



Agreement No. SEAFBD-2019-WhCoPW-00054

SHORELANDS FLOODPLAINS BY DESIGN AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

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, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	The Nooksack River: Floodplains that Work
Total Cost:	\$53,080,000.00
Total Eligible Cost:	\$7,550,000.00
Ecology Share:	\$6,040,000.00
Recipient Share:	\$1,510,000.00
The Effective Date of this Agreement is:	07/01/2019
The Expiration Date of this Agreement is no later than:	06/30/2023
Project Type:	Floodplains by Design

Project Short Description:

The RECIPIENT and watershed partners will work collectively to achieve multi-benefit integrated flood risk reduction, protect and restore habitat, and improve the resiliency of floodplain agriculture and communities along the Nooksack River in Whatcom County.

Project Long Description:

The Nooksack River: Floodplains That Work project is the result of relationship and trust building among multiple interests through an integrated floodplain management approach. Floodplains that Work is a suite of strategic, results-focused actions that garner broad support for achieving multiple floodplain benefits across interests. Phase 1 includes projects in three Nooksack River mainstem reaches, from the confluence of the three Forks reach downstream to the City of Ferndale, and two projects in the three Forks reaches. Phase 1 projects have a common goal of reducing flood hazards, recovering salmon populations and improving the resiliency of floodplain agriculture and communities.

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Recipient Name: Whatcom County Flood Control Zone District

Task 1: Project Administration/Management. The RECIPIENT will manage and submit all grant requirements to ECOLOGY.

Task 2: The South Fork Jones Creek Debris Flow Risk Reduction task will benefit public life and safety and protect critical infrastructure. The RECIPIENT will acquire one property, relocate these family, and demolish structures.

Task 3: The North Fork Glacier-Gallup Alluvial Fan Restoration task will benefit public and safety, reduce flood hazards, restore habitat and protect critical infrastructure. The RECIPIENT will complete the feasibility work for a 30 percent design and advance it to a 60 percent design.

Task 4: The Reach 1, Ferndale Levee Improvement task will protect critical infrastructure, reduce flood hazards, improve riparian habitat and, improve roads and stormwater infrastructure and recreation. The RECIPIENT will complete an alternative analysis of potential design configurations and advance the preferred alternative to a 60 percent design.

Task 5: The Reach 4, Phase 1 Acquisition task will reduce flood hazards and secure properties needed to restore habitat-forming processes. The RECIPIENT will complete acquisition of one entire property, and portions of, or easements on up to three other properties, or other properties within Reach 4 needed for future integrated floodplain management projects.

Task 6: The Lynden Levee Improvement task will protect critical infrastructure, improve habitat and reduce flood hazards. The RECIPIENT will complete the permitting, design, and construction of a channel realignment.

Task 7: The Agricultural Integration task is part of a planning effort to reduce flood hazards, improve fish habitat, and improve water quality. The RECIPIENT will increase farmer participation, improve relationships, and work collaboratively to implement projects.

Overall Goal:

The overarching multi-benefit goal is to reduce flood hazards, protect and restore floodplain function and ecological processes, all while supporting values important to the local community such as protecting agricultural productivity, improving water quality and providing recreational opportunities within the Nooksack River watershed.

State of Washington Department of Ecology

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Recipient Name: Whatcom County Flood Control Zone District

RECIPIENT INFORMATION

Organization Name: Whatcom County Flood Control Zone District

Federal Tax ID: 91-6001383

DUNS Number: 060044641

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

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

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

Contacts

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Project Title: The Nooksack River: Floodplains that Work
Recipient Name: Whatcom County Flood Control Zone District

Project Manager	Paula Harris River and Flood Manager 322 N Commercial Street, Suite 120 Bellingham, Washington 98225 Email: pharris@co.whatcom.wa.us Phone: (360) 778-6285
Billing Contact	Christy Fowler 322 N. Commercial St. Suite 210 Bellingham, Washington 98225 Email: cfowler@co.whatcom.wa.us Phone: (360) 778-6214
Authorized Signatory	Satpal Singh Sidhu County Executive 311 Grand Avenue, Suite 108 Bellingham, Washington 98225 Email: ssidhu@co.whatcom.wa.us Phone: (360) 778-5200

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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

