

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202408009

Originating Department:	Public Works / Flood Control Zone District (FCZD)
Division/Program: <i>(i.e. Dept. Division and Program)</i>	River and Flood - 907550
Contract or Grant Administrator:	Julie Anderson, River & Flood Manager
Contractor's / Agency Name:	Washington Department of Ecology

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No

Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes No 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 No If yes, grantor agency contract number(s): SEAFBD-2325-WhCoPW-00054 CFDA#: _____

Is this contract grant funded?
Yes No If yes, Whatcom County grant contract number(s): TBD

Is this contract the result of a RFP or Bid process? Contract
Yes No If yes, RFP and Bid number(s): _____ Cost Center: 169114

Is this agreement excluded from E-Verify? No Yes If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

Professional services agreement for certified/licensed professional. Goods and services provided due to an emergency

Contract work is for less than \$100,000. Contract for Commercial off the shelf items (COTS).

Contract work is for less than 120 days. Work related subcontract less than \$25,000.

Interlocal Agreement (between Governments). Public Works - Local Agency/Federally Funded FHWA.

<p>Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>12,500,000: 2,500,000 (FCZD) + 10,000,000 (DOE)</u></p> <p>This Amendment Amount: \$ _____</p> <p>Total Amended Amount: \$ <u>12,500,000</u></p> <p>Summary of Scope:</p>	<p>Council approval required for; all property leases, contracts or bid awards exceeding \$40,000, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:</p> <ol style="list-style-type: none"> 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.
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This grant provides \$10,000,000 in Floodplain by Design funding to advance three Phase 2 capital projects and one new capital project; two of which are led by the Tribes (Nooksack and Lummi). This grant will also acquire key floodplain land and support agricultural, tribal and small cities in participating in the FLIP process. This grant requires a 20% match (\$2,500,000) for a total project cost of \$12,500,000. Grant match will be provided by the FCZD and project partners.

Term of Contract: <u>7/1/2023</u>	Expiration Date: <u>6/30/2027</u>
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Contract Routing:	Date:
1. Prepared by: <u>JMAnderson</u>	<u>7/23/2024</u>
2. Attorney signoff: <u>Chris Quinn</u>	<u>8/1/2024</u>
3. AS Finance reviewed: <u>Brad Bennett</u>	<u>8/1/2024</u>
4. IT reviewed (if IT related): _____	Date: _____
5. Contractor signed: _____	Date: _____
6. Executive contract review: _____	Date: _____
7. Council approved, if necessary: <u>AB2024-535</u>	<u>9/10/2024</u>
8. Executive signed: _____	Date: _____
9. Original to Council: _____	Date: _____



Agreement No. SEAFBD-2325-WhCoPW-00054

SHORELANDS FLOODPLAINS BY DESIGN AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

WHATCOM COUNTY PUBLIC WORKS

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and Whatcom County Public Works, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	The Nooksack River: Floodplains that Work – Phase 3
Total Cost:	\$12,500,000.00
Total Eligible Cost:	\$12,500,000.00
Ecology Share:	\$10,000,000.00
Recipient Share:	\$2,500,000.00
The Effective Date of this Agreement is:	07/01/2023
The Expiration Date of this Agreement is no later than:	06/30/2027
Project Type:	Floodplains by Design

Project Short Description:

This project is the third part of a multi-phase effort to integrate flood hazard reduction and salmon recovery with the needs of agriculture and other land uses within the Nooksack River watershed. Phases 1-2 were initiated using previous Floodplains by Design funds. Phase 3 will further advance these components incorporating additional elements in response to devastating floods, and to continue to support the collaborative Floodplain Integrated Planning (FLIP) process.

Project Long Description:

Phase 3 is based on a commitment among multiple interests to address floodplain management through an integrated approach, which is reflected by the overall goal of the Floodplain Integrated Planning committee to update the Lower Nooksack Comprehensive Flood Hazard Management Plan (CFHMP). Utilizing the RECIPIENT’s FLIP process provides an effective institutional framework for achieving integrated goals of reducing flood risk, recovering salmon

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Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

populations, preserving cultural resources, and improving the resilience of communities throughout the Nooksack basin.

