue the same remedies against the GRANTEE as it could pursue in the event of a breach of the contract by the GRANTEE. The

rights and remedies of the AGENCY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the AGENT makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

EPA's conflict of interest (COI) policy is posted at <http://www.epa.gov/oqd/coi.htm>. The GRANTEE must notify WDFW of any potential conflicts of interest identified in EPA's COI Policy within 5 calendar days of the discovery of the potential COI.

#### **COST PRINCIPLES AND AUDIT REQUIREMENTS**

The GRANTEE agrees to comply with the costs principles contained in 2 CFR Part 200 as appropriate for this contract. The GRANTEE agrees to comply with the organizational audit requirements of 2 CFR Subpart F, and further understands and agrees that funds may be withheld, or other related requirements may be imposed, if outstanding audit issues (if any) from 2 CFR Subpart F audits (and any other audits of Contract funds) are not satisfactorily and promptly addressed.

#### **COPYRIGHT PROVISIONS**

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

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

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

The GRANTEE shall exert all reasonable effort to advise the AGENCY, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.



The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the GRANTEE with respect to any data delivered under this contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the GRANTEE.

In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36 for other recipients, the EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this contract for Federal purposes.

#### **COVENANT AGAINST CONTINGENT FEES**

The GRANTEE warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the GRANTEE for securing business. The AGENCY shall have the right, in the event of breach of this clause by the GRANTEE, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

#### **CYBERSECURITY**

The GRANTEE agrees to comply with the current EPA general terms and conditions "Cybersecurity". The terms and conditions can be found on the EPA Grants Terms and Conditions Website.

For STATE AGENCIES:

[http://www2.epa.gov/sites/production/files/2015-07/documents/state\\_grant\\_cyber\\_security\\_condition.pdf](http://www2.epa.gov/sites/production/files/2015-07/documents/state_grant_cyber_security_condition.pdf).

For TRIBES:

[http://www2.epa.gov/sites/production/files/2015-07/documents/tribal\\_grant\\_cyber\\_security\\_condition.pdf](http://www2.epa.gov/sites/production/files/2015-07/documents/tribal_grant_cyber_security_condition.pdf).

For Other Recipients:

[http://www2.epa.gov/sites/production/files/2015-07/documents/cyber\\_security\\_grant\\_condition\\_for\\_other\\_recipients.pdf](http://www2.epa.gov/sites/production/files/2015-07/documents/cyber_security_grant_condition_for_other_recipients.pdf).

#### **DAVIS BACON AND RELATED ACTS**

If any work performed by the GRANTEE or Subcontractor employees is subject to the Davis Bacon Act and Davis-Bacon prevailing wage provisions contained in applicable federal laws, the GRANTEE shall ensure that they and their Subcontractor(s) a) pay at least once per week wages to GRANTEE and/or Subcontractor laborers and mechanics at a rate not less than the minimum wages specified in wage determinations made by the U.S. Department of Labor; and b) provide to the AGENCY each week U.S. Department of Labor Form WH-347 "Payroll (For Contractors Optional Use)" stating the wages paid to GRANTEE and /or Subcontractor laborers and mechanics engaged in work funded by this contract.

#### **DISADVANTAGED BUSINESS ENTERPRISE**

The Grantee agrees to comply with the requirements of the Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

#### **DISALLOWED COSTS**

The GRANTEE is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

#### **DISPUTES**

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with AGENT.

1. The request for a dispute hearing must:
  - Be in writing;
  - State the disputed issue(s);
  - State the relative positions of the parties;
  - State the GRANTEE'S name, address, and contract number; and
  - Be mailed to the AGENT and the other party's (respondent's) contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the AGENT and the requester within 5 calendar days.
3. The AGENT shall review the written statements and reply in writing to both parties within 10 calendar days. The AGENT may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

#### **DRUG FREE WORKPLACE**

The GRANTEE shall comply with the Drug-Free Workplace Act of 1988, 41 USC 701-707, as amended. Compliance with the Drug-Free Workplace Act includes publishing a drug-free workplace statement and establishing a drug-free awareness program for GRANTEE employees; and taking actions concerning GRANTEE employees who are convicted of violating drug statutes in the workplace. The GRANTEE shall provide written notice of a conviction of a GRANTEE employee of a drug violation in the workplace to the AGENCY within

seven (7) calendar days after the GRANTEE learns of the conviction.

**DUPLICATE PAYMENT**

The AGENCY shall not pay the GRANTEE, if the GRANTEE has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

**ENTIRE AGREEMENT**

This contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.

**EQUIPMENT MANAGEMENT**

The GRANTEE may keep any equipment funded through this contract and continue to use it on the project originally funded through this contract or on other federally funded projects whether or not the project or program continues to be supported by federal funds. If the GRANTEE is a state agency, the GRANTEE will manage and dispose of equipment acquired under this contract in accordance with state laws and procedures.

**FEDERAL DEBARMENT AND SUSPENSION**

The GRANTEE certifies, that neither it nor its "principals" (as defined in 49 CFR 29.105) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Further, the GRANTEE agrees not to enter into any arrangements or other contracts with any party that is on the "List of Parties Excluded from Federal Procurement or Non-procurement Programs" which can be found at <https://www.sam.gov>.

**FEDERAL EMPLOYEES**

The GRANTEE understands that none of the funds provided through this contract (including funds contributed by the recipient as cost sharing) may be used to pay for the travel of Federal employees or for other costs associated with Federal participation in this project unless a Federal agency will be providing services to the GRANTEE as authorized by a Federal statute.

**FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT**

This contract is subject to the requirements of the Federal Funding Accountability and Transparency Act (FFATA) as stated in 2 CFR 170. The GRANTEE agrees to comply with applicable requirements to assist the AGENCY in reporting first-tier subawards of \$25,000 or more and, in certain circumstances, in reporting the names and total compensation of the five most highly compensated executives of first-tier subrecipients of award funds. Such data will be submitted to the FFATA Subaward Reporting System (FSRS).

**FINAL INVOICE**

WDFW # 23-24027

The GRANTEE shall submit the final invoice not later than 60 calendar days from the end of the contract period.

**GOVERNANCE**

This contract is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this contract shall be construed to conform to those laws. In the event of an inconsistency in the terms of this contract, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Statement of work; and
- c. Any other provisions of the contract, including materials incorporated by reference.

**GOVERNING LAW**

This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

**HOTEL FIRE SAFETY ACT**

The Grantee agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part by this contract complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended).

**INDEMNIFICATION**

To the fullest extent permitted by law, the GRANTEE shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

The GRANTEE'S obligations to indemnify, defend, and hold harmless includes any claim by the GRANTEES' agents, employees, representatives, or any Subcontractor or its employees.

The GRANTEE expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the GRANTEE'S or any Subcontractor's performance or failure to perform the contract. The GRANTEE'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.



