

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No. \_\_\_\_\_

Originating Department:	_____
Division/Program: (i.e. Dept. Division and Program)	_____
Contract or Grant Administrator:	_____
Contractor's / Agency Name:	_____

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): \_\_\_\_\_ CFDA#: \_\_\_\_\_

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

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

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.

Contract Amount:(sum of original contract amount and any prior amendments):  
 \$ \_\_\_\_\_  
 This Amendment Amount:  
 \$ \_\_\_\_\_  
 Total Amended Amount:  
 \$ \_\_\_\_\_

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:**

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: \_\_\_\_\_

Term of Contract: \_\_\_\_\_     Expiration Date: \_\_\_\_\_

Contract Routing:	1. Prepared by: _____	Date: _____
	2. Attorney signoff: _____	Date: _____
	3. AS Finance reviewed: _____	Date: _____
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____



## Agreement No. SEAFBD-2123-WhCoPW-00014

### SHORELANDS FLOODPLAINS BY DESIGN AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / 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 FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY PUBLIC WORKS, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

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#### GENERAL INFORMATION

Project Title:	The Nooksack River: Floodplains that Work - Phase 2
Total Cost:	\$7,900,000.00
Total Eligible Cost:	\$7,900,000.00
Ecology Share:	\$6,320,000.00
Recipient Share:	\$1,580,000.00
The Effective Date of this Agreement is:	07/01/2021
The Expiration Date of this Agreement is no later than:	06/30/2025
Project Type:	Floodplains by Design

#### Project Short Description:

Whatcom County Flood Control Zone District / Whatcom County Public Works and watershed partners will implement Phase 2 of the Nooksack River Floodplains That Work project in the mainstem and forks of the Nooksack River. This project builds on the existing Floodplain Integrated Planning (FLIP) process and past collaborative efforts to implement integrated floodplain management in the Nooksack Watershed. This project will reduce flood hazards and increase flood resiliency in Whatcom County.

#### Project Long Description:

The Nooksack River: Floodplains That Work – Phase 2 project is the result of relationship and trust building among multiple interests through an integrated floodplain management approach. The result is a suite of strategic, results-focused actions that garner broad support for achieving multiple floodplain benefits. Phase 2 includes projects in mainstem and upper Fork reaches. Projects have a common goal of reducing flood hazards, recovering salmon

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Project Title: The Nooksack River: Floodplains that Work - Phase 2

Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

populations and improving the resiliency of floodplain agriculture and communities.

- **Ferndale Levee Improvements Project:** The RECIPIENT will advance the preliminary (60%) design for Ferndale levee improvements to final (90-100%) design. This project will protect critical infrastructure; reduce flood hazards; and improve riparian habitat, roads, stormwater infrastructure and recreation. Preliminary (60%) design is being completed under the existing grant, SEAFBD-2019-WhCoPW-00054.

- **Jones Creek Debris Flow Risk Reduction Project:** The RECIPIENT will complete the final design, permitting, and construction of the Jones Creek deflection berm. The berm will reduce risk to the town of Acme from Jones Creek debris flows. A large event would impact residences, farmland, roads, the Acme Elementary School, and salmon runs. Acquisition of properties in hazard zones is occurring under the existing grant.

- **Fish Camp Integrated Fish-Flood Project:** The RECIPIENT, in collaboration with the Nooksack Tribe, will complete final (100%) design, permitting, and construction of the Fish Camp Phase 1A project within the Burlington Northern Santa Fe (BNSF) sub-reach of the South Fork Nooksack River downstream of Acme. The overall project will integrate fish and flood needs in the repetitive flood loss area of Acme. Preliminary (60%) design of Phase 1A is being completed with separate funding sources.

- **Glacier Gallup Creek Alluvial Fan Restoration Project:** The RECIPIENT will complete final (100%) design, permitting and construction of the interim project; and will advance the long-term project design to a minimum of conceptual level. The project is funded under the SEAFBD-2019-WhCoPW-00054 grant and includes concept alternative development, alternatives analysis, and selection of a preferred alternative for the interim and long-term project phases, and advancement of the interim project to preliminary (90%) design.

- **Floodplain Land Acquisition:** The RECIPIENT will acquire key lands needed for future floodplain reconnection, habitat restoration, and flood risk reduction. Potential properties for acquisition will be vetted through the Floodplain Integrated Planning Steering Committee (FLIPSC) and acquired for future implementation of integrated projects resulting from the FLIP process.

- **Agricultural Integration, Tribal Capacity Building, and City Flood Resiliency:** The RECIPIENT will participate in the FLIP process through: (1) agricultural representatives including diking districts, subzones, Flood Control Zone District (FCZD) Advisory Committee, and Watershed Improvement Districts (WIDs); (2) tribal representatives including the Nooksack Indian Tribe and Lummi Nation; and (3) representatives from the cities of Ferndale, Lynden, Everson, Sumas, and Nooksack.. The FLIPSC includes a consultant retained by the Ag Water Board (AWB) to represent agriculture, staff from the Nooksack Indian Tribe and Lummi Nation to represent the Tribes, a staff member of the city of Ferndale to represent downriver interests and a consultant to represent the interests of the upriver cities.

- **Floodplain Integrated Planning (FLIP) Early Action Projects:** The RECIPIENT will generate early action projects for implementation as an outcome of the FLIP reach planning process. While the FLIP process will be ongoing for several more years, one or more projects with broad support will be vetted through the FLIPSC and moved into implementation to build momentum and demonstrate success on the ground.

#### Overall Goal:

The overall goal of this project is to develop and implement a broadly-supported set of integrated reach-scale strategies and actions that will reduce flood risk, protect and restore habitat, and support floodplain functions.