The FLIP process is led by a Steering Committee (FLIPSC), which is comprised of representatives from Lummi Nation, Nooksack Indian Tribe, Whatcom County Flood Control Zone District (FCZD), the Ag Water Board of Whatcom County, and cities throughout the basin. The FLIPSC embraces Floodplains by Design (FbD) principles of integrating multiple interests into floodplain and salmon recovery planning efforts throughout the Nooksack watershed. There is also a broader FLIP team which includes additional members from the FCZD; representatives from the six Watershed Improvement Districts (WID's); representatives from multiple drainage and diking districts; federal, state, and local agency staff; city representatives within the floodplain; and technical experts. The broader team also includes agriculture representatives from the four Subzone Advisory Committees: (1) Acme and VanZandt; (2) Birch Bay Watershed and Aquatic Resource Management District; (3) Lynden and Everson; and (4) Sumas, Everson and Nooksack. (Everson is listed in two subzones because the river divides the town).

In Phase 3, FLIPSC members will also be coordinating with the Nooksack Transboundary Flood Initiative (NTFI). This initiative transpired as a response to frequent flood events at the Everson "Flow Split" or Overflow. Here, the Nooksack River overtops the bank of its main westerly flowing channel, causing some of the floodwater to flow northward through a historic Nooksack River channel that crosses the border from the U.S. into Canada. This Nooksack River overflow exacerbates flooding from the nearby Sumas River that already flows north into Canada. NTFI represents an international, multi-government agreement that commits to coordination to reduce flood risks while also considering restoration opportunities on both sides of the border. The NTFI advances a collaborative framework to identify and pursue actions for flood-risk reduction and habitat restoration on the Nooksack and Sumas watersheds.

This agreement will advance the following four capital projects and a minimum of one Early Action Project for the purpose of reducing flood risk, restoring habitat for federal Endangered Species Act (ESA) listed salmon, and enhancing agricultural resilience.

- Slater Road will advance to technical analysis and conceptual design.
- Glacier-Gallup Creek Alluvial Fan Restoration will advance to 90% designs and permits.
- Ferndale Levee Improvement-Phase 1 will advance to 100% designs and permits.
- Fish Camp (Ts'eq) will advance to construction.
- One or more Early Action Projects to be identified through the FLIP process will advance to construction.

This agreement will also advance the Acquisition & Flood Mitigation program by acquiring high priority properties; establishing conservation or agricultural easements; supporting home elevations or relocation of at-risk structures to less flood prone locations; and relocating people to safer housing.

Overall Goal:

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

To continue to implement and advance projects funded by the 2019-2021 and 2021-2023 FbD grants.

To support continued participation of agricultural interests; cities; and local tribes in the FLIP and Nooksack Transboundary Flood Initiative process.

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To significantly reduce flood risk through buyouts and elevations, and to raise public awareness of relevant technical information produced through Phases 1-2.

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-WhCoPW-00054

Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

RECIPIENT INFORMATION

Organization Name: Whatcom County Public Works

Federal Tax ID: 91-6001383

UEI Number: NT6RMN8THTN7

Mailing Address: 322 N. Commercial Street, Suite 220
Bellingham, Washington 98225

Physical Address: 322 N. Commercial Street, Suite 220
Bellingham, Washington 98225

Organization Email: rrydel@co.whatcom.wa.us

Contacts

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-WhCoPW-00054

Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

<p>Project Manager</p>	<p>Paula Harris River and Flood Manager</p> <p>322 N Commercial Street, Suite 120 Bellingham, Washington 98225 Email: pharris@co.whatcom.wa.us Phone: (360) 778-6285</p>
<p>Billing Contact</p>	<p>Julie Anderson River and Flood Manager</p> <p>322 N. Commercial Street, Suite 220 Bellingham, Washington 98225 Email: jmanders@co.whatcom.wa.us Phone: (360) 778-6200</p>
<p>Authorized Signatory</p>	<p>Satpal Singh Sidhu County Executive</p> <p>311 Grand Avenue, Suite 108 Bellingham, Washington 98225 Email: ssidhu@co.whatcom.wa.us Phone: (360) 778-5200</p>

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Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

ECOLOGY INFORMATION

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

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

Contacts

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

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Agreement No: SEAFBD-2325-WhCoPW-00054

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Recipient Name: Whatcom County Public Works

AUTHORIZING SIGNATURES

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

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

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

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

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

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

Washington State
Department of Ecology

Whatcom County Public Works

By:  9/18/2024
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By:  9/17/2024
1102G7C18B664E3...