The GRANTEE waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

#### **INDEPENDENT CAPACITY OF THE GRANTEE**

The parties intend that an independent contractor relationship will be created by this contract. The GRANTEE and his or her employees or agents performing under this contract are not employees or agents of the AGENCY. The GRANTEE will not hold himself/herself out as or claim to be an officer or employee of the AGENCY or of the State of Washington by reason hereof, nor will the GRANTEE make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the GRANTEE.

#### **INDIRECT COSTS**

The GRANTEE is entitled to reimbursement of indirect costs, subject to any statutory or regulatory administrative cost limitations, if the GRANTEE has a current Federally-approved indirect cost rate agreement or have submitted an indirect cost rate proposal to their cognizant federal agency for review and approval and a final rate has been determined by the cognizant agency. The GRANTEE is responsible for maintaining an approved indirect cost rate for the life of this contract. If the GRANTEE has a difference between their provisional rate and final rate the GRANTEE is not entitled to more than the contract value without prior approval from WDFW. The GRANTEE must send its proposal to its cognizant federal agency within six (6) months after the close of the governmental unit's fiscal year. If the GRANTEE is an Indian tribe and does not have a previously established indirect cost rate, the GRANTEE must submit their indirect costs rate proposal to the National Business Center, Indirect Cost Services, U.S. Department of the Interior, 2180 Harvard Street, Suite 430, Sacramento, CA 95815-3317. The GRANTEE will comply with the audit requirements in accordance with 2 CFR 200 Subpart F.

#### **INDUSTRIAL INSURANCE COVERAGE**

The GRANTEE shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the GRANTEE fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, the AGENCY may collect from the GRANTEE the full amount payable to the Industrial Insurance accident fund. The AGENCY may deduct the amount owed by the GRANTEE to the accident fund from the amount payable to the GRANTEE by the AGENCY under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the GRANTEE.

#### **INSURANCE**

The GRANTEE shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect

the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the GRANTEE or Subcontractor, or agents of either, while performing under the terms of this contract.

The GRANTEE shall provide insurance coverage, which shall be maintained in full force and effect during the term of this contract, as follows:

1. Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the GRANTEE is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
2. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the GRANTEE, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
3. Marine Insurance. If the GRANTEE will be using a vessel or boat in the performance of this contract, the GRANTEE shall maintain a Commercial Marine Protection and Indemnity (P&I) Policy with P&I limit of not less than \$1,000,000 per occurrence and with a deductible not to exceed \$25,000 (to include diving operations if diving is a part of the contracted service for any liability which includes coverage for injury to the crew and passengers).
4. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. GRANTEE shall instruct the insurers to give AGENCY thirty (30) calendar days advance notice of any insurance cancellation.

If the GRANTEE is self-insured, evidence of its status as a self-insured entity shall be provided to the AGENCY. If requested by the AGENCY, the GRANTEE must describe its financial condition and the self-insured funding mechanism.

The GRANTEE shall submit to AGENCY within fifteen (15) calendar days of the contract effective date, a certificate of insurance or evidence of its status as a self-insured entity that outlines the coverage and limits defined in this section. The GRANTEE shall submit renewal certificates as appropriate during the term of the contract; the failure of the AGENCY to



enforce this term in no way reduces the GRANTEE's responsibilities under this section.

#### **LICENSING, ACCREDITATION AND REGISTRATION**

The GRANTEE shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

#### **LIGHT REFRESHMENTS AND/OR MEALS**

The GRANTEE will obtain prior approval from WDFW for the use of contract funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events).

#### **LIMITATION OF AUTHORITY**

Only the AGENT or AGENT'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the AGENT.

#### **MANAGEMENT FEES**

Management fees or similar charges in excess of the direct costs and approved indirect rates are not reimbursable under this contract. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this contract.

#### **MATCHING FUNDS**

The GRANTEE shall be responsible for providing matching funds as indicated in the contract (if any). If the GRANTEE is responsible for matching funds they shall state the amount of match used during the billing period and the cumulative amount of match used to date on every invoice submitted for payment to the AGENCY. The GRANTEE shall comply with the uniform administrative rules on matching or cost sharing for Federal grants and cooperative agreements and subawards as contained in 2 CFR Section 200.

#### **MINORITY, WOMEN AND VETERAN-OWNED BUSINESSES**

The AGENCY encourages participation by minority and women-owned business enterprises certified by the Office of Minority and Women's Business Enterprises (OMWBE); and veteran-owned businesses certified by the Department of Veteran's Affairs (DVA). If any part of this contract is subcontracted to an OMWBE or DVA-certified firm the GRANTEE shall submit a statement of participation indicating what OMWBE or DVA certified firm was used and the dollar amount of their subcontracts.

Pursuant to 40 CFR, Section 33.301, the GRANTEE agrees to make six good faith efforts whenever procuring construction, equipment, services and supplies funded through this contract,

and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained by the GRANTEE.

#### **NONDISCRIMINATION**

During the performance of this contract, both parties shall comply with all federal and state nondiscrimination laws, regulations and policies, including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and, if applicable, Section 13 of the Federal Water Pollution Control Act Amendments of 1972. In the event of the GRANTEE'S non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the GRANTEE may be declared ineligible for further contracts with the AGENCY. The GRANTEE shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

#### **PREVAILING WAGE**

If any work performed by the GRANTEE or its Subcontractors is subject to Chapter 39.12 of the Revised Code of Washington, the GRANTEE shall ensure that the GRANTEE and its Subcontractors pay the prevailing rate of wages to all GRANTEE and/or Subcontractor workers, laborers or mechanics in the performance of any part of the work described in the contract in accordance with state law and Department of Labor and Industries rules and regulations.

#### **PRIVACY**

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. The GRANTEE shall ensure its directors, officers, employees, Subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. The GRANTEE and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The GRANTEE agrees to indemnify and hold harmless the AGENCY for any damages related to the GRANTEE'S unauthorized use of personal information.

#### **PROCUREMENT STANDARDS**

The GRANTEE will meet the procurement standards contained in 2 CFR 200.317 through 2 CFR 200.326.

#### **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

As required by 2 CFR 200.216, the GRANTEE is prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment 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, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

#### **RECOGNITION OF EPA FUNDING**

The Grantee will ensure that reports, documents, signage, videos, or other media, developed as part of projects funded by this contract contain the following statement: "This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement PC-01J89501 through the Washington Department of Fish and Wildlife. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency or the Washington Department of Fish and Wildlife, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

#### **RECORDS MAINTENANCE**

The parties to this contract shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this contract will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this contract to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

#### **RECYCLED PRODUCTS**

The Grantee agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this contract. If a governmental entity, the Grantee shall comply with all the requirements of Section 6002 of the Resource

Conservation and Recovery Act (42 USC 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12872 as they apply to procurement.