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Project Title: The Nooksack River: Floodplains that Work - Phase 2

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Agreement No: SEAFBD-2123-WhCoPW-00014  
Project Title: The Nooksack River: Floodplains that Work - Phase 2  
Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

**RECIPIENT INFORMATION**

Organization Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY PUBLIC WORKS

Federal Tax ID:

DUNS Number: 91-6001383                      UEI Number: NT6RMN8THTN7  
060044641

Mailing Address:

322 N. Commercial Street, Suite 220  
Bellingham, Washington 98225

Physical Address:

322 N. Commercial Street, Suite 220

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

**Contacts**

Agreement No: SEAFBD-2123-WhCoPW-00014

Project Title: The Nooksack River: Floodplains that Work - Phase 2

Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

<p><b>Project Manager</b></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><b>Billing Contact</b></p>	<p>Christy Fowler</p> <p>322 N. Commercial St. Suite 210 Bellingham, Washington 98225 Email: cfowler@co.whatcom.wa.us Phone: (360) 778-6214</p>
<p><b>Authorized Signatory</b></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 2  
 Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

**ECOLOGY INFORMATION**

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

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

**Contacts**

<p><b>Project Manager</b></p>	<p>Lisa Nelson</p> <p>PO Box 330316                  Shoreline, Washington 98133-9716                  Email: LNEL461@ecy.wa.gov                  Phone: (425) 466-8732</p>
<p><b>Financial Manager</b></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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Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

**AUTHORIZING SIGNATURES**

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

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

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

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

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

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

Washington State  
Department of Ecology

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

By: \_\_\_\_\_

By: \_\_\_\_\_

Joenne McGerr  
Shorelands  
Program Manager  
Date

Satpal Singh Sidhu  
County Executive  
Date

Template Approved to Form by  
Attorney General's Office



Agreement No: SEAFBD-2123-WhCoPW-00014

Project Title: The Nooksack River: Floodplains that Work - Phase 2

Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

**SCOPE OF WORK**Task Number: 1 **Task Cost: \$50,000.00**

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: Daniel Goger

**1. Project Administration/Management****Deliverables**

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

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Project Title: The Nooksack River: Floodplains that Work - Phase 2

Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

**SCOPE OF WORK**Task Number: 2 **Task Cost: \$300,000.00**

Task Title: 2. Ferndale Levee Improvements

Task Description:

The RECIPIENT will complete the final (90-100%) design for improvements to the Ferndale and Treatment Plant Levees. The RECIPIENT will coordinate with the city of Ferndale, public utility district (PUD), and other stakeholders throughout the design process. This design will provide flood protection and enhance riparian habitat on the river side of the levees. The work will advance current design efforts and include reviewing and refining the 60% design in conjunction with the city of Ferndale, Whatcom County Public Utility District No.1, and other stakeholders. Preliminary Design (up to 60%) is currently funded under Grant Number SEAFBD-2019-WhCoPW-00054.

The project will provide a 100-year level of flood protection (LOP) to key infrastructures; improve riparian and salmon rearing habitat along approximately 6,300 feet of riverbank; improve stormwater quality; and enhance recreation. The LOP will be based on anticipated future flood levels that consider predicted climate change impacts on flow and sedimentation.

The RECIPIENT will complete the following subtasks:

A. The RECIPIENT is responsible for application of, receipt of, and compliance with all required local, state, tribal and federal permits, and licenses necessary for the project. The RECIPIENT will submit documentation of permits and approvals to ECOLOGY.

B. The RECIPIENT submitted the cultural resources review and Inadvertent Discovery Plan to ECOLOGY for this project under the SEAFBD-2019-WhCoPW-00054 grant. These documents will be resubmitted as deliverables under this grant for continuity. The results will be incorporated into the JARPA filing, if applicable.

C. The RECIPIENT has a consultant already under contract for the preliminary (60%) design task scope of work funded under SEAFB-2019-WhCoPW-00054. The RECIPIENT will amend the consultant contract to include the final (90-100%) design task scope of work in accordance with the RECIPIENT or State of Washington procurement procedures. The RECIPIENT will upload a copy of the signed consultant contract in EAGL, and notify the ECOLOGY Project Manager.

D. The RECIPIENT will complete the final (90-100%) design plans, specifications, engineer's cost estimate, and Basis of Design Report (BDR) signed and sealed by an engineer licensed in the State of Washington. Final design will include road and levee alignments, cross-sections and details, retaining wall designs and geotechnical improvements (if applicable), a riparian re-establishment plan and a trail improvement plan. The RECIPIENT will upload a copy of the final design documents in EAGL, and notify the ECOLOGY Project Manager.

E. The RECIPIENT will coordinate with the city of Ferndale and the PUD throughout the design process.

Task Goal Statement:

To improve the city of Ferndale and Treatment Plant Levees, provide 100-year level of flood protection to critical infrastructure and adjacent land uses, and enhance riparian habitat.

Agreement No: SEAFBD-2123-WhCoPW-00014

Project Title: The Nooksack River: Floodplains that Work - Phase 2

Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

**Task Expected Outcome:**

The outcome of this task will be a final (90-100%) engineering design plan set, along with technical specifications, engineer's cost estimate, and Basis of Design Report (BDR).

Recipient Task Coordinator: Daniel Goger

**2. Ferndale Levee Improvements****Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
2.1	List and copies of required and acquired permits with effective dates. Upload to EAGL and notify ECOLOGY Project Manager.	
2.2	Cultural resources review documents. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	
2.3	Inadvertent Discovery Plan (IDP). Upload to EAGL and notify ECOLOGY Project Manager.	
2.4	Signed consultant contract(s) and amendment(s). Upload to EAGL and notify ECOLOGY Project Manager.	
2.5	Final (90-100%) Design Plans, Specifications Engineer's Cost Estimate, and Basis of Design Report (BDL), signed and sealed by a Washington State-licensed engineer. Upload to EAGL and notify ECOLOGY Project Manager.	

Agreement No: SEAFBD-2123-WhCoPW-00014

Project Title: The Nooksack River: Floodplains that Work - Phase 2

Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

## SCOPE OF WORK

Task Number: 3 **Task Cost: \$3,100,000.00**

Task Title: 3. Jones Creek Debris Flow Risk Reduction

### Task Description:

The RECIPIENT will construct a deflection berm (approx. 440 ft long) and a secondary training berm (approx. 3,400 ft long) to reduce the risk of Jones Cr. debris flows to the Acme Community. Work will also include rerouting Turkington and Galbraith Roads and associated utilities to accommodate the new berms and minimize impacts to adjacent developed properties.