Joenne McGerr
Shorelands
Program Manager
Date

Satpal Singh Sidhu
County Executive
Date

Template Approved to Form by
Attorney General's Office

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-WhCoPW-00054

Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

SCOPE OF WORK

Task Number: 1 **Task Cost: \$75,000.00**

Task Title: 1. Project Administration/Management

Task Description:

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

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

Task Goal Statement:

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

Task Expected Outcome:

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

Recipient Task Coordinator: Julie Anderson

1. Project Administration/Management

Deliverables

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

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Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

SCOPE OF WORK

Task Number: 2 **Task Cost: \$7,500,000.00**

Task Title: 2. Acquisition & Flood Mitigation Program

Task Description:

The RECIPIENT has developed an Acquisition & Flood Mitigation Program focused on getting people out of harm's way and securing lands which are priority areas for future multi-benefit projects. The RECIPIENT will implement the program by acquiring high priority properties and conservation or agricultural easements while also supporting home elevations or relocations.

A. The RECIPIENT will acquire a minimum of three properties and one conservation or agricultural easement. The RECIPIENT will submit a full Acquisition Report for each fee-simple acquisition and conservation or agricultural easement purchased.

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

Escrow Process (if applicable): If the RECIPIENT requires funds to acquire a property prior to closing, the RECIPIENT can request (an exception to ECOLOGY's reimbursement policy) by going through the escrow process. This process allows ECOLOGY to pay a RECIPIENT's grant funds in advance for the property or easement acquisition through the title / escrow company. Allow sufficient time for ECOLOGY and the Office of the State Treasurer to process documentation a minimum of three weeks prior to closing.

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

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

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

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

F. For elevations or home relocations, the RECIPIENT will provide a copy of bid documents and signed contracts for above actions, as applicable. Contracted services will be secured in accordance with State of Washington procurement procedures and within the scope of work of this agreement.

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G. The RECIPIENT will obtain and submit a copy of all required local, state, or federal permits for above actions.

H. The RECIPIENT will submit annotated digital photographs showing conditions before, during, and after above actions.

Task Goal Statement:

The goal is to: (1) Acquire residential properties that are at risk for flooding; (2) Assist displaced residents by supporting costs associated with relocating to new housing; (3) Demolish unneeded structures on acquired properties to prevent the likelihood that they would become debris in a future flood; (4) When acquisitions are not an option, reduce flood risk to homeowners by supporting elevation or relocation of at risk structures to improve their safety; and (5) Acquire conservation or agricultural easements as needed to implement integrated flood hazard reduction projects.

Task Expected Outcome:

This task will reduce risk to people who were living in harm's way by acquiring their property and relocating their household, or elevating or relocating their homes.

Acquired lands will be conserved into perpetuity, which prevents future incompatible development in the floodplain. The lands being targeted for acquisition are in high priority areas for future flood hazard reduction and restoration projects.

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Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

Recipient Task Coordinator: Julie Anderson

2. Acquisition & Flood Mitigation Program

Deliverables

Number	Description	Due Date
2.1	Complete Acquisition Report for each property and conservation or agricultural easement purchased. Submit to ECOLOGY Project Manager via email and upload electronic acquisition forms in EAGL.	
2.2	In accordance with the URA, relocation services will be provided. Upload signed contracts with relocation agencies and submit reimbursements to ECOLOGY as applicable.	
2.3	Cultural Resource Review documents for each property purchased and prior to demolition, elevation, or relocation work. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	
2.4	Copy of IDP and other documentation to meet cultural resources review requirements. Upload to EAGL and notify ECOLOGY Project Manager via email.	
2.5	Project area GIS shapefiles showing the location of acquisitions, demolitions, elevations, or relocations. Save the shapefiles in a .zip file, upload to EAGL and notify ECOLOGY Project Manager via email.	
2.6	Copy of bid documents and signed contracts for demolitions, elevations, or relocations to be included with the first invoice seeking reimbursement on relevant work. Upload to EAGL and notify ECOLOGY Project Manager via email.	
2.7	Copy of all required local, state, and federal permits for demolitions, elevations, or relocations, as applicable. Upload documentation to EAGL prior to implementation and notify ECOLOGY Project Manager via email.	
2.8	Annotated digital photographs showing conditions before, during, and after demolitions, elevations, or relocations. Upload to EAGL and notify ECOLOGY Project Manager via email.	