#### **RESTRICTIONS ON LOBBYING AND LITIGATION**

The GRANTEE certifies that under the requirements of Lobbying Disclosure Act, 2 USC, Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the GRANTEE, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. The GRANTEE also ensures that no funds awarded through this contract will be used to engage in litigation against the federal government unless authorized under existing law.

#### **RIGHT OF INSPECTION**

The GRANTEE shall provide right of access to its facilities to the AGENCY, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

#### **SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the AGENCY may terminate the contract under the "Termination" clause, without the thirty-day notice requirement, subject to renegotiation at the AGENCY'S discretion under those new funding limitations and conditions.

#### **SEVERABILITY**

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

#### **SITE SECURITY**

While on AGENCY premises, the GRANTEE, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

#### **STATEWIDE VENDOR PAYMENT REGISTRATION**

The GRANTEE is required to be registered in the Statewide Vendor Payment System prior to submitting a request for payment under this contract. The Washington State Office of Financial Management (OFM) maintains the Statewide Vendor Payment System; to obtain registration materials contact the Statewide Payee Desk at (360) 407-8180; or go to: <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>.

### **SUBCONTRACTING**

Neither the GRANTEE nor any Subcontractor(s) shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. AGENCY may deny the use of specific subcontractors if the subcontractors would not be eligible, under federal rules and regulations, to be funding subrecipients. In no event shall the existence of the subcontract operate to release or reduce the liability of the GRANTEE to the AGENCY for any breach in the performance of the GRANTEE's duties. This clause does not include contracts of employment between the GRANTEE and personnel assigned to work under this contract.

Additionally, the GRANTEE is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this contract are carried forward to any subcontracts. The GRANTEE and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

### **TERMINATION**

Except as otherwise provided in this contract, the AGENCY may, by 10 calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the AGENCY shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

### **TERMINATION FOR CAUSE**

In the event the AGENCY determines the GRANTEE has failed to comply with the conditions of this contract in a timely manner, the AGENCY has the right to suspend or terminate this contract. Before suspending or terminating the contract, the AGENCY shall notify the GRANTEE in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

The AGENCY reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the GRANTEE from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the GRANTEE or a decision by the AGENCY to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the GRANTEE: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the AGENCY provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

### **TERMINATION PROCEDURES**

Upon termination of this contract, the AGENCY, in addition to

any other rights provided in this contract, may require the GRANTEE to deliver to the AGENCY any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The AGENCY shall pay to the GRANTEE the agreed upon price, if separately stated, for completed work and services accepted by the AGENCY, and the amount agreed upon by the GRANTEE and the AGENCY for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the AGENCY, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AGENT shall determine the extent of the liability of the AGENCY. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The AGENCY may withhold from any amounts due the GRANTEE such sum as the AGENT determines to be necessary to protect the AGENCY against potential loss or liability.

The rights and remedies of the AGENCY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the AGENT, the GRANTEE shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the AGENCY, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the GRANTEE under the orders and subcontracts so terminated, in which case the AGENCY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENT to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the AGENCY and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the contract had been completed, would have been required to be furnished to the AGENCY;

- 6. Complete performance of such part of the work as shall not have been terminated by the AGENT; and
- 7. Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the GRANTEE and in which the AGENCY has or may acquire an interest.

**TRAFFICKING VICTIMS PROTECTION ACT**

As described in 2 CFR Part 175 the AGENCY may terminate this contract, without penalty, if the GRANTEE is found to be in violation of the Trafficking Victims Protection Act of 2000.

**UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS**

The GRANTEE shall comply with the uniform administrative rules for Federal grants and cooperative agreements and subawards contained in 2 CFR Part 200 and as appropriate for this contract:

<u>Federal Grantor Agency</u>	<u>2 CFR Chapter</u>
Environmental Protection Agency	XV

**WAIVER**

A failure by either party to exercise its rights under this contract shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this contract unless stated to be such in a writing signed by an authorized representative of the party and attached to the original contract.

**WHISTLEBLOWER PROTECTION**

If this contract exceeds the federal simplified acquisition threshold of \$100,000 the contract and all employees working on the contract are subject to the whistleblower protections established at 41 USC 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013. If subject to this statute the Grantee shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712. This section is applicable to all subcontractors and subawardees related to this contract that exceed the federal simplified acquisition threshold of \$100,000, and the Grantee shall include this section in all such subcontracts and/or subawards.

**APPROVED AS TO FORM BY ASSISTANT ATTORNEY GENERAL JOHN HEIDINGER 7/5/2023**

**Attachment B -  
CONTRACT/PROJECT SUMMARY**

<b>TITLE:</b> Capacity to Expedite WRIA 1 Culvert and Fish Barrier Prioritization, Design, and Implementation		<b>WDFW CONTRACT NUMBER:</b> 23-24027	
<b>PERIOD:</b> 11/01/2023 to 12/30/2025 <b>GRANTEE:</b> Whatcom County <b>GRANTEE CONTACT:</b> John Thompson, (360) 676-6876 <b>CONTRACT TYPE:</b> Payable / Grant / Sub-Recipient Fed EPA		<b>WDFW PROJECT MANAGER:</b> Jennifer Griffiths (360) 706-4302	
<b>SUMMARY CONTRACT DESCRIPTION:</b> The purpose of this project is to expedite fish barrier removal projects that are priorities for implementation across Water Resource Inventory Area 1 (WRIA 1), the Nooksack Basin and adjacent independent streams, in order to restore access to historically available habitats deemed necessary for recovery of threatened and at-risk salmon populations. The project will ensure effective coordination among project sponsors and barrier owners so that biological priorities are met, opportunities are capitalized upon, existing resources are leveraged, new resources are identified, and preparations are made to pursue implementation.			
<b>Master Index Number(s):</b> 37308			
<b>CFDA Number</b>	<b>Award Year</b>	<b>Award Number</b>	<b>Research &amp; Development?</b>
66.123 Puget Sound Action Agenda: Technical Investigations and Implementation Assistance/Environmental Protection Agency	2023	PC-01J89501	No



**Attachment C -  
SPECIAL TERMS AND CONDITIONS**

**1. Summary**

The purpose of this project is to expedite fish barrier removal projects that are priorities for implementation across Water Resource Inventory Area 1 (WRIA 1), the Nooksack Basin and adjacent independent streams, in order to restore access to historically available habitats deemed necessary for recovery of threatened and at-risk salmon populations. The project will ensure effective coordination among project sponsors and barrier owners so that biological priorities are met, opportunities are capitalized upon, existing resources are leveraged, new resources are identified, and preparations are made to pursue implementation.

**2. Description of all Project Requirements**

The Grantee will perform the project as described in Attachment "D" (Statement of Work).

**3. Reporting Requirements**

a. Semiannual Reports. The Grantee shall submit a performance report to the WDFW Project Manager once every six months using the reporting tool supplied by WDFW, unless otherwise specified in this Contract. This report shall include brief information on each of the following areas:

- A comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period;
- The reasons for slippages if established outputs/outcomes were not met; and
- Additional pertinent information, including when appropriate, analysis and information of cost overruns or high unit costs.