The RECIPIENT will complete the following subtasks:

A. The RECIPIENT will procure all required local, state, tribal and federal permits, and licenses necessary for the project. The RECIPIENT will submit documentation of permits and approvals to ECOLOGY.

B. The RECIPIENT will resubmit cultural resources reviews and IDP previously submitted under prior grant.

C. The RECIPIENT has a consultant already under contract for the design and construction management task scopes of work and will not seek reimbursement for these costs as a part of the grant.

D. The RECIPIENT will hire a construction contractor(s) for the construction task scope of work in accordance with the RECIPIENT or State of Washington procurement procedures. Additional consultant(s) may be hired to support the design, permitting, construction support, and/or other consultant service task scopes of work in accordance with the RECIPIENT or State of Washington procurement procedures. The RECIPIENT will upload a copy of signed contract(s) in EAGL, and notify the ECOLOGY Project Manager. The RECIPIENT has a consultant already under contract for the design and construction management task scopes of work.

E. The RECIPIENT will provide public outreach to the community of Acme to present final plans and describe temporary construction impacts. Public outreach may be in the form of mailers, project factsheets, development of a project website, individual landowner meetings, and/or a community meeting. The RECIPIENT will upload invoices related to these expenses that are eligible for reimbursement as defined by ECOLOGY's Administrative Requirements of Ecology's Grants and Loans (2017 Yellow Book) to EAGL and will notify the ECOLOGY Project Manager.

If applicable, the RECIPIENT will request and receive approval by ECOLOGY's Project Manager for light refreshment reimbursement(s). The ECOLOGY Project Manager can send a copy of the light refreshment request form. Approved request forms must be submitted with the corresponding Payment Request/Progress Report (PRPR).

F. The RECIPIENT will prepare the construction bid documents in accordance with the RECIPIENT or State of Washington procurement procedures. The RECIPIENT will upload a copy of the bid documents in EAGL, and notify the ECOLOGY Project Manager.

G. The RECIPIENT will upload an updated project schedule and milestones with each quarterly Progress Report/Payment Request in EAGL, and notify the ECOLOGY Project Manager.

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H. The RECIPIENT will upload copies of the as-built drawings and annotated photos in EAGL, and notify the ECOLOGY Project Manager.

Task Goal Statement:

The goal of this task is to reduce flood risk associated with Jones Creek debris flows to the community of Acme.

Task Expected Outcome:

Construction of the deflection berm and training berm will reduce the likelihood and intensity of impacts of future debris flows in the community of Acme.

Recipient Task Coordinator: Christina Schoenfelder

**3. Jones Creek Debris Flow Risk Reduction**

**Deliverables**

Number	Description	Due Date
3.1	List and copies of required and acquired permits with effective dates. Upload in EAGL and notify ECOLOGY Project Manager.	
3.2	Cultural resources review documents. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	
3.3	Inadvertent Discovery Plan (IDP). Upload in EAGL and notify ECOLOGY Project Manager.	
3.4	Final Design Plans, Specifications, Engineer's Cost Estimate, and Basis of Design Report (BDR). Upload in EAGL and notify ECOLOGY Project Manager.	
3.5	Copies of Public Outreach documents such as mailer(s), factsheet(s), website(s), presentation(s), and/or meeting agenda(s) and attendance log(s), as applicable. Upload in EAGL and notify ECOLOGY Project Manager.	
3.6	Light refreshments meeting request form (if applicable). Submit to ECOLOGY Project Manager for approval prior to each public meeting. Submit approved copy with each Payment Request/Progress Report (PRPR).	
3.7	Bid documents and signed construction contract(s). Design, construction support, or other related signed consultant contract(s), as applicable. Upload copies to EAGL and notify ECOLOGY Project Manager.	
3.8	Construction project schedule, including project milestones. Update and include with each quarterly Progress Report/Payment Request for ECOLOGY Project Manager review.	
3.9	As-built drawings and annotated before and after photos of the construction phase. Upload in EAGL and notify ECOLOGY Project Manager.	

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Project Title: The Nooksack River: Floodplains that Work - Phase 2

Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

## SCOPE OF WORK

Task Number: 4 **Task Cost: \$1,100,000.00**

Task Title: 4. Fish Camp (Ts'ég) Integrated Fish-Flood Project

### Task Description:

The RECIPIENT, in collaboration with the Nooksack Indian Tribe (NIT), will finalize design and construct Phase 1 of the Fish Camp (Ts'ég) Integrated Fish-Flood Project located in the Burlington Northern Santa Fe Railroad (BNSF) sub-reach of the South Fork Nooksack River. Phase 1A and 1B project elements are anticipated to be implemented concurrently, but only phase 1A will be funded through this agreement. Project elements identified for implementation as part of Phase 1A and 1B, respectively, will be determined at the 90% design level. Preliminary Phase 1 design is being paid for with separate funding sources.

Project elements identified for Phase 1 include: reconnecting the floodplain under the south section of the BNSF railroad bridge/approach to increase flood conveyance; constructing engineered log jams in the active channel; roughening riprap with engineered log jams; restoring riparian forest and removing; lowering, or setting back all or portions of the Acme Farming left bank levee downstream of the BNSF bridge to improve floodplain connectivity and flood storage.

BNSF and Acme Farming LLC are supportive of the proposed Phase 1 project elements. Continued stakeholder outreach will continue to occur as design and construction advances for both the BNSF sub-reach and the overall project area.