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Agreement No: SEAFBD-2325-WhCoPW-00054

Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

SCOPE OF WORK

Task Number: 3 **Task Cost: \$4,425,000.00**

Task Title: 3. Capital Project Advancement

Task Description:

The RECIPIENT will advance the capital project development work for one new project, three ongoing projects, and Early Action projects as described below.

A. Slater Road project - the RECIPIENT will advance technical analyses to support development and evaluation of stakeholder-driven conceptual alternatives for elevating Slater Road, including modifying adjacent flood infrastructure for climate resilience; restoring lower river habitat; evaluation of project effects on adjacent land uses; consideration of tribal priorities; and consideration of future integrated projects. The RECIPIENT will provide an area technical assessment, alternatives analysis report and conceptual designs for Slater Road elevations. Any remaining funds may be applied to filling the funding deficit for the Early Action project to construct the Cougar Creek Fish Passage and Habitat Improvement Project.

B. The RECIPIENT will provide a copy of signed contracts for designs for each project. Contracted services will be secured in accordance with state of Washington procurement procedures and within the scope of work of this agreement.

C. The RECIPIENT will complete an Inadvertent Discovery Plan (IDP) and cultural resources review on each project prior to construction in accordance with Section 106 or Governor’s Executive Order 21-02 requirements. Due to confidentiality, email surveys to the ECOLOGY Project Manager and do not upload in EAGL.

D. Glacier-Gallup Creek Alluvial Fan Restoration (Glacier-Gallup) project - the RECIPIENT will complete and submit the 90% Design Plans, Specifications, and Estimates (PS&E); Basis of Design Report (BDR); and a funding strategy for implementation.

E. Ferndale Levee Improvement-Phase 1 project - the RECIPIENT will complete and submit the 100% designs, PS&E and BDR; required local, state, and federal permits; signed contracts; and bid documents.

F. Fish Camp (Ts’eq) Project Area 1 (PA1) Phase A - the RECIPIENT will complete and submit the 100% designs, PS&E and BDR; required local, state, and federal permits; signed contracts; bid documents; and as-built plans.

G. Early Action projects - the RECIPIENT will complete and submit the 100% designs, PS&E and BDR; required local, state, and federal permits; signed contracts; bid documents; and as-built plans.

H. The RECIPIENT will submit annotated photos and GIS-compatible project area data for each construction project in an ECOLOGY-approved format to ECOLOGY and upload it to EAGL.

Task Goal Statement:

The goal is to: (1) Complete technical analysis and conceptual designs of Slater Road; (2) Improve flood protection for two water treatment plants, one wastewater treatment plant, roads, parks, over 200 residences, and 1,900 acres of farmland in Ferndale; (3) Install log jams and set back the Acme Farming left bank levee at Fish Camp (Ts’eq); (4) Advance

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Glacier-Gallup to 90% design on the construction of 6,300 feet of levee improvements; and (5) Construct at least one Early Action project.

Task Expected Outcome:

This task will advance key capital projects on the Nooksack River forks and tributaries that deliver high priority integrated results for partners, including the community of Glacier; Lummi Nation; Nooksack Tribe; FCZD; City of Ferndale; agriculture interests; and lower river delta residents and businesses.

Outcomes will be improved flood protection in Ferndale; improved habitat and increased flood conveyance and floodplain connectivity at Fish Camp (Ts'ég); improved habitat and river conveyance at Glacier-Gallup; and continued advancement of FLIP supported Early Action Projects.

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Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