The reporting periods for these reports are from October 1 to March 31 and from April 1 to September 30 for each year of the contract. Performance reports are due to the WDFW Project Manager not later than fifteen (15) calendar days after the end of each reporting period.

b. Final Report. The Grantee will submit a final performance report to the WDFW Project Manager not later than sixty (60) calendar days after contract termination. The final report will generally contain the same information as contained in semiannual reports, but will cover the entire project period.

**4. Budget**

WDFW will reimburse the Grantee for allowable costs as described in the budget contained in Attachment "D" in accordance with the deliverable and invoice requirements provided in the Habitat Strategic Initiative Lead Funding Guidelines for Subrecipients of EPA Puget Sound Geographic Program Funds located at <https://pspwa.box.com/v/HSI-NEPGrantGuidance>. Final payment is contingent on the approval and acceptance of all deliverables identified in Attachment "D" by the WDFW Project Manager.

**5. Peer Review**

The results of the project funded through this contract may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Grantee's Principal Investigator (PI) of this project must solicit advice, review and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the WDFW Project Manager prior to releasing any final reports or products resulting from the funded study.

**6. Electronic and Information Technology Accessibility**

The Grantee is subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology ("EIT"). In compliance with Section 504, EIT systems or products funded by this contract must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient's websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, the EPA encourages recipients of EPA grant funds to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities. Recipients may wish to consult the latest Section 508 guidelines issued by the US Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0 (see <http://www.access-board.gov/sec508/guide/index.htm>).

**7. Riparian Buffers**

Riparian buffer restoration projects in agricultural areas shall be consistent with the interim riparian buffer recommendations provided to EPA and the Natural Resource Conservation Service by National Marine Fisheries Service letters of January 30, 2013 and April 9, 2013; or the October 28, 2013 guidance previously agreed to by Lead Organizations). These documents are available from WDFW on request. For projects involving riparian buffer restoration in agricultural areas, the Grantee shall confirm with WDFW in writing projects' consistency with the recommendations referenced above. When evaluating project proposals, WDFW will consider the extent to which proposals include appropriate riparian buffers or otherwise address pollution sources on other water courses on the properties in the project area to support water quality and salmon recovery. Deviations can only be obtained through an exception approved by EPA. In order for EPA to evaluate a request for an exception, the Grantee must submit to WDFW the scientific rationale demonstrating adequacy of buffers for supporting water quality and salmon recovery. The request must summarize tribal input on the scientific rationale or other relevant issues. The scientific rationale could be developed from sources such as site-specific assessment data, salmon recovery plans, Total Maximum Daily Loads (TMDLs) and the state nonpoint plan. EPA will confer with the National Oceanic and Atmospheric Administration (NOAA) and the Washington Department of Ecology and provide the opportunity for affected tribes to consult with EPA before making a final decision on a deviation request.

**8. WQX**

All water quality data generated in accordance with an EPA approved Quality Assurance Project Plan as a result of this contract will be required to be transmitted into the EPA's Water Quality Portal (WQP) using either WQX or WQX web. Water quality data appropriate for WQP include physical, chemical, and biological sample results for water, sediment and fish tissue. The data include toxicity data, microbiological data, and the metrics and indices generated from biological and habitat data. The Water Quality Exchange (WQX) is the water data schema associated with the EPA, State and Tribal Exchange Network. Using the WQX schema partners map their database structure to the WQX structure. WQX web is a web based tool to convert data into the WQX format for smaller data generators that are not direct partners on the Exchange Network. More information about WQX, WQX web, and WQP, including tutorials, can be found at <https://www.epa.gov/waterdata/water-quality-data-wqx>.

**9. Quality Assurance Requirements**

Acceptable Quality Assurance documentation must be submitted to the WDFW Project Manager within 30 days of acceptance of this contract or another date as negotiated with the WDFW Project Manager. The Washington Department of Ecology's National Estuary Program (NEP) Quality Coordinator supports quality assurance for EPA-funded NEP projects. No work involving direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology shall be initiated under this contract until the WDFW Project Manager or the NEP Quality Coordinator has approved the Grantee's quality assurance document. The Grantee will submit all Quality Assurance documentation to the following address; please copy the WDFW Project Manager on all correspondence with the NEP Quality Coordinator listed at: <https://ecology.wa.gov/issues-and-local-projects/Investing-in-communities/Scientific-services/Quality-assurance/Quality-assurance-for-NEP-grantees>.

**10. Geospatial Data Standards**

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at [www.fgdc.gov](http://www.fgdc.gov).

**11. Information Collection Requirements**

The Grantee agrees to comply with the requirements of the Paperwork Reduction Act in completing the project under this contract. Because the scope of work includes a survey, a questionnaire or similar information-gathering activity, the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.* ), requires the EPA to obtain Office of Management and Budget (OMB) clearance prior to the Grantee's collection of information by means of identical questions posed to 10 or more persons. The Grantee will provide to WDFW the following information: (1) description of the information to be collected; (2) explanation of the need for the information; and (3) to whom the survey is being directed.

**12. International Travel (Including Canada)**

All International Travel must be approved by EPA's Office of International and Tribal Affairs (OITA) through WDFW BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. The Grantee will contact WDFW as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that WDFW can obtain appropriate approvals from EPA Headquarters.

**13. Animal Subjects**

The Grantee agrees to comply with the Animal Welfare Act of 1966 (P.L. 89-544), as amended, 7 USC 2131-2156. The Grantee also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training." (Federal Register 50(97): 20864-20865. May 20, 1985).

**Attachment D -  
STATEMENT OF WORK**

*See separate attachment*

# PUGET SOUND National Estuary Program

## Attachment D STATEMENT OF WORK

### Capacity to Expedite WRIA 1 Culvert and Fish Barrier Prioritization, Design, and Implementation

Subrecipient Organization: Whatcom County  
Investment Priority: Project Development and Readiness  
Action Agenda Strategy: #20 - River-basin scale integrated planning and project implementation  
Implementation Strategy alignment: Floodplains and Estuaries

Applicant Coalition: Lummi Nation Natural Resources, Nooksack Tribe Natural Resources

#### Subrecipient Contacts:

Grant Manager: John N. Thompson, [jnthomps@co.whatcom.wa.us](mailto:jnthomps@co.whatcom.wa.us), (360) 778-6295  
Whatcom County Public Works – Natural Resource Division  
322 N. Commercial St., 2<sup>nd</sup> Floor, Bellingham, WA 98225-4042

Grant Admin: Erika Douglas, [edouglas@co.whatcom.wa.us](mailto:edouglas@co.whatcom.wa.us), (360) 778-6294  
Whatcom County Public Works – Natural Resource Division  
322 N. Commercial St., 2<sup>nd</sup> Floor, Bellingham, WA 98225-4042