Project Manager	<p>Lisa Nelson</p> <p>3190 - 160th Ave SE Bellevue, Washington 98008-5452 Email: LNEL461@ecy.wa.gov Phone: (425) 649-4253</p>
Financial Manager	<p>Cindy James</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: cjam461@ecy.wa.gov Phone: (360) 407-7421</p>

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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: _____

Gordon White
Shorelands
Program Manager
Date

Satpal Singh Sidhu
County Executive
Date

Template Approved to Form by
Attorney General's Office

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 Recipient Name: Whatcom County Flood Control Zone District

SCOPE OF WORK

Task Number: 1 **Task Cost: \$62,500.00**

Task Title: 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 department; 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 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: Paula Harris

Project Administration/Management

Deliverables

Number	Description	Due Date
1.1	Progress Reports	
1.2	Recipient Closeout Report	06/30/2023
1.3	Project Outcome Summary Report	06/30/2023

State of Washington Department of Ecology

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SCOPE OF WORK

Task Number: 2 **Task Cost:** \$1,212,500.00

Task Title: 2-South Fork Jones Cr Debris Flow Risk Reduction

Task Description:

A. The RECIPIENT will retain a relocation assistance consultant following federal relocation regulations, acquire one residential property and demolish or relocate structures on it, acquire flood easements on two other properties, and acquire right-of-way if needed based on the final project footprint .

For each property or easement purchased, the RECIPIENT will complete an Acquisition Report (AR). The RECIPIENT will submit a complete AR to ECOLOGY prior to the request for reimbursement of each acquisition. Each AR 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 Cert*, and Property Assessment Checklist*, both signed by the County.
 7. Annotated photographic documentation of each property acquired in sufficient quantity /quality to document the state of the properties prior to/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 AR will include the pre-recorded Conservation Covenant. The recorded Conservation Covenant will be submitted to Ecology after recording with County.)
 10. Escrow Process (if applicable): if the RECIPIENT requires funds to acquire a property prior to closing, the RECIPIENT can request (an exception to ECOLOGY's reimbursement policy) by going through the escrow process. This process allows ECOLOGY to pay a RECIPIENT's grant funds in advance for the property acquisition through the title / escrow company.
- The RECIPIENT, working through an established title company, will provide ECOLOGY with supporting documents :
- a. (Hard copy) (red) Face Sheet for acquisitions;
 - b. (Electronic) EAGL Payment Request/Progress Report;
 - c. (Hard copy) title company's "Wire Transfer Request" with routing number, and wiring instructions for specific property referenced;
 - d. (Hard copy) 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 min. of three weeks prior to closing).

* The RECIPIENT will upload electronic acquisition forms in EAGL

B. The RECIPIENT will submit demolition bid and relocation assistance consultant contract documents to the ECOLOGY Project Manager (PM) and upload to EAGL.

C. The RECIPIENT will upload the demolition project schedule to EAGL.

D. The RECIPIENT will comply with the Cultural Resources Review requirements of the Governor's Executive Order 05-05. The RECIPIENT will submit a copy of the Inadvertent Discovery Plan (IDP) to the ECOLOGY PM and upload to EAGL, and will notify all contractors on site about IDP protocol. The RECIPIENT will notify the ECOLOGY PM if there is an archaeological finding on site during demolition.

E. The RECIPIENT will obtain the required local, state, and federal environmental permits and related documentation. The RECIPIENT will submit a list of the required permits to the ECOLOGY PM and upload it to EAGL. The list will include the type of permit, permit description, permitting agency, effective dates of permit.

F. The RECIPIENT will submit annotated before and after photos and Final Report to ECOLOGY PM and upload to EAGL.

Task Goal Statement:

To secure lands needed for future construction of the deflection berm to protect the town of Acme. To remove up to one habitable structures and associated outbuildings from the high-risk area of the Jones Creek alluvial fan and secure flood easements and right-of-way on other lands required for project implementation.

Task Expected Outcome:

Property acquisition will immediately reduce risk to people and infrastructure and is needed for future berm construction.