Recipient Task Coordinator: Julie Anderson

3. Capital Project Advancement

Deliverables

Number	Description	Due Date
3.1	Technical assessment, alternatives analysis report and conceptual designs for Slater Road elevations. Upload to EAGL and notify ECOLOGY Project Manager via email.	
3.2	Signed contracts for project design for Fish Camp (Ts’eq), Ferndale Levee Improvement-Phase 1, Glacier-Gallup, and Early Action Projects. Contracted services will be secured in accordance with state of Washington procurement procedures and within the scope of work of this agreement.	
3.3	Cultural Resource Review documents for Fish Camp (Ts’eq), Ferndale Levee Improvement-Phase 1, Glacier-Gallup, and Early Action Projects. Due to confidentiality, do not upload to EAGL. Email documents to ECOLOGY Project Manager.	
3.4	Copy of IDP for all projects. Submit to ECOLOGY Project Manager via email prior to ground-disturbing activities.	
3.5	90% designs, specifications, engineer’s cost estimates, and basis of design reports for Glacier-Gallup, prepared by an engineer licensed in the State of Washington. Upload to EAGL and notify ECOLOGY Project Manager via email.	
3.6	100% designs, specifications, engineer’s cost estimates, basis of design reports for Fish Camp (Ts’eq), Ferndale Levee Improvement-Phase 1, and Early Action Projects. Upload to EAGL and notify ECOLOGY Project Manager via email.	
3.7	Copy of bid docs and signed contracts for construction to be included with the first invoice seeking reimbursement on relevant work for Ferndale Levee Improvement-Phase 1, Fish Camp (Ts’eq), and Early Action Projects. Upload to EAGL and notify ECOLOGY Project Manager via email.	
3.8	Copy of all required local, state or federal permits for construction or permit applications for projects not going to construction, for Fish Camp (Ts’eq), Ferndale Levee Improvement-Phase 1, and Early Action Projects. Upload documentation to EAGL prior to implementation and notify ECOLOGY Project Manager via email.	
3.9	Construction project schedule, including project milestones for Fish Camp (Ts’eq), and Early Action Projects. Upload to EAGL and notify ECOLOGY Project Manager via email.	

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3.10	Annotated digital photographs showing conditions before, during, and after construction for Fish Camp (Ts'eq), and Early Action Projects. Upload to EAGL and notify ECOLOGY Project Manager via email.	
3.11	As-built construction plan set for Fish Camp (Ts'eq) and Early Action Projects signed and sealed by a Washington State licensed engineer. Upload to EAGL and notify ECOLOGY Project Manager via email.	
3.12	Project area GIS shapefiles showing the location of construction for Fish Camp (Ts'eq), and Early Action Projects. Save the shapefiles in a .zip file and upload to EAGL. Notify ECOLOGY Project Manager via email.	

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-WhCoPW-00054

Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

SCOPE OF WORKTask Number: 4 **Task Cost:** \$500,000.00

Task Title: 4. Floodplain Integrated Planning Process Support

Task Description:

While devastating, the historic 2021 floods have created a once in a career opportunity to advance an integrated flood plan that benefits a broad community.

This task will support participation of agricultural (ag) representatives, Tribal, and small city staff on the FLIPSC and the larger ongoing FLIP process. Staffing limitations at both tribes and the small cities make it challenging to ensure consistent participation at the FLIPSC meetings. Individual farmers, Tribal members and city representatives are asked to participate in FLIP planning and attend FLIP meetings in addition to their ‘day jobs.’ Supporting the participation of these key partners is essential for ongoing FLIP planning efforts. These efforts include: support and engagement with the Nooksack Transboundary Flood Initiative; support development of climate-resilient fish-farm-flood projects; prioritizing projects after more accurate modeling of the river is completed; identification of priorities for disaster relief; and outreach and education surrounding future flood preparedness.

The RECIPIENT will complete the following subtasks:

A. The RECIPIENT will upload a final, signed Interlocal Agreement (ILA) or amendment to existing ILA with Ag Water Board in EAGL, and notify the ECOLOGY Project Manager via email.

B. The RECIPIENT will increase the capacity of agricultural interests to participate in the FLIP process by distributing reimbursement stipends to farmers to attend FLIP Team meetings. The RECIPIENT will be responsible for engaging with and organizing reimbursable-eligible farmer participation by entering into individual Letters of Agreement (LOAs) with each farmer. Stipends are not to exceed \$599 per farmer. Stipends to cover costs for time and travel expenses of farmers are set at the following rates:

1. Field trip (approx. 3 hours) and Workshop #1 (7-8 hours) = \$375
2. Follow-up meetings (3-5 hours) = \$200

(The RECIPIENT expects a similar stipend for the upcoming Reach Team meetings. Rates may be adjusted if the Reach Team meeting times differ significantly but will not exceed \$599 per farmer.)

Farmers must sign in and out to each FLIP Team and/or Reach Team meeting and stay for the entire meeting to qualify for reimbursement. Should farmers not stay for an entire meeting, the stipend will be prorated on actual hours. The RECIPIENT will submit signed Letter of Agreements (LOAs), sign-in sheets, and reimbursement documents to the ECOLOGY Project Manager and upload to EAGL.