The RECIPIENT will complete the following subtasks:

- A. The RECIPIENT will enter into an Interlocal Agreement (ILA) with the NIT for design, permitting, construction, and funding support of the Phase 1A project. The RECIPIENT will submit a copy of the fully signed ILA to ECOLOGY.
- B. The RECIPIENT will submit copies of the environmental permits; cultural resources review documents, including the Inadvertent Discovery Plan (IDP); Phase 1 90% design and the final design, signed and sealed by a Washington State-licensed engineer; annotated before and after photos; and a complete list of the documents obtained for this project.
- C. The RECIPIENT will provide consultant contract(s) supporting the NIT for the Phase 1A design and construction management task scopes of work and contractor contract(s) supporting the NIT for the Phase 1A construction task scope of work in accordance with the RECIPIENT or State of Washington procurement procedures. The RECIPIENT will upload a copy of the signed contracts in EAGL, and notify the ECOLOGY Project Manager.
- D. The RECIPIENT will upload signed easement package(s) and/or landowner agreement(s) for Phase 1A project construction, as applicable.
- E. The RECIPIENT will provide stakeholder and community outreach to present the final Phase 1 design plans and describe temporary construction impacts. Public outreach may be in the form of mailers, project listserv and webpage updates, individual landowner meetings, and/or community meeting(s). The RECIPIENT will upload eligible invoices and will notify the ECOLOGY Project Manager.

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Project Title: The Nooksack River: Floodplains that Work - Phase 2

Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

The RECIPIENT will request and receive approval by ECOLOGY's Project Manager for venue rental fees, and light refreshment reimbursement(s). Approved request forms must be submitted with the corresponding Payment Request/Progress Report (PRPR).

F. The RECIPIENT will provide the Phase 1A construction bid documents, construction schedule and milestones. The RECIPIENT will upload these documents in EAGL, and notify the ECOLOGY Project Manager.

#### Task Goal Statement:

The Fish Camp (Ts'eq) Project's primary goals are to reduce flood risk in the Acme area and improve habitat to support salmon recovery. Goals for improved habitat are to restore upstream migration, holding, spawning and rearing habitat to improve abundance and productivity of South Fork Nooksack Early Chinook salmon, which is considered essential for recovery of the ESA-listed Puget Sound Chinook ESU. Goals for flood risk reduction are to improve protection for repetitive flood loss areas and reduce overall flood risk for the Acme area.

Integrated project objectives are: (1) reduce pool spacing; (2) increase habitat unit diversity; (3) reduce length of riprap bank and increase length of complex edge habitat; (4) increase floodplain connectivity; (5) restore channel migration processes; (6) increase complex cover in the low-flow channel; (7) increase availability of cold-water refuges; (8) restore fish passage; and (9) reduce flood risk in Acme.

To meet project goals and objectives, conceptual design alternatives will be evaluated based on an integrated scoring approach including: (1) habitat benefits (pool formation, edge habitat creation, floodplain connectivity, log jams and wood cover, and cold water refuge); (2) flood risk reduction benefits (change in flood levels, change in road closures, erosion risk, and impacted structures); and (3) implementation factors (landowner/community willingness, permitting/construction complexity, cost, safety, and maintenance).

#### Task Expected Outcome:

Expected task outcomes are as follows for the Fish Camp Phase 1 Reach: (1) plans, cost estimate, and specifications for final design; (2) final basis of design report; (3) final design hydraulic memo and-rise analysis; (4) permits required for project construction; (5) conservation easements as applicable to implement the preferred project elements; (6) construction bid and contract documents; (7) as-built plans and construction documentation/photos; and (8) outreach products – outreach plan, materials, meeting/workshop agendas and notes, and website link.

The task will reduce flood risk within the BNSF sub-reach and restore riverine and associated floodplain habitats. Future phases could include restoring fish passage into Jones Creek. Project elements will: (1) increase flood storage and floodplain connectivity reducing flow velocities and scour that may affect salmon redd survival; (2) increase flood storage and floodplain connectivity that result in a reduction of flood and erosion risk to structures, roads, bridges, and farmland; (3) increase habitat quantity and diversity including deep pools with complex woody cover to benefit Nooksack early chinook adults and juveniles; (4) lower water temperatures by constructing log jams to form pools and temperature refuges; and (5) increase habitat quantity and diversity that will also benefit summer and winter steelhead, bull trout, coho, chum, riverine sockeye, and pink salmon, and cutthroat trout.

Agreement No: SEAFBD-2123-WhCoPW-00014

Project Title: The Nooksack River: Floodplains that Work - Phase 2

Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

Recipient Task Coordinator: Deb Johnson**4. Fish Camp (Ts'eq) Integrated Fish-Flood Project****Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
4.1	Final signed ILA between the Nooksack Indian Tribe (NIT) and RECIPIENT. Upload to EAGL and notify ECOLOGY Project Manager.	
4.2	List and copies of required and acquired permits with effective dates for Phase 1A. Upload in EAGL and notify ECOLOGY Project Manager.	
4.3	Cultural Resources Review Documents. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	
4.4	Inadvertent Discovery Plan (IDP). Upload copy in EAGL and notify ECOLOGY Project Manager.	
4.5	Draft final (90%) Phase 1 design plan layout defining which elements are included with Phase 1A and Phase 1B, respectively. Upload in EAGL and notify ECOLOGY Project Manager.	
4.6	Final (100%) Phase 1A Design Plans, Specifications, Engineer's Cost Estimate, and Basis of Design Report (BDR). Upload in EAGL and notify ECOLOGY Project Manager.	
4.7	Signed easement package(s) and/or landowner agreement(s) for construction of Phase 1A. Upload in EAGL and notify ECOLOGY Project Manager.	
4.8	Copies of Public Outreach documents such as mailer(s), factsheet(s), website(s), presentation(s), and/or meeting agenda(s) and attendance log(s), as applicable. Upload in EAGL and notify ECOLOGY Project Manager.	
4.9	Receipts for venue rental fees and Light refreshments meeting request form (if applicable). Submit to ECOLOGY Project Manager for approval prior to each public meeting. Submit approved copy with each Payment Request/Progress Report (PRPR).	
4.10	Bid documents and signed consultant and construction contractor contract(s) for Phase 1A. Upload in EAGL and notify ECOLOGY Project Manager.	
4.11	Construction project schedule, including project milestones for Phase 1A. Update and include with each quarterly Progress Report/Payment Request for ECOLOGY Project Manager review.	
4.12	As-built drawings and annotated before and after photos for Phase 1A. Upload in EAGL and notify ECOLOGY Project Manager.	