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Recipient Name: Whatcom County Flood Control Zone District

Recipient Task Coordinator: Gary Goodall and Andrew Hester**2-South Fork Jones Cr Debris Flow Risk Reduction****Deliverables**

Number	Description	Due Date
2.1	Complete Acquisition Report for each property. Submit to ECOLOGY Project Manager, and upload electronic acquisition forms in EAGL.	
2.2	Bid documents and consultant contract for demolition. Submit to the ECOLOGY Project Manager and upload to EAGL.	
2.3	Demolition schedule, including project milestones. Update and include with each quarterly	
2.4	Cultural Resources Review Documents. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	
2.5	Inadvertent Discovery Plan (IDP). Upload to EAGL and notify ECOLOGY Project Manager.	
2.6	List and copies of required and acquired permits with effective dates, such as USACE Permits, other permits, and environmental review documents, and copies of permits acquired. Upload to EAGL and notify ECOLOGY Project Manager.	
2.7	Before and after annotated photos of the completed project. Upload a copy to EAGL and notify the ECOLOGY Project Manager.	
2.8	Final Report from RECIPIENT summarizing all properties purchased including demolition activities which occurred. Submit to ECOLOGY Project Manager for review and approval.	

SCOPE OF WORK

Task Number: 3 **Task Cost:** \$650,000.00

Task Title: 3-North Fork Glacier-Gallup Alluvial Fan Restorat

Task Description:

The Washington State Department of Transportation (WSDOT) has identified the levee located near the community of Glacier as deficient due to ongoing damage which has exacerbated aggradation upstream of the Glacier Creek bridge, degraded fish habitat, and increased risk to structures. The design for WSDOT's preferred alternative removes the Glacier Creek Levee and constructs a new setback levee along Gallup Creek to protect the Community of Glacier, reconnects the Glacier / Gallup Creeks Coastal Management Zones, and restores the alluvial fan. WSDOT is proceeding with the bridge design which will span the two creeks, but has requested assistance with the levee work.

The RECIPIENT will advance WSDOT's design of the Glacier-Gallup restoration by completing a feasibility study of alternatives including removing or setting back the levee; conducting restoration of habitat-forming processes; coordinating with WSDOT on replacement of the State Route 542 Glacier Creek bridge; and providing assistance for design of a Glacier Water District replacement water line. The levee and habitat work will include advancing the design to a 60 percent design. The water line work will include a design incorporating WSDOT's design schedule for the bridge. If Jones Creek or Reach 4 negotiations result in additional funding being available, easements/lands may be acquired under this task.

- A. The RECIPIENT will conduct a hydraulic, geomorphic, and habitat assessment for evaluating the impacts and benefits of the preferred design levee removal/setback alternative including flood risk, debris flow risk, sediment transport, restoration of habitat-forming processes, and bridge hydraulics. The RECIPIENT will conduct hydraulic modelling of existing conditions, a hazard and risk assessment, a habitat assessment, and a final Modeling and Assessment Report. The RECIPIENT will submit a Modeling and Assessment Report with all findings to the ECOLOGY Project Manager and upload it to EAGL.
- B. The RECIPIENT will analyze the conceptual alternatives for the levee reconfiguration and habitat improvements through: developing concept alternatives; evaluating feasibility of alternatives; selecting a preferred alternative; and creating a Conceptual Alternatives Analysis Memo. The RECIPIENT will submit the Conceptual Alternatives Analysis Memo to ECOLOGY Project Manager and upload to EAGL.
- C. The RECIPIENT will perform the technical analyses needed to support the design of the preferred alternative (geotechnical, scour, etc.) and will submit, 60 percent design drawings, cost estimate, specifications, and basis of design report to the ECOLOGY Project Manager and upload it to EAGL.
- D. The RECIPIENT will provide the ECOLOGY Project Manager with plans and cost estimates for conceptual design alternatives from the Glacier Water District to relocate their water main. The RECIPIENT will upload these into EAGL.
- E. The RECIPIENT will obtain the required local, state, and federal environmental permits and related documentation. The RECIPIENT will submit a list of and copies of the required permits obtained to the ECOLOGY Project Manager and upload it to EAGL.
- F. The RECIPIENT will conduct a minimum of two community meetings, and submit meeting agendas, summaries, and list of attendees to the ECOLOGY Project Manager, and upload a copy to EAGL.
- G. If funding is left available for easements or land acquisitions, the RECIPIENT will complete an Acquisition Reports as outlined in Description A of Task 2.

Task Goal Statement:

The goal of this task is to complete design and construct the channel realignment and modifications to the levee crest profile to

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shift overtopping away from the treatment plant, reduce the potential for breaching, and improve habitat on the seasonal tributary to the Nooksack River. This work will be coordinated with the USACE’s levee rehabilitation and culvert replacement project.