Fiscal Office: Randy Rydel, [rrydel@co.whatcom.wa.us](mailto:rrydel@co.whatcom.wa.us), (360) 778-6217  
Whatcom County Public Works Accounting  
322 N. Commercial St., 4<sup>th</sup> Floor

Signatory Authority: Satpal Singh Sidhu, [SSidhu@co.whatcom.wa.us](mailto:SSidhu@co.whatcom.wa.us) (360) 778-5200  
311 Grand Ave., Suite 108, Bellingham, WA 98225-4082

#### Habitat Strategic Initiative Lead (HSIL) Contacts:

Subaward Manager: Kameron Harper - [Kameron.Harper@dfw.wa.gov](mailto:Kameron.Harper@dfw.wa.gov) (564) 669-4867  
1111 Washington St. SE Olympia, WA 98504

Subaward Admin email: [nep.grants@dfw.wa.gov](mailto:nep.grants@dfw.wa.gov)

Effective Date: November 1, 2023  
Expiration Date: December 30, 2025  
Not to Exceed: \$800,250





# PUGET SOUND

## National Estuary Program

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### OVERVIEW

The purpose of this project is to expedite fish barrier removal projects that are priorities for implementation across Water Resource Inventory Area 1 (WRIA 1), the Nooksack Basin and adjacent independent streams, in order to restore access to historically available habitats deemed necessary for recovery of threatened and at-risk salmon populations. The project will ensure effective coordination among project sponsors and barrier owners so that biological priorities are met, opportunities are capitalized upon, existing resources are leveraged, new resources are identified, and preparations are made to pursue implementation.

The scope of this project includes capacity for two years for County staff to lead a collaborative and coordinated process with WRIA 1 partners involved in culvert and fish barrier removal, update an integrated multi-year work plan, identify priorities, provide financial support to Nooksack Indian Tribe and Lummi Nation to offset costs of participation, and prepare designs and budgets for priority County projects. The integrated WRIA 1 Barrier Removal 4-Year Work Plan adopted by the WRIA 1 Lead Entity in April 2022 will serve as the foundation for the project objectives. The standing WRIA 1 Culvert Committee has broad representation and meets annually to share information. Due to limited capacity, however, the full benefit and potential for the Committee to develop an integrated and prioritized work plan and expedite implementation has progressed slowly.

Whatcom County, Washington Department of Fish and Wildlife (WDFW), Lummi Nation, and the Nooksack Indian Tribe have a signed July 2023 Memorandum of Agreement (MOA) to collaboratively prioritize and create a schedule for remediating culverts owned by Whatcom County that block salmon passage and secure funding sources as they become available. The prioritization approach and schedule from the MOA will guide the County's contribution to the WRIA 1 Barrier Removal 4-Year Work Plan. The work detailed in this Statement of Work and completed for this project will be in accordance with the terms and objectives of the MOA.

This project advances the Floodplains and Estuaries Implementation Strategy sub strategy of river-basin planning and project implementation and Action Agenda ID #20, River-basin scale integrated planning and project implementation by expanding capacity for local partner implementation and coordinating with other jurisdictions on integrated planning efforts. The project supports tribal treaty rights by expediting barrier removal and access to upstream habitat to support salmon recovery. Supporting recovery of salmonid populations to levels that are self-sustaining, meet ecological needs, and support a harvestable surplus is essential for the Lummi Nation and Nooksack Indian Tribe to be able to exercise their treaty rights in a meaningful manner.

### GOALS & MEASURABLE OBJECTIVES

The main goals of the project are:

- Expedite the County's ability to remove fish passage barriers by building capacity at the County, Lummi Nation, and Nooksack Indian Tribe.
- Coordinate training for County staff, small cities, Tribes and other partners in barrier and habitat assessment to provide a foundation for work plan development and adaptive management.
- Convene the WRIA 1 Culvert Committee and update an integrated and prioritized 4-year barrier removal work plan in coordination with the Committee.
- Conduct landowner and community outreach to promote community awareness of project benefits and obtain necessary landowner permissions.
- Develop designs and budgets for 5 previously identified project sites associated with County roadways.

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## National Estuary Program

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### TASKS & DELIVERABLES

Whatcom County (hereafter referred to as the subrecipient) will manage all project components, including but not limited to subcontract(s), invoice submission, budget, and deliverable completion and submission. The subrecipient will submit deliverables and invoices to the Habitat Strategic Initiative Lead (HSIL) subaward manager. Deliverables and invoice submission procedures are described in the [HSIL Subrecipient Manual](#).

The following are tasks, deliverables, and target completion dates associated with this this subaward:

#### ▶▶ TASK 1. Project Development

This task must be completed before initiating any other work under this subaward. **Work completed on other tasks prior to completion of Task 1 may be ineligible for reimbursement.**

##### 1.1 DEVELOP PROJECT PLAN

The subrecipient will complete the project plan template describing the work necessary to achieve the subaward deliverables. The template includes a timeline, workplan, budget, project success measures, and storytelling metrics. The Habitat Implementation Strategy (IS) lead and subaward manager will have the opportunity to provide input on the template and establish mutual expectations. The template provides the framework for quarterly reporting (Task 2.1) and clear communication between the HSIL and the subrecipient.

##### 1.2 CULTURAL RESOURCES REVIEW

HSIL facilitates the review of projects for potential impacts to cultural resources, except as those listed below.

###### State or Federally Managed Lands

Cultural resources compliance for projects implemented on state or federally owned or managed lands will be the responsibility of the land managing agency, regardless of subrecipient.

Prior to ground disturbing work or alteration of a potentially historic or culturally significant structure, or release of final payments on an acquisition, the subrecipient must provide HSIL documentation from the state or federal land managing agency's cultural resources responsible official demonstrating compliance with all applicable cultural resource laws and regulations.

The subrecipient shall follow HSIL guidance and directives to assist it with such review as may apply. The subrecipient will work with the HSIL subaward manager to fulfill cultural resource review requirements. Costs associated with project review and evaluation of archeology and cultural resources are eligible for reimbursement under this agreement. Costs that exceed the budget grant amount shall be the responsibility of the subrecipient.

Task 5 may not begin until the required consultation and review processes and documentation have been approved by the HSIL in coordination with the WDFW Cultural Resources Division.

No work shall commence in the project area until the HSIL has provided a notice of cultural resources completion. The HSIL may require on-site monitoring for impacts to cultural resources during any demolition, construction, land clearing, restoration, or repair work, and may direct that work stop to minimize, mitigate, or avoid impacts to cultural resource impacts or concerns. All cultural resources requirements for non-ground disturbing projects (such as acquisition or planning projects) must be met prior to final reimbursement.

# PUGET SOUND

## National Estuary Program

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At all times, the subrecipient shall take reasonable action to avoid, minimize, or mitigate adverse effects to cultural resources in the project area, and comply with any HSIL direction to manage adverse effects such as project re-design, relocation, or mitigation.