C. The RECIPIENT will increase the capacity of the Tribes to participate in the FLIP process by reimbursing 80% of the Lummi Nation and Nooksack Indian Tribe staff time at FLIP Team and FLIPSC meetings. The RECIPIENT will enter into separate ILAs with the Lummi Nation and the Nooksack Indian Tribe, respectively. The RECIPIENT will submit copies of the

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Recipient Name: Whatcom County Public Works

fully signed ILA’s or amendment to the ILA’s to ECOLOGY.

D. The RECIPIENT will increase the capacity of the small cities to participate in the FLIP process by reimbursing 80% of the costs of staff or consultant time in attending the FLIPSC and FLIP Team meetings by entering into one ILA which will include Everson, Nooksack and Sumas. The RECIPIENT will submit a copy of the fully signed ILA or amendment to the ILA to ECOLOGY.

Task Goal Statement:

This task will provide funding for key partners to consistently participate in the FLIPSC, the larger FLIP process (FLIP Team), and contribute to collaboration within the Nooksack Transboundary Flood Initiative. This will ensure diverse participation in critically important floodplain planning discussions and potentially accelerate the work by providing meaningful opportunity for participation by key partners early in these efforts.

Task Expected Outcome:

Involving interested parties and keeping the community informed is essential for advancing the technical work needed to support the FLIP process, and to develop and evaluate suites of actions to mitigate flood risk and increase community resilience throughout the Nooksack and Sumas basins, with a focus on potential interventions in managing the Everson Overflow.

Recipient Task Coordinator: Paula Harris

4. Floodplain Integrated Planning Process Support

Deliverables

Number	Description	Due Date
4.1	Final, signed Interlocal Agreement (ILA) or amendment to existing ILA with Ag Water Board. Upload to EAGL and notify ECOLOGY Project Manager via email.	
4.2	Signed Letters of Agreements (LOAs) with farmers for FLIP meeting participation; sign-in sheets; and reimbursement documents. Upload to EAGL and notify ECOLOGY Project Manager via email.	
4.3	Final, signed ILA’s or amendment to existing ILA’s with the Lummi Nation and the Nooksack Indian Tribe. Upload to EAGL and notify ECOLOGY Project Manager via email.	
4.4	Final, signed ILA or amendment to existing ILA with the small cities that incur expenses. Upload to EAGL and notify ECOLOGY Project Manager via email.	

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-WhCoPW-00054

Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
Floodplains by Design 23-25	20.00 %	\$ 2,500,000.00	\$ 10,000,000.00	\$ 12,500,000.00
Total		\$ 2,500,000.00	\$ 10,000,000.00	\$ 12,500,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

Floodplains by Design and Flood Control Assistance Account Program - Special Terms and Conditions

1. Local Decision: This grant is made in response to a request for financial assistance from the RECIPIENT to undertake flood damage prevention projects. The choice of floodplain management activities addressed by this grant is a local decision made solely by the RECIPIENT. The RECIPIENT is not acting as an agent of the State of Washington.

2. Lawsuits: Ecology shall not be responsible for any non-contractual damage or inverse condemnation claims resulting from the structures or works constructed, repaired, restored, maintained, or improved pursuant to this grant.

3. Indemnification, Hold Harmless and Duty to Defend

a. Ecology shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the scope of work.

b. This paragraph applies to negligence based claims only. All other claims are governed by paragraph 4 of this section (item 3.d). To the extent the constitution and laws of the State of Washington permit, RECIPIENT shall indemnify, defend and hold harmless the State, its agencies, officers and employees, from all claims, suits or actions brought for any or all injuries to persons or property arising from, or as a consequence of, negligent acts or omissions related to the construction, restoration, repair, maintenance, improvement or operation of the structures or works for which this grant is provided. If the structures or works for which this grant is received are a portion of an integrated flood protection system, RECIPIENT agrees to indemnify, defend and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the operation, maintenance, or repair of that integrated flood protection system; PROVIDED, however, that this provision is not intended to and shall not be construed as a waiver by RECIPIENT of any immunities conferred upon the RECIPIENT by RCW 86.12.037 nor is it intended to, and it shall not be construed to, confer any rights upon third parties.

c. The RECIPIENT will not be required to indemnify, defend, or save harmless the State, its agencies, officers or employees as provided in the preceding paragraph of this section if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the State. Where such claims, suits, or actions result from the concurrent negligence of (a) the State, or the State's agents or employees and (b) the RECIPIENT or the RECIPIENT's agents or employees, the indemnity provisions