Task Expected Outcome:

Constructed project that improves flood protection to the City of Lynden's treatment facilities and 350 acres of agricultural lands and improves off-channel rearing habitat for salmon.

Recipient Task Coordinator: Deb Johnson

3-North Fork Glacier-Gallup Alluvial Fan Restorat

Deliverables

Number	Description	Due Date
3.1	Modeling and Assessment Report submitted to the ECOLOGY Project Manager and uploaded to EAGL.	
3.2	Conceptual Alternatives Analysis Memo submitted to ECOLOGY Project Manager and uploaded to EAGL.	
3.3	Sixty Percent Design Report for the chosen levee alternative, including cost estimates, drawings, and specs. Submit to ECOLOGY Project Manager and uploaded to EAGL.	
3.4	Thirty Percent Design Plans (or a design consistent with WSDOT’s bridge design) for the improvement of the main water line. Submit to ECOLOGY Project Manager and uploaded to EAGL.	
3.5	List and Copies of required permits, such as USACE Permits, other permits, and environmental review documents. Upload to EAGL and notify ECOLOGY Project Manager.	
3.6	Meeting agendas, meeting summaries, and list of attendees submitted to ECOLOGY Project Manager and uploaded to EAGL.	
3.7	If funding is left available for easements or land acquisitions, the RECIPIENT will complete an Acquisition Reports as outlined in Description A of Task 2.	

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SCOPE OF WORK

Task Number: 4 **Task Cost: \$1,000,000.00**

Task Title: 4-Reach 1, Ferndale Levee Improvement

Task Description:

The Ferndale Levee provides protection to two water and one wastewater treatment plants, roads, parks, residences, and farmland. Riparian vegetation is virtually non-existent in this area. The RECIPIENT will design improvements to the Ferndale and Treatment Plant Levees to provide greater flood protection and enhance riparian habitat on the riverward side of the levees. The work will include reviewing and refining the 30 percent design in conjunction with the City of Ferndale and the PUD and advancing it to a 60 percent design level.

- A. The RECIPIENT, in accordance with their own procurement policies, will request proposals and select a consultant for analyses and design of the Ferndale Levee Improvement Project. The RECIPIENT will submit consultant selection documentation and signed consultant contracts to ECOLOGY Project Manager and upload into EAGL.
- B. The RECIPIENT will submit a Hydraulic Analysis and Evaluation Report outlining flood impacts for existing and anticipated future flows resulting from climate change, and potential mitigation measures. If needed, this may include coordination with the Federal Emergency Management Agency (FEMA) to obtain a Conditional Letter of Map Revision (CLOMR), in which case the RECIPIENT will submit a CLOMR to ECOLOGY'S Project Manager and upload into EAGL.
- C. The RECIPIENT will perform traffic analysis to investigate potential impacts of traffic on pedestrian access/trail system. The RECIPIENT will submit a memo of this analysis to ECOLOGY'S Project Manager and upload into EAGL.
- D. The RECIPIENT will submit an inventory of existing riparian zone and a native riparian planting and maintenance plan to the ECOLOGY Project Manager and upload it to EAGL.
- E. The RECIPIENT will evaluate stormwater impacts, and create a conceptual layout of revised stormwater drainage and possible treatment facilities. The RECIPIENT will submit the selection of roadway design standard and preliminary 30 percent design drawings including layout, right-of-way, utility relocation, riparian re-establishment plan, and a 30 percent cost estimate to the ECOLOGY Project Manager and upload it to EAGL.
- F. The RECIPIENT will obtain the required local, state, and federal environmental permits and related documentation. The RECIPIENT will submit a list of the required permits to the ECOLOGY Project Manager and upload it to EAGL. The list will include the type of permit, permit description, permitting agency, application dates (actual or anticipated) or effective dates of permit, if issued.
- H. The RECIPIENT will submit 60 percent design drawings and cost estimate by an engineer licensed in the state of Washington, including details on levee, potential retaining wall and/or scour protection, and roadway geometry and trail to the ECOLOGY Project Manager and upload it to EAGL.

Task Goal Statement:

To improve the Ferndale and Treatment Plant Levees to provide improved flood protection and enhance habitat.