Agreement No: SEAFBD-2123-WhCoPW-00014

Project Title: The Nooksack River: Floodplains that Work - Phase 2

Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

## SCOPE OF WORK

Task Number: 5 **Task Cost:** \$850,000.00

Task Title: 5. Glacier-Gallup Creeks Alluvial Fan Restoration

### Task Description:

This task is directly related to a larger Glacier Creek State Route 542 highway bridge replacement project led by the Washington State Department of Transportation (WSDOT) that is currently on hold due to lack of funds. Advancement of the alluvial fan restoration project (the long-term project) is dependent on advancement of the WSDOT bridge replacement project. Until WSDOT obtains funding, the RECIPIENT will, at a minimum, advance the preferred alternative of the long-term alluvial fan restoration project to conceptual level design. In addition, the RECIPIENT is pursuing an interim project to repair existing damage to the Glacier Creek Levee and add wood features within the levee reach. The wood features will provide immediate habitat benefit and will help protect the levee until the long-term alluvial fan restoration project can be implemented and are intended to remain in place and will be integrated with the long-term alluvial fan restoration project in tandem with the Glacier Creek bridge replacement project.

The RECIPIENT will complete the following subtasks:

A. The RECIPIENT will submit copies of the environmental permits; cultural resources review documents, including the Inadvertent Discovery Plan (IDP); and final design, signed and sealed by a Washington State-licensed engineer; as-built drawings, annotated before and after photos, and a complete list of the documents obtained for this project.

B. The RECIPIENT has a consultant already under contract for the alternatives analysis of the interim and long-term projects and will seek reimbursement of these project costs to ECOLOGY under the SEAFBD-2019-WhCoPW-00054 grant. The consultant contract will be amended to include preliminary to final design, permitting (if needed), and construction management task scopes of work for the interim project and conceptual design task scope of work for the long-term project. The RECIPIENT will hire a construction contractor(s) for the construction task scope of work of the interim project in accordance with the RECIPIENT or State of Washington procurement procedures. The RECIPIENT will seek reimbursement through this agreement for costs associated with the amended consultant contract(s) and the construction contract(s). The RECIPIENT will upload copies of signed consultant and construction contractor contract(s) in EAGL, and notify the ECOLOGY Project Manager.

C. The RECIPIENT will provide a signed easement package for construction of the interim project. The RECIPIENT will upload a copy of the easement package in EAGL, and notify the ECOLOGY Project Manager.

D. The RECIPIENT will provide stakeholder and community outreach in the form of mailers, project listserv, and webpage updates, individual landowner meetings, and/or community meeting(s). The RECIPIENT will upload eligible invoices and will notify the ECOLOGY Project Manager.

E. The RECIPIENT will request and receive approval by ECOLOGY's Project Manager for venue rental fees, and a light refreshment reimbursement(s). Approved request forms must be submitted with the corresponding Payment Request/Progress Report (PRPR).

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F. The RECIPIENT will advance the long-term project design phase to a minimum of conceptual design.

Task Goal Statement:

The goal of this project is to reduce flood risk for the community of Glacier and improve habitat-forming processes on the Glacier-Gallup alluvial fan that support recovery of three Endangered Species Act-listed salmonids. This task will support the future WSDOT Glacier Creek bridge replacement project.

Task Expected Outcome:

The outcomes of this task will be final (100%) design plans, technical specifications, and cost estimate; and construction of the interim project phase. This task will also advance the long-term project phase design up to conceptual design. Property and easement acquisitions for the long-term project, as applicable, will be included under Task 6 Glacier-Gallup Creeks Alluvial Fan Restoration.

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Recipient Task Coordinator: Deb Johnson**5. Glacier-Gallup Creeks Alluvial Fan Restoration****Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
5.1	List and copies of required and acquired permits with effective dates for the interim project. Upload to EAGL and notify ECOLOGY Project Manager.	
5.2	Cultural Resources Review Documents. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	
5.3	Inadvertent Discovery Plan (IDP). Upload to EAGL and notify ECOLOGY Project Manager.	
5.4	Final Design Plans, Specifications, Engineer's Cost Estimate, and Basis of Design Report (BDR) for the interim project. Upload to EAGL and notify ECOLOGY Project Manager.	
5.5	Copies of Public Outreach documents such as mailers, factsheets, project website, meeting agendas, meeting attendance lists, and presentations, as applicable. Upload to EAGL and notify ECOLOGY Project Manager.	
5.6	Receipts for venue rental fees and light refreshments meeting request form (if applicable). Submit to ECOLOGY Project Manager for approval prior to each public meeting. Submit approved copy with each Payment Request/Progress Report (PRPR).	
5.7	Bid documents and signed construction contractor contract(s) for the interim project. Signed consultant contract(s) for the interim project final design/permitting and long-term project conceptual design. Upload to EAGL and notify ECOLOGY Project Manager.	
5.8	Construction project schedule, including project milestones for the interim project. Update and include with each quarterly Progress Report/Payment Request for ECOLOGY Project Manager review.	
5.9	As-built drawings for the interim project. Upload to EAGL and notify ECOLOGY Project Manager.	
5.10	Annotated before and after photos of construction for the interim project. Upload to EAGL and notify ECOLOGY Project Manager.	
5.11	Conceptual Design Plans for the long-term project. Upload to EAGL and notify ECOLOGY Project Manager.	

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**SCOPE OF WORK**Task Number: 6 **Task Cost: \$1,500,000.00**

Task Title: 6. Floodplain Land Acquisition

Task Description:

The RECIPIENT will complete the following subtasks:

A. The RECIPIENT will identify properties and complete acquisition of property and easements, and complete demolition of structures on these properties as applicable to reduce flood risk and enable implementation of future integrated projects. Properties will be vetted through the FLIPSC to ensure the acquisitions are consistent with FLIP goals and are broadly supported and approved by ECOLOGY.