All federal or state cultural resources requirements under Governor's Executive Order 21-02 and the National Historic Preservation Act, and the State Environmental Policy Act and the National Environmental Policy Act, and any local laws that may apply, must be completed prior to the start of any work on the project site. The subrecipient must agree to indemnify and hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the project funded under this Agreement.

Subrecipient shall comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

HSIL retains the right to terminate a project due to anticipated or actual impacts to cultural resources.

### **Inadvertent Discovery Plan**

Using the WDFW-provided template, the subrecipient will adopt an Inadvertent Discovery Plan (IDP). If subrecipients would like to use a template used by their organization, they will work with the HSIL Subaward Manager to ensure the template contains all information required by WDFW Cultural Resources Division. Subrecipients are required to keep a copy of the IDP at all the project sites at all times.

If any *archaeological or historic resources* are found while conducting work under this Agreement, the subrecipient shall immediately stop work and notify:

HSIL/WDFW    HSIL subaward manager  
DAHP            Dr. Lance Wollwage - 360-586-3064

HSIL/WDFW will contact any affected Tribe. Immediately stop any activity that may cause further disturbance to the archeological or historic resources.

If ground disturbing activities encounter *human skeletal remains* during construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains (RCWs 68.50.645, 27.44.055, and 68.60.055).

### **Inadvertent Discovery Plan Training**

Subrecipient will take an IDP training from a resource approved by the HSIL subaward manager. Subrecipient will submit documentation via email of IDP training completion including the type of training (in-person or virtual), the provider of training, training date, and staff trained.



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### Additional Cultural Resources Review and Consultation upon Work Zone Identification

When specific project “work zones” are identified,

1) HSIL will require the subrecipient to provide written documentation that project review and consultation has occurred as provided for in applicable local, state, and federal laws and regulations *and* that no adverse impacts/effects have been identified *or* agreement to mitigation has been reached. This documentation will be provided by a person meeting the Secretary of the Interior’s qualifications for professional archaeologist archeologist and approved by the WDFW Cultural Resources Division.

- OR -

2) HSIL will continue consultation to identify whether any archaeological or historic archaeological site, historic building/structure or traditional/sacred place studies are needed before a project may proceed, as provided in EO 21-02. The subrecipient may need to provide supplemental information which may include maps, monitoring, surveys, or other requirements contingent on consultation with tribes and the Department of Archaeology and Historic Preservation (DAHP).

The following process will be followed:

- i. The subrecipient will submit the WDFW Cultural Resources Intake Form and provide a map or shapefile (polygons) of the project location(s).
- ii. Additionally, the subrecipient may provide written documentation that project review and consultation has occurred as provided for in applicable local, state, and federal laws and regulations *and* that no adverse impacts/effects have been identified *or* agreement on mitigation has been reached
- iii. WDFW will review the information submitted in (i) and (ii) and make one of the following determinations:
  - a. Subrecipient has provided sufficient documentation per (i) and (ii) may proceed *or*,
  - b. Project-specific consultation should be initiated with a specific supplemental information recommendation.
- iv. If a project-specific consultation is recommended, HSIL will initiate a project-specific consultation with the affected Tribes and Department of Archeological and Historic Preservation.
- v. Following the initial consultation, HSIL will confirm with subrecipient the required supplemental information required as deliverables under this Task.
- vi. Required supplemental information will be provided to HSIL for WDFW approval and communication to consulting parties.
- vii. Work may begin on related tasks when HSIL provides a notice to proceed.

Deliverable Number	Deliverable	Target Completion Date
1.1	Project Plan	January 30, 2024
1.2a	Completed Inadvertent Discovery Plan	January 30, 2024
1.2b	Documentation via email of IDP training completion	January 30, 2024

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1.2c - i	WDFW Cultural Resources Intake Form and map or shapefile (polygons) of project location(s)	January 30, 2024
1.2c - ii	Written documentation that project review and consultation has occurred	April 10, 2024
1.2c - iii	Supplemental Information to be specified	April 10, 2024

**TOTAL ESTIMATED COST FOR TASK 1: \$4,460**

### ▶▶ TASK 2. Project Administration and Reporting

Task 2 describes project administrative and reporting requirements. The subrecipient will refer to and comply with all underlying state and federal terms and conditions.

#### 2.1 PROGRESS REPORTING AND INVOICING

The subrecipient will submit quarterly progress reports by the specified target completion dates to the subaward manager as described in the [HSIL Subrecipient Manual](#).

Quarterly reporting periods are:

Quarter 1 reporting period:	January 1 – March 31
Quarter 2 reporting period:	April 1 – June 30
Quarter 3 reporting period:	July 1 – September 30
Quarter 4 reporting period:	October 1 – December 31

Progress reports shall include:

- A description of:
  - Work completed for each task/deliverable during the reporting period, including what deliverables were completed and submitted during the reporting period.
  - Success measures or storytelling metrics completed during the reporting period.
  - Status for ongoing project tasks.
  - Challenges affecting task-specific or overall project completion date(s), scope of work, or costs.

The subrecipient will submit invoices at least quarterly, but no more frequently than monthly.

#### 2.2 MINORITY BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE (MBE/WBE) REPORTING

Subrecipients will submit MBE/WBE utilization reports each year as required by EPA terms and conditions included in this contract. Reports will be in the format described in the [HSIL Subrecipient Manual](#) and will include all qualifying purchases or will clarify that no qualifying purchases were made. MBE/WBE reporting periods are from October 1 to September 30 annually. Reports are due to the subaward manager 15 calendar days after the end of each reporting period.

#### 2.3 CONTRACTS AND SUBAWARDS

The subrecipient will pass-through funds through subawards to applicant coalition partners Lummi Nation, Nooksack Indian Tribe and City of Lynden to achieve the goals of this subaward. The subrecipient will provide copies of the final pass-through agreements.



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The subrecipient will execute one or more subcontracts (professional services agreements) for Task 5.1 Black Slough Barrier Removal Alternatives Analysis and Preliminary Designs. Selection of subcontractor(s) must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at <http://wcms.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients>. A meeting(s) may be held between HSIL and the subrecipient to clarify the scope, schedule, and deliverables.

### 2.4 CLOSE-OUT REPORT

The subrecipient will complete a final Close-out report using an HSIL provided template. The Close-out report will describe methods, lessons learned, and outcomes and will be shared by the subrecipient via it's salmon recovery webpage and social media.