Task Expected Outcome:

Provide a 100-year level of flood protection (LOP) to key infrastructure, improve riparian and salmon rearing habitat along 6,300 feet of riverbank, improve water quality, and enhance recreation. If feasible, this work will also incorporate a shared use trail to connect the project to the local trail system. The new roadway will improve stormwater treatment, drainage, and safety.

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Recipient Task Coordinator: Dan Goger

4-Reach 1, Ferndale Levee Improvement

Deliverables

Number	Description	Due Date
4.1	Signed consultant contracts. Submit to ECOLOGY Project Manager and upload into EAGL.	
4.2	Hydraulic Analysis and Evaluation Report, and a CLOMR, if necessary. Submit to ECOLOGY Project Manager and upload into EAGL.	
4.3	Traffic Analysis Memo. Submit to ECOLOGY Project Manager and upload into EAGL.	
4.4	Inventory of existing riparian zone and native riparian planting and maintenance plan. Submit to the ECOLOGY Project Manager and upload it to EAGL.	
4.5	Roadway design standards and preliminary 30 percent design drawings by a Washington State licensed engineer, including layout, right-of-way, utility relocation, riparian re-establishment plan, and a 30 percent cost estimate. Submit to the ECOLOGY Project Manager and upload it to EAGL.	
4.6	Sixty percent design drawings and cost estimate, including details on levee, potential retaining wall and/or scour protection, and roadway geometry and trail. Upload to EAGL and notify ECOLOGY Project Manager.	

SCOPE OF WORK

Task Number: 5 **Task Cost:** \$3,062,500.00

Task Title: 5-Reach 4, Phase 1 Acquisition

Task Description:

The Lower Nooksack Comprehensive Flood Hazard Management Plan (CFHMP) identified extreme channel migration as the driver for flood expenditures in this reach. Several levees significantly constrain the river, increasing the potential for levee damage and limiting habitat-forming processes. The constriction also increases potential for landslides along an unstable glacial terrace. A detailed geomorphic and economic analysis led to three levee setback configurations identified in the Nooksack River System-wide Improvement Framework (SWIF). SWIF analyses support the CFHMP recommendation to remove the levee constraints. There is a unique time-sensitive opportunity to acquire key properties as long-time residents consider selling all, or portions of, their properties.

The Nooksack River Floodplain Integrated Planning (FLIP) process is identifying project concepts in each of the four reaches of the Lower Nooksack River. If negotiations are not successful with the owners of the properties identified for acquisition in Reach 4, properties needed to implement other integrated projects resulting from the FLIP reach-scale planning process may be substituted with prior approval from ECOLOGY.

A. The RECIPIENT will acquire one property, and portions of /, or easements on up to three or more other properties. Acquisition will enable future levee setbacks or floodplain corridor enhancements and will reduce flood risk and improve habitat. Acquisitions will be performed in accordance with Task 2A above.

B. The RECIPIENT will rent the house on said property to the previous owners for a \$1,000 deposit, \$1,400/month rent, for five years to end March 31, 2025. This may be extended another five years. The RECIPIENT will provide quarterly reports showing these deposits to the ECOLOGY Project manager, and will use this income as match for the life of this grant. Any funds received after the life of the grant will be the responsibility of the RECIPIENT,

For each property purchased, the RECIPIENT will complete an Acquisition Report in accordance with Task 2 above.

Task Goal Statement:

Complete acquisition of one entire property, and portions of, or easements on other properties to enable future levee setbacks or improvements in the floodplain corridors that will reduce flood risk and improve habitat.

Task Expected Outcome:

Immediate results include acquisition of land for future floodplain restoration. Long-term benefits include reconnecting up to 140 acres of forested floodplain, restoring habitat-forming processes along 3.5 miles of river, significantly reducing levee repair costs, and increasing reach resilience to changes in flows and sediment.

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Recipient Task Coordinator: Paula Harris and Andrew Hester

5-Reach 4, Phase 1 Acquisition

Deliverables

Number	Description	Due Date
5.1	Complete Acquisition Report for each property. Submit to ECOLOGY Project Manager, and upload electronic acquisition forms in EAGL.	
5.2	Final Report from RECIPIENT summarizing all properties and easements purchased. Submit to ECOLOGY Project Manager for review and approval.	
5.3	The RECIPIENT will provide quarterly reports showing rental property deposits to the ECOLOGY Project manager, and will use this income as match. The RECIPIENT will follow a strict accounting protocol approved by ECOLOGY Project Manager.	
5.4	The RECIPIENT will submit a Lease Agreement to ECOLOGY Project Manager for review and approval.	