For each property purchase, the RECIPIENT will complete an Acquisition Report. The RECIPIENT will submit a complete Acquisition Report to ECOLOGY prior to the request for reimbursement of each acquisition. No funds will be transferred for acquisitions unless a Cultural Resources Review has been conducted, per Executive Order 21-02. Each Acquisition Report will include, but is not limited to, the following documents:

1. Acquisition Face Sheet \*
  2. Appraisal including:
    - a. Name/Address of seller
    - b. General Vicinity Map
    - c. Site Specific Map
    - d. Legal Description
    - e. Title Report
  3. Appraisal Review by a qualified third party.
  4. Offer letter of just compensation.
  5. Settlement Statement or equivalent.
  6. Hazardous Substances Certification\*, and Property Assessment Checklist\*, both signed by the County.
  7. Annotated photographic documentation of each property acquired in sufficient quantity and quality to document the state of the properties prior to and after acquisition.
  8. Statutory Warranty Deed Official Copy.
  9. Conservation Covenant Official Copy\*: All properties acquired shall be protected as open space in perpetuity for floodplain functions (including dikes, levees and related structures), floodplain restoration, a natural riverine environment, and as applicable: agricultural uses, passive, non-motorized recreational uses, trails, wildlife observation areas, picnic areas, other public facilities consistent with the purposes of this covenant. (The Acquisition Report will include the pre-recorded Conservation Covenant. The recorded Conservation Covenant will be submitted to ECOLOGY after recording with County.)
- The RECIPIENT, working through an established title company, will provide ECOLOGY with supporting documents including electronic versions of:
- a. (Red) Face Sheet for acquisitions;
  - b. EAGL Payment Request/Progress Report;
  - c. Title company's "Wire Transfer Request" with routing number and wiring instructions for specific property referenced;
  - d. Settlement Statement;
  - e. Closing date of property.

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ECOLOGY will wire funds to the title company for acquisition at the time of closing.

Note: Allow sufficient time for ECOLOGY and the Office of the State Treasurer to process documentation (a minimum of three (3) weeks prior to closing).

\* The RECIPIENT will upload electronic acquisition forms in EAGL (in Application Menu; then View, Edit and Complete Forms; then Uploads.)

B. The RECIPIENT will hire a construction contractor for each demolition, as applicable, in accordance with the RECIPIENT or State of Washington procurement procedures. The RECIPIENT will prepare the construction bid documents, signed contract(s), project schedule, annotated before and after photos and as-built drawings to EAGL and notify the ECOLOGY Project Manager.

Task Goal Statement:

The goal of this task is to acquire lands and easements to reduce flood risk and enable implementation of future integrated projects.

Task Expected Outcome:

Outcomes include acquisition and removal of residential structures from the floodplain/floodway, obtaining easements, removing development rights from floodplain properties, and acquisition of riverfront and floodplain properties to enable implementation of future integrated projects.

Recipient Task Coordinator: Paula Harris and Andrew Hester

## 6. Floodplain Land Acquisition

### Deliverables

Number	Description	Due Date
6.1	Complete Acquisition Report for each property. Upload to EAGL and notify ECOLOGY Project Manager.	
6.2	List and copies of required and acquired permits with effective dates for each demolition, as applicable. Upload to EAGL and notify ECOLOGY Project Manager.	
6.3	Cultural Resources Review Documents for each demolition, required prior to any reimbursement from ECOLOGY. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	
6.4	Inadvertent Discovery Plan (IDP) for each demolition. Upload to EAGL and notify ECOLOGY Project Manager.	
6.5	Bid documents and signed contractor contract(s) for each demolition, as applicable. Upload to EAGL and notify ECOLOGY Project Manager.	
6.6	Before and after annotated photos of each demolition, as applicable. Upload to EAGL and notify the ECOLOGY Project Manager.	

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Recipient Name: WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT / WHATCOM COUNTY

**SCOPE OF WORK**Task Number: 7 **Task Cost: \$500,000.00**

Task Title: 7. Ag, Tribal, &amp; Small City Support / Integration

Task Description:

The RECIPIENT will provide support for agricultural, tribal, and small city representation in the Floodplain Integrated Plan (FLIP) process. The purpose is to update the Nooksack River Comprehensive Flood Hazard Management Plan (CFHMP) in a manner that integrates flood, fish, and farm interests. Due to staffing and monetary limitations, financial support will facilitate participation of the agricultural community, tribal, and city staff in the FLIP planning process including the FLIP Steering Committee (FLIPSC) meetings.

The RECIPIENT will complete the following subtasks:

A. The RECIPIENT has entered into an agreement with the Ag Water Board to represent agricultural interests and participate in the FLIP process for the 2019-21 grant period of performance. This agreement will be amended to provide for the additional time period and budget provided by this grant agreement. The RECIPIENT will upload a copy of the signed amendment in EAGL, and notify the ECOLOGY Project Manager.

B. The RECIPIENT will be responsible for engaging, organizing, and distributing reimbursement stipends to participating farmers to attend FLIP Team meetings. The RECIPIENT will provide stipends for the farmers to attend FLIP Team meetings. Stipends are not to exceed \$599 per farmer. Stipends established for the Reach 2 Reach Team meeting to cover costs for time and travel expenses of farmers were set at the following rates:

1. Field trip (approx. 3 hours) and Workshop #1 (7-8 hours) = \$375
2. Workshop #2 (4-5 hours) = \$200

The RECIPIENT expects a similar stipend for the upcoming reach team meetings but rates may be adjusted if the meeting times differ significantly but will not exceed \$599 per farmer. Farmers must sign in and out to each meeting, and stay for the entire meeting, in order to qualify for reimbursement. Should farmers not stay for 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 Interlocal Agreements (ILA) with the Lummi Nation and the Nooksack Indian Tribe, respectively. The RECIPIENT will submit copies of the fully signed ILAs 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. The RECIPIENT will enter into Interlocal Agreements (ILAs) with the small cities that incur expenses related to their participation in FLIP. The RECIPIENT will submit copy(ies) of the fully signed ILA(s).