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provided in the preceding paragraphs of this section shall be valid and enforceable only to the extent of the RECIPIENT's negligence or the negligence of its agents and employees.

d. To the extent that the constitution and laws of the State of Washington permit, RECIPIENT shall indemnify and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the continued operation, maintenance, or repair of the structures or works constructed, restored, repaired, maintained or improved as a result of this grant. If the structures or works for which this grant is received are portions of an integrated flood protection system, RECIPIENT agrees to indemnify, defend and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the operation, maintenance, or repair of that integrated flood protection system; PROVIDED, however, that the indemnity provisions of this paragraph are not intended to and shall not be construed as a waiver by Recipient of any immunities conferred upon the Recipient by RCW 86.12.037 nor are they intended to, and they shall not be construed to, confer any rights upon third parties. This agreement applies to all non-negligent, non-contractually based claims including, but not limited to, inverse condemnation, contribution, indemnification, trespass and/or nuisance.

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

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

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

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

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

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FLOODPLAINS BY DESIGN FUNDING PROGRAM AND FCAAP GRANTS SPECIAL TERMS AND CONDITIONS LAST UPDATED MAY 2021.**GENERAL FEDERAL CONDITIONS****If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.****A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY****EXCLUSION:**

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

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

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

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five

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top executives using the FFATA Data Collection Form.

- Receives more than \$30,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

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

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

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

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

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

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

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GENERAL TERMS AND CONDITIONS

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

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

07/01/2023 Version

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/2301002.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

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

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

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

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

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

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

RECIPIENT shall:

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

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

RECIPIENT shall:

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

5. ASSIGNMENT

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

6. COMMUNICATION

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

7. COMPENSATION

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

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

8. COMPLIANCE WITH ALL LAWS

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

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

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

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

9. CONFLICT OF INTEREST

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

10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

11. DISPUTES

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

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

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

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

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

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

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

12. ENVIRONMENTAL DATA STANDARDS

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

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

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

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

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

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

13. GOVERNING LAW

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

14. INDEMNIFICATION

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

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

15. INDEPENDENT STATUS

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

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16. KICKBACKS

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

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

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

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

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

18. ORDER OF PRECEDENCE

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

19. PRESENTATION AND PROMOTIONAL MATERIALS

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

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

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

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

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

20. PROGRESS REPORTING

State of Washington Department of Ecology

Agreement No: SEAFBD-2325-WhCoPW-00054

Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

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

21. PROPERTY RIGHTS

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

State of Washington Department of Ecology

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Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

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

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced.

Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

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

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

23. RECOVERY OF FUNDS

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

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

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

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

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

24. SEVERABILITY

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

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

26. SUSPENSION

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

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Project Title: The Nooksack River: Floodplains that Work – Phase 3

Recipient Name: Whatcom County Public Works

27. SUSTAINABLE PRACTICES

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

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

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

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

28. TERMINATION

a) For Cause

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

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

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

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

b) For Convenience

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

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

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

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

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

c) By Mutual Agreement

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

d) In Event of Termination

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

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

29. THIRD PARTY BENEFICIARY

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

30. WAIVER

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

End of General Terms and Conditions

Certificate Of Completion

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 Source Envelope:
 Document Pages: 32 Signatures: 2
 Certificate Pages: 3 Initials: 0
 AutoNav: Enabled
 EnvelopeId Stamping: Enabled
 Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed

 Envelope Originator:
 Cindy James
 P.O. Box 47600
 Olympia, WA 98504
 cjam461@ecy.wa.gov
 IP Address: 76.135.73.99

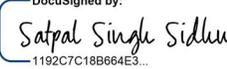
Record Tracking

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Storage Appliance Status: Connected	Pool: Washington State Department of Ecology	Location: DocuSign

Signer Events

Satpal Singh Sidhu
 SSidhu@co.whatcom.wa.us
 County Executive
 Security Level: Email, Account Authentication (None)

Signature

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Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Joenne McGerr
 jomc461@ecy.wa.gov
 Program Manager, SEA
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 Not Offered via DocuSign

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Cindy James
 cjam461@ecy.wa.gov
 Security Level: Email, Account Authentication (None)



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Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Cindy James
 cjam461@ecy.wa.gov
 Security Level: Email, Account Authentication (None)



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Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
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