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SCOPE OF WORK

Task Number: 6 **Task Cost: \$625,000.00**

Task Title: 6-Lynden Levee Improvement

Task Description:

A portion of the City of Lynden's levee is adjacent to the wastewater treatment plant. The levee is narrow with steep side slopes and overtops at a 5-year flood. This levee section will be improved to provide 100-year level of protection (LOP) and overtopping will be shifted downstream away from the treatment plant to areas more suitable for flooding. The work is in cooperation with and adjacent to the Army Corps of Engineers (USACE) project to remove and replace two failing culverts that run through the levee which is located between the river and the treatment plant. The new culverts will be designed to be seasonally fish-passable with a side hinge flood gate. The existing drainage channel adjacent to the treatment plant will be filled with excavation spoils from construction of the new channel alignment. The new channel will route flows through an existing forested area that will enhance off-channel rearing and high-flow refuge habitat for salmon.

- A. The RECIPIENT will create a base map through the collection of data which includes a Wetland Delineation and a field survey. The RECIPIENT will submit this report to ECOLOGY'S Project Manager and upload into EAGL.
- B. The RECIPIENT will coordinate with the USACE on design of the culvert and associated levee work to ensure the culvert design is consistent with the RECIPIENT's stream layout design. Coordination items will consider: culvert and stream layout design options; hydraulic analysis of flood impacts; and selection and alignment of final project components. The RECIPIENT will upload the results of the comments to each USACE design submittal package submittal, and the USACE's responses to comments to EAGL and notify ECOLOGY Project Manager.
- C. The RECIPIENT will develop the 30 percent design and cost estimate by a licensed Washington State engineer for channel relocation, habitat features, and levee profile modifications. The RECIPIENT will upload the design to EAGL and notify the ECOLOGY Project Manager.
- D. The RECIPIENT will comply with the Cultural Resources Review requirements of the Governor's Executive Order 05-05. The RECIPIENT will submit a copy of the Inadvertent Discovery Plan (IDP) to the ECOLOGY Project Manager and upload to EAGL, and will notify all contractors on site about IDP protocol. The RECIPIENT will notify the ECOLOGY Project Manager if there is an archaeological finding on site during construction.
- E. The RECIPIENT will obtain the required local, state, and federal environmental permits and related documentation. The RECIPIENT will copies of the required permits to the ECOLOGY Project Manager and upload it to EAGL.
- F. The RECIPIENT will develop 100 percent Final Design Plans, Specifications, and Estimates signed and sealed by a State of Washington licensed engineer. Submit to ECOLOGY Project Manager and upload into EAGL.
- G. The RECIPIENT will submit copies of bid documents and signed consultant contracts to the ECOLOGY Project Manager and upload into EAGL.
- H. The RECIPIENT will submit the construction project schedule, including project milestones. The RECIPIENT will include updates to the project construction schedule with each quarterly Progress Report/Payment Request for ECOLOGY Project Manager review.
- I. The RECIPIENT will submit annotated before and after photos and as-built plans to ECOLOGY Project Manager and upload to EAGL.

Task Goal Statement:

Complete 100 percent design and construction of the channel realignment and modifications to the levee crest profile.

Task Expected Outcome:

Improve flood protection to the City of Lynden's wastewater treatment facilities and approximately 350 acres of agricultural lands. Construction will result in shifting floodwaters overtopping away from the City of Lynden's wastewater treatment plant, reducing the potential for breaching, and improving habitat on the seasonal tributary to the Nooksack River.