Deliverable Number	Deliverable	Target Completion Date
2.1	Quarterly progress reporting (Quarter 1) (Quarter 2) (Quarter 3) (Quarter 4)	Annually on April 10 Annually on July 10 Annually on October 10 Annually on January 10
2.2	MBE/WBE Reporting	Annually on October 10
2.3a	Copy of the RFP for subcontractors	March 30, 2024
2.3b	Copy of the winning proposal	April 30, 2024
2.3c	Executed subcontract(s)	May 30, 2024
2.4a	Draft Close-out Report	November 30, 2025
2.4b	Final Close-out Report	December 31, 2025

**TOTAL ESTIMATED COST FOR TASK 2: \$21,805**

### ▶▶ TASK 3. Broader Impacts and Communication

The recipient will communicate project outcomes, lessons learned, and recommendations. The project factsheet, presenting at the Salish Sea Ecosystem Conference and project close out report are required tasks. The subrecipient will also complete 2-3 presentations for the recovery community, a story map, and a final report.

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### 3.1 PROJECT FACTSHEETS

Using the project factsheet template provided, the subrecipient will complete an initial one-page project factsheet at the outset of the grant and a final one-page factsheet at the end of the grant. The initial factsheet will provide an overview of the project and a brief description of the subrecipient’s organization. The subrecipient will submit the initial factsheet with the first quarterly progress report. The subrecipient will submit the final factsheet at the end of the grant to summarize project outcomes, lessons learned, and next steps. The HSIL will make the factsheets publicly available through the website <https://pugetsoundestuary.wa.gov/>.

### 3.2 SALISH SEA ECOSYSTEM CONFERENCE (SSEC) ATTENDANCE AND PRESENTATION

Subrecipients are required to attend the Salish Sea Ecosystem Conference and required to submit an abstract for an oral or poster presentation. Conference registration documentation and, if accepted, a copy of the conference abstract and presentation, will be provided as deliverables.

### 3.3 HSIL SUBRECIPIENT SUMMIT

HSIL is committed to building community and supporting knowledge exchange among HSIL subrecipients. HSIL will organize an annual gathering of active subrecipients to provide an opportunity for them to exchange information and connect on shared interests and goals for Puget Sound Recovery.

### 3.4 PRESENTATIONS FOR THE PUGET SOUND RECOVERY COMMUNITY

The subrecipient will provide 2-3 presentations on project outcomes, recommendations, and lessons learned for the Watershed Management Board, Whatcom Water Week, or other recovery community forum. The presentation will share project outcomes and context for how the project work fits within other planning efforts, local coordination, and applicability of the approaches used in developing an integrated prioritization and funding approach to other Puget Sound watersheds.

### 3.5 STORY MAP FOR WHATCOM COUNTY WEBSITE

The subrecipient will complete a story map for the Whatcom County website that describes the project, provides context for correction of barriers to ecosystem benefits, and can be easily maintained. A link to this page will be provided on the WRIA 1 website.

Per the terms and conditions of this subaward, all geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at [www.fgdc.gov](http://www.fgdc.gov).

Adherence of the subrecipient to the FGDC metadata standards will be reviewed by HSIL in collaboration with the WDFW Habitat Program Administrative Operations IT section.

- The subrecipient will follow all data QA/QC procedures as described in Task 1.2 Quality Assurance Project Plan.

Deliverable Number	Deliverable	Target Completion Date
3.1a	Initial Project Factsheet	January 30, 2024
3.1b	Final Project Factsheet	December 15, 2025
3.2a	SSEC conference registration	January 10, 2026

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3.2b	SSEC submitted conference abstract	April 10, 2026
3.2c	If SSEC abstract accepted, copy of poster or presentation.	July 10, 2026
3.3	Attendance at HSIL subrecipient summit	Annually on April 10 – April 10, 2025
3.4	Presentation slides and recordings (if virtual or hybrid presentation)	September 30, 2025
3.5	Link to Whatcom County Website StoryMap	September 30, 2025

**TOTAL ESTIMATED COST FOR TASK 3: \$18,050**

**▶▶ TASK 4. Integrated WRIA 1 Culvert and Barrier Removal 4-Year Work Plan**

The subrecipient will create an integrated WRIA 1 Barrier Removal 4-Year Work Plan that reflects local priorities and project sequencing. Metrics and data sources that will be used in improving and building on the coordinated work plan include the WDFW fish passage database (Fish Passage and Diversion Screening Inventory database), which includes the outcome of the comprehensive inventory of barriers completed by Whatcom County in 2006. Pending the outcomes of the prioritization criteria from the culvert MOA process, two technical factors will be used initially to establish the relative priority of an individual barrier: (1) salmonid species priority and (2) length of habitat gain. Salmonid species are currently prioritized to address critically low early Chinook abundances and the broad spatial distribution of steelhead and coho. For length of habitat gain, top priority will be assigned to barrier removals that will provide the greatest amount of the highest quality habitat for the priority populations either individually or in combination with partner projects on the same stream system. Climate change adaptation and resilience will be considered in prioritization and design and how modifications or removals of one owner’s barriers may impact downstream owners.

**4.1 WRIA 1 BARRIER REMOVAL 4-YEAR WORK PLAN WITH IMPLEMENTATION STRATEGY**

The subrecipient will coordinate the collaborative WRIA 1 Culvert Committee for purposes of advising on individual entity priorities and creating a prioritized and sequenced WRIA 1 Barrier Removal 4-Year Work Plan with implementation strategy. The subrecipient will submit agendas, meeting notes, and presentations to document the work of the Culvert Committee. The Culvert Committee includes the Cities of Bellingham, Ferndale, and Lynden, Whatcom County, Whatcom Conservation District, Nooksack Salmon Enhancement Association, WDFW, Washington Department of Natural Resources, Washington State Department of Transportation, the Nooksack Indian Tribe, and Lummi Nation.

**4.2 TECHNICAL SUPPORT FOR PRIORITY PROJECTS**

The subrecipient will develop project descriptions, maps, pre-design budget estimates and other content necessary for at least two project proposals as funding opportunities become available. The sub-recipient will also provide support to other participants in the WRIA 1 Culvert Committee in identifying funding opportunities. Additional support may be provided on a resource available basis.

Deliverable Number	Deliverable	Target Completion Date
4.1a	Meeting agendas, notes, and presentations	Annually on April 10 Annually on July 10 Annually on October 10 Annually on January 10



# PUGET SOUND

## National Estuary Program

<b>4.1b</b>	Updated WRIA 1 Barrier Removal 4-Year Work Plan with implementation strategy	Annually on April 10 – April 10, 2025
<b>4.2</b>	Project descriptions, maps, and preliminary design budget estimates for two priority county projects	Annually on January 10 – January 10, 2025

**TOTAL ESTIMATED COST FOR TASK 4: \$205,255**

### ▶▶ TASK 5. Barrier Removal Designs

#### 5.1 BLACK SLOUGH BARRIER REMOVAL ALTERNATIVES ANALYSIS AND PRELIMINARY DESIGNS

The subrecipient will conduct an alternatives analysis and prepare preliminary designs and construction cost estimates budgets for priority projects. The subrecipient will develop 15 % designs for an anticipated 5 projects on county roads adjacent to the Black Slough restoration site which contains reaches of both Black Slough and Homesteader Creek. Designs should meet the standards in WDFW’s Water Crossing Design Guidelines for fish passage. Concurrence with WDFW on bankfull width measurements should be reached through site visits prior to alternatives analysis and design.