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**Task Goal Statement:**

The goal of this task is to provide support to the tribes, small cities, farmers, and agricultural community for increased and ongoing participation in the FLIP process. While the agricultural consultant and tribal staff have been consistently participating on the FLIPSC and at FLIP team meetings, providing funding to offset their time spent will help build the capacity to become more engaged in the process and add value to project development activities. Representatives from the small cities have recently been added to the FLIPSC to better address their varied interest depending where they lie with respect to the area in Everson where the Nooksack overflows it's banks.

**Task Expected Outcome:**

Ongoing participation by the agricultural consultant and increased participation by tribal staff, small cities and farmers in the FLIP planning process, improved relationships between the farming and resource agencies, and more momentum to work collaboratively to implement projects on the ground.

**Recipient Task Coordinator:** Paula Harris**7. Ag, Tribal, & Small City Support / Integration****Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
7.1	Final, signed ILA with Ag Water Board (existing agreement between the RECIPIENT and the Ag Water Board). Upload to EAGL and notify ECOLOGY Project Manager.	
7.2	Signed letters of agreements (LOAs) with farmers, sign-in sheets, and reimbursement documents. Upload to EAGL and notify ECOLOGY Project Manager.	
7.3	Final, signed ILAs with the Lummi Nation and the Nooksack Indian Tribe. Upload to EAGL and notify ECOLOGY Project Manager.	
7.4	Final, signed ILAs with the small cities that incur expenses. Upload to EAGL and notify ECOLOGY Project Manager.	

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## SCOPE OF WORK

Task Number: 8 **Task Cost: \$500,000.00**

Task Title: 8. FLIP Early Action Project(s)

### Task Description:

This task includes implementation of one or more early action projects that result from the Floodplain Integrated Planning (FLIP) process. As projects are conceived in the reach planning work, landowners become invested in the projects and are anxious to get on the ground implementation. While the final FLIP plan will include a prioritized project list, many of the projects are likely to have relatively broad support due to the level of collaboration that is occurring during project development.

Depending on FLIP's progress, the budget, and the time available, this task may include design and/or construction of early action projects, as well as technical analyses to support the design and monitoring of metrics for evaluation of project success.

All proposals for early action projects will be vetted through the FLIP Steering Committee (FLIPSC) to ensure consistency with FLIP goals and approved by ECOLOGY prior to project initiation.

The RECIPIENT will complete the following subtasks:

- A. The RECIPIENT will develop proposals for early action projects.
- B. The RECIPIENT will review proposals with the FLIPSC to ensure consistency and broad-based support. The RECIPIENT will upload final FLIPSC approved early action project proposals to EAGL, and notify the ECOLOGY Project Manager.
- C. The RECIPIENT will document the methods used for delivery of early action projects (interlocal agreements and consultant/contractor contracts, as applicable). The RECIPIENT will upload to EAGL, and notify the ECOLOGY Project Manager.
- D. The RECIPIENT will implement early action projects (design and/or construction, as applicable).
- E. The RECIPIENT will, as applicable, submit a project schedule for each construction project to ECOLOGY that includes project milestones. The RECIPIENT will update the project schedule whenever major changes occur and at a minimum with each quarterly Progress Report/Payment Request.
- F. The RECIPIENT will document completion and/or progress of early action projects, as applicable (design documents, required permits, construction as-built drawings, and construction annotated before/after photos). Final design(s), as applicable, will be signed and sealed by a Washington State-licensed engineer. The RECIPIENT will upload all applicable documents to EAGL notify the ECOLOGY Project Manager.

### Task Goal Statement:

The goal of this task is to advance specific integrated projects resulting from the FLIP process to detailed design and construction. This task goal is to also demonstrate early successes, keep people engaged and motivated in the FLIP process, and encourage residents to participate meaningfully when projects affect their reach of the river.

### Task Expected Outcome:

- Increased landowner willingness to participate in project development and implementation activities.



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- Greater momentum to work collaboratively and ideally create a synergy among the FLIP Team as the process continues.
- Near-term actions to start improving habitat and agriculture viability on the ground.

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Recipient Task Coordinator: Paula Harris**8. FLIP Early Action Project(s)****Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
8.1	List and copies of required and acquired permits with effective dates for implementation project(s), as applicable. Upload to EAGL and notify ECOLOGY Project Manager.	
8.2	Cultural resources review documents for implementation project(s), as applicable. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	
8.3	Inadvertent Discovery Plan (IDP) for implementation project(s), as applicable. Upload to EAGL and notify ECOLOGY Project Manager.	
8.4	Signed Interlocal Agreement(s) between agencies, as applicable. Upload to EAGL and notify ECOLOGY Project Manager.	
8.5	Signed landowner agreement(s) and/or easement package(s) for construction projects, as applicable. Upload to EAGL and notify ECOLOGY Project Manager.	
8.6	Proposal(s) for early action project(s). Upload to EAGL and notify ECOLOGY Project Manager.	
8.7	Document the methods used for delivery of early action projects. Upload to EAGL and notify ECOLOGY Project Manager.	
8.8	Design plans, specifications, engineer's cost estimates, and Basis of Design Reports (BDRs), as applicable. Final design plans, as applicable, to be signed and sealed by a Washington State-licensed engineer. Upload to EAGL and notify ECOLOGY Project Manager.	
8.9	Signed consultant contract(s) for design, permitting, and/or construction management, as applicable. Upload to EAGL and notify ECOLOGY Project Manager.	
8.10	Bid documents and signed construction contractor contract(s) for construction projects, as applicable.	
8.11	Project construction schedule(s), including project milestones, as applicable. Update and include with each quarterly Progress Report/Payment Request for ECOLOGY Project Manager review.	
8.12	As-built drawings, as applicable. Upload copy in EAGL and notify ECOLOGY Project Manager.	
8.13	Annotated before and after photos of the construction phase, as applicable. Upload in EAGL and notify ECOLOGY Project Manager.	