A draft project alternatives analysis and design will be submitted and reviewed by WDFW and subject matter experts prior to the final.

#### 5.2 BLACK SLOUGH QUARTERLY STATUS UPDATE

Subrecipient will develop and submit a quarterly status update that summarizes all work done toward completion of task 5.1 Black Slough Barrier Removal Alternatives Analysis and Preliminary Designs.

Deliverable Number	Deliverable	Target Completion Date
<b>5.1a</b>	Draft project alternatives analysis, preliminary designs and construction cost estimates	September 30, 2025
<b>5.1b</b>	Final project alternatives analysis, preliminary designs and construction cost estimates	December 31, 2025
<b>5.2a</b>	Quarterly Status Updates	Annually on April 10 Annually on July 10 Annually on October 10 Annually on January 10

**Total Estimated Cost for Task 5: \$499,910**

### ▶▶ TASK 6. Coordinate Barrier and Habitat Assessment Training for WRIA 1 Partners

The subrecipient and partners will participate in WDFW’s Barrier and Habitat Assessment Training. The training will provide a foundation for engaging in the WRIA 1 Barrier Removal 4-Year Work Plan development and adaptive management. Many culverts were originally assessed in 2005, and the training will ensure staff have the knowledge to reassess site conditions and complete new assessments as necessary to assist in site prioritization or prior to completing designs.

# PUGET SOUND

## National Estuary Program

### 6.1 TRAINING COORDINATION AND ATTENDANCE

The subrecipient will coordinate with staff and partners to attend WDFW’s Barrier and Habitat Assessment Training. Training participants may include members of the WRIA 1 Culvert Committee which includes Whatcom County Public Works staff, cities and tribal staff, and non-profit organizations involved in assessing fish passage barriers and blocked habitat. Subrecipient will work with WDFW to ensure training includes a clear protocol for when an Engineer Evaluation (EA) including technical assistance from WDFW Habitat Engineer will be needed to determine barrier status.

Deliverable Number	Deliverable	Target Completion Date
6.1	Training materials including program, attendance list, and other supporting materials	March 30, 2024

**TOTAL ESTIMATED COST FOR TASK 6: \$39,760**

### ▶▶ TASK 7. Community and Landowner Engagement and Outreach

The subrecipient will engage landowners to build relationships and seek needed permissions for barrier correction. The subrecipient will also conduct broader community outreach to build awareness and support for salmon recovery and restoration. This outreach will use social marketing techniques to promote behavior change. Messages will include importance of barrier removal to salmon recovery, projects implemented, and habitat gained.

#### 7.1 LANDOWNER OUTREACH MATERIALS

The subrecipient will conduct landowner outreach to obtain permissions necessary for correction of barriers associated with publicly owned roadways. As part of this outreach, the subrecipient will develop targeted materials such as brochures, mailers, or other materials developed to meet the needs of the subrecipient and other members of the WRIA 1 culvert committee.

#### 7.2 SOCIAL MARKETING MATERIALS

The subrecipient will use social marketing techniques to promote community awareness of barrier removal benefits to salmon recovery and ecosystem functions and inspire habitat stewardship. The subrecipient will provide documentation of social marketing outreach through submittal of materials such as social media posts, webpages, or other materials used for outreach.

Deliverable Number	Deliverable	Target Completion Date
7.1	Targeted outreach materials for landowners (brochures, mailers, etc.)	April 10, 2025
7.2	Social marketing materials for community outreach (links to social media posts, webpages, etc.)	April 10, 2025

**TOTAL ESTIMATED COST FOR TASK 7: \$11,010**

**TOTAL GRANT AMOUNT: \$800,250**



**BUCET SOUND**  
 COMMUNITY DEVELOPMENT

Project Name: Community Development and Public Works  
 Fiscal Year: 2023  
 Budget Period: 01/01/23 - 12/31/23  
 Budget Type: Operating

Approved by: [Signature] Date: [Date]

Program/Activity	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2	2.3	2.4	2.5	2.6	2.7	2.8	2.9	3.0	TOTAL
...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...

Activity	Description	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2	2.3	2.4	2.5	2.6	2.7	2.8	2.9	3.0	TOTAL
...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...

Notes and additional information regarding the budget items, including program descriptions and funding sources.

**WHATCOM COUNTY  
PUBLIC WORKS DEPARTMENT**

**Elizabeth Kosa  
Director**




**NATURAL RESOURCES**

322 N. Commercial, 2<sup>nd</sup> Floor  
Bellingham, WA 98225  
Telephone: (360) 778-6230  
FAX: (360) 778-6231  
[www.whatcomcounty.us](http://www.whatcomcounty.us)

**MEMORANDUM**

**TO:** The Honorable Satpal Singh Sidhu, Whatcom County Executive, and The Honorable Members of the Whatcom County Council, collectively serving in their capacity as the Whatcom County Flood Control Zone District Board of Supervisors

**THROUGH:** Elizabeth Kosa, Public Works Director

**FROM:** Gary Stoyka, Natural Resources Manager   
Erika Douglas, Environmental Programs Manager

**DATE:** January 22, 2024

**RE:** Grant Agreement with Washington State Department of Fish and Wildlife for Fish Passage Barrier Remediation Program

---

Please find attached for your review a copy of the grant agreement between Washington State Department of Fish and Wildlife and Whatcom County Flood Control Zone District for Capacity to Expedite WRIA 1 Culvert and Fish Barrier Prioritization, Design, and Implementation. The authorized agreement will be signed electronically through AdobeSign.

**Requested Action**

Public Works respectfully requests that the Flood Control Zone District Board of Supervisors authorize the County Executive to sign this agreement.

**Background and Purpose**

The WRIA1 Salmonid Recovery Plan guides recovery of ESA listed Chinook salmon, steelhead, bull trout and other salmonids in the Nooksack River and adjacent coastal streams. One component of the plan is correcting fish passage barriers that block access to tributary, floodplain and estuarine habitats.

The purpose of this grant agreement is to expedite WRIA 1 fish passage barrier remediation. This agreement supports building staff capacity, coordinating prioritization with other WRIA 1 partners, coordinating fish passage and habitat assessment training, completing pre-design for 5 priority fish passage barriers, and share project information with community members and other professionals in the Puget Sound region.

**Funding Amount and Source**

This grant agreement will provide \$800,250 to support fish passage barrier remediation in WRIA 1. Funding originates from the Environmental Protection Agency National Estuary Program and is routed through the Washington State Department of Fish and Wildlife. Budget authority to implement the labor portion of this agreement is provided in the 2024 Public Works budget. Budget authority to implement other portions of the agreement will be included in a forthcoming budget supplement request.

Please contact John Thompson at extension 6295 or Erika Douglas at extension 6294, if you have any questions or concerns regarding the terms of this agreement.

Encl.