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**BUDGET**

**Funding Distribution EG220623**

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

Funding Title: Floodplains by Design 2021-23 Funding Type: Grant  
 Funding Effective Date: 07/01/2021 Funding Expiration Date: 06/30/2025

Funding Source:

Title: State Building Construction Account (SBCA)  
 Fund: FD  
 Type: State  
 Funding Source %: 100%  
 Description: State Building Construction Account (SBCA)

Approved Indirect Costs Rate: Approved State Indirect Rate: 0%  
 Recipient Match %: 20%  
 InKind Interlocal Allowed: Yes  
 InKind Other Allowed: Yes  
 Is this Funding Distribution used to match a federal grant? Yes

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<b>Floodplains by Design 2021-23</b>	<b>Task Total</b>
1. Project Administration/Management	\$ 50,000.00
2. Ferndale Levee Improvements	\$ 300,000.00
3. Jones Creek Debris Flow Risk Reduction	\$ 3,100,000.00
4. Fish Camp (Ts'eq) Integrated Fish-Flood Project	\$ 1,100,000.00
5. Glacier-Gallup Creeks Alluvial Fan Restoration	\$ 850,000.00
6. Floodplain Land Acquisition	\$ 1,500,000.00
7. Ag, Tribal, & Small City Support / Integration	\$ 500,000.00
8. FLIP Early Action Project(s)	\$ 500,000.00

**Total: \$ 7,900,000.00**

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

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
Floodplains by Design 2021-23	20.00 %	\$ 1,580,000.00	\$ 6,320,000.00	\$ 7,900,000.00
<b>Total</b>		<b>\$ 1,580,000.00</b>	<b>\$ 6,320,000.00</b>	<b>\$ 7,900,000.00</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS**

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

1. Local Decision: This grant is made in response to a request for financial assistance from the RECIPIENT to undertake flood damage prevention projects. The choice of floodplain management activities addressed by this grant is a local decision made solely by the RECIPIENT. The RECIPIENT is not acting as an agent of the State of Washington.
2. Lawsuits: Ecology shall not be responsible for any non-contractual damage or inverse condemnation claims resulting from the structures or works constructed, repaired, restored, maintained, or improved pursuant to this grant.
3. Indemnification, Hold Harmless and Duty to Defend
  - a. Ecology shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the scope of work.
  - b. This paragraph applies to negligence based claims only. All other claims are governed by paragraph 4 of this section (item 3.d). To the extent the constitution and laws of the State of Washington permit, RECIPIENT shall indemnify, defend and hold harmless the State, its agencies, officers and employees, from all claims, suits or actions brought for any or all injuries to persons or property arising from, or as a consequence of, negligent acts or omissions related to the construction, restoration, repair, maintenance, improvement or operation of the structures or works for which this grant is provided. If the structures or works for which this grant is received are a portion of an integrated flood protection system, RECIPIENT agrees to indemnify, defend and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the operation, maintenance, or repair of that integrated flood protection system; PROVIDED, however, that this provision is not intended to and shall not be construed as a waiver by RECIPIENT of any immunities conferred upon the RECIPIENT by RCW 86.12.037 nor is it intended to, and it shall not be construed to, confer any rights upon third parties.
  - c. The RECIPIENT will not be required to indemnify, defend, or save harmless the State, its agencies, officers or employees as provided in the preceding paragraph of this section if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the State. Where such claims, suits, or actions result from the concurrent negligence of (a) the State, or the State's agents or employees and (b) the RECIPIENT or the RECIPIENT's agents or employees, the indemnity provisions provided in the preceding paragraphs of this section shall be valid and enforceable only to the extent of the RECIPIENT's negligence or the negligence of its agents and employees.
  - d. To the extent that the constitution and laws of the State of Washington permit, RECIPIENT shall indemnify and hold harmless the State of Washington, its agencies, employees, and officers against any and all liability arising out of the continued operation, maintenance, or repair of the structures or works constructed, restored, repaired, maintained or improved as a result of this grant. If the structures or works for which this grant is received are portions of an integrated flood protection

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

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

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

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

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

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

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

## **GENERAL FEDERAL CONDITIONS**

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

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

#### EXCLUSION:

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

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

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

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

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

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

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

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

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

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

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**SERVICES OR EQUIPMENT:**

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

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



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**GENERAL TERMS AND CONDITIONS****Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology**

## GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

06/24/2021 Version

## 1. ADMINISTRATIVE REQUIREMENTS

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

## 2. AMENDMENTS AND MODIFICATIONS

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

## 3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

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

## 4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

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

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

RECIPIENT shall:

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

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

RECIPIENT shall:

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

## 5. ASSIGNMENT

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

## 6. COMMUNICATION

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

## 7. COMPENSATION

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

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

#### 8. COMPLIANCE WITH ALL LAWS

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

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

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

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

#### 9. CONFLICT OF INTEREST

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

#### 10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

#### 11. DISPUTES

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

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

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

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

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

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

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

## 12. ENVIRONMENTAL DATA STANDARDS

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

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

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

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

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

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

## 13. GOVERNING LAW

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

## 14. INDEMNIFICATION

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

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

## 15. INDEPENDENT STATUS

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

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## 16. KICKBACKS

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

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

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

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

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

## 18. ORDER OF PRECEDENCE

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

## 19. PRESENTATION AND PROMOTIONAL MATERIALS

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

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

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

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

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

## 20. PROGRESS REPORTING

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

## 21. PROPERTY RIGHTS

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

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## 22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

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

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

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

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

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

## 23. RECOVERY OF FUNDS

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

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

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

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

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

## 24. SEVERABILITY

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

## 25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

## 26. SUSPENSION

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

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## 27. SUSTAINABLE PRACTICES

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

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

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

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

## 28. TERMINATION

### a) For Cause

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

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

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

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

### b) For Convenience

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

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

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



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

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

c) By Mutual Agreement

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

d) In Event of Termination

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

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

29. THIRD PARTY BENEFICIARY

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

30. WAIVER

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

End of General Terms and Conditions