Recipient Task Coordinator: Deb Johnson

6-Lynden Levee Improvement

Deliverables

Number	Description	Due Date
6.1	Report with the results of data collection, and a base map, including Wetland Delineation and a field survey. Submit to ECOLOGY'S Project Manager and upload into EAGL.	
6.2	Comments on each USACE design submittal and the USACE's responses to comments. Upload to EAGL and notify Ecology Project Manager.	
6.3	Thirty Percent Design and cost estimate for channel realignment. Submit to ECOLOGY'S Project Manager and upload into EAGL.	
6.4	Cultural Resources Review Documents. Due to confidentiality, do not upload to EAGL. Email surveys to ECOLOGY Project Manager.	
6.5	Inadvertent Discovery Plan (IDP). Upload to EAGL and notify ECOLOGY Project Manager.	
6.6	List and Copies of required permits, such as USACE Permits, and other environmental review permits and documents. Upload to EAGL and notify ECOLOGY Project Manager.	
6.7	Final 100 Percent Design Plans signed and sealed by an engineer licensed in the state of WA. Upload to EAGL and notify ECOLOGY Project Manager.	
6.8	Bid Documents and signed consultant contract(s). Upload to EAGL and notify ECOLOGY Project Manager.	
6.9	Construction project schedule, including project milestones. Update and include with each quarterly Progress Report/Payment Request for ECOLOGY Project Manager review.	
6.10	Before and after annotated photos and as-built plans of the completed project. Upload a copy to EAGL and notify the ECOLOGY Project Manager.	

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SCOPE OF WORK

Task Number: 7 **Task Cost: \$937,500.00**

Task Title: 7-Agricultural Integration

Task Description:

The agriculture (ag) community participates directly in the Floodplain Integrated Planning (FLIP) Team planning process through representatives of diking districts, subzones, Flood Control Zone District (FCZD) Advisory Committee, and Watershed Improvement Districts (WIDs). In addition to the challenges of farming in flood prone areas, farmers grapple to find solutions related to water quality, instream flows, water rights, drainage, and habitat.

This task includes funding to: support farmers and their consultant to participate in the FLIP planning process; develop a broadly supported on-the-ground early action project; and create broadly supported educational videos on environmental issues associated with ag and steps to address them.

A. The RECIPIENT will reimburse the Ag Water Board 80% for hiring a consultant to represent agricultural interests and participate in the FLIP process. The RECIPIENT will upload the Interlocal Agreement with the Ag Water Board into EAGL and notify the ECOLOGY Project Manager.

B. The RECIPIENT will enter into agreements with farmers who will serve as technical advisors for FLIP Team meetings. The RECIPIENT will draft an agreement between the Whatcom County Flood Control Zone District (WCFCZD) and farmers which will be approved by ECOLOGY. Final version of this agreement will be submitted to ECOLOGY Project Manager and uploaded to EAGL. The RECIPIENT will provide stipends for the farmers to attend FLIP Team meetings. Stipends are not to exceed \$599 per farmer per year. Stipends will cover costs for time and travel expenses of farmers at the following rates:

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

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, sign-in sheets, and reimbursement documents to the ECOLOGY Project Manager and upload to EAGL.

C. The RECIPIENT will participate in and provide technical support to the floodplain portion of a drainage-based management planning pilot project to integrate not only the flood, fish and farm interests but also water quality and in-stream flow considerations. If a consultant is selected to provide technical assistance and support, the RECIPIENT will submit a copy of the consultant contract or Interlocal Agreement if consultant is retained by partner agency to the ECOLOGY, upload consultant contract or Interlocal Agreement to EAGL.

D. The RECIPIENT will implement one or more early-action projects developed in the drainage-based management pilot project or the FLIP reach-scale planning process. The RECIPIENT will submit a proposal for delivery of one or more Early Action Projects to the ECOLOGY Project Manager and upload to EAGL prior to actual implementation of the early actions projects.

E. The RECIPIENT will create a series of three short (approximately 5-8 minutes each) educational videos on environmental issues associated with agriculture and steps the agricultural sector is taking or needs help to take in order to achieve mutually beneficial goals. Each video will highlight a different practice or project working towards improving waterway quality and flood management in agricultural land; the concepts, outlines and final videos will all need to be reviewed and supported by the FLIP

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Steering Committee.

The RECIPIENT will follow ECOLOGY's requirements for Presentation and Promotional Materials outlined in the Agreement General Terms and Conditions, including acknowledging funding through ECOLOGY's grant.

The RECIPIENT will submit a draft version of the video to the ECOLOGY Project Manager for approval prior to distribution.

Task Goal Statement:

Provide support to the agricultural community for increased and ongoing participation in the floodplain integrated planning process, and to support farmer-led efforts in developing and implementing drainage-based management plans and projects. This task will also advance the integrated reach-scale work already underway in the Nooksack River basin and start implementing projects on the ground.

Task Expected Outcome:

Results from this work will be part of a planning effort aiming to reduce risk to public safety and property, improve habitat, and enhance the resiliency of land uses in the Nooksack River floodplain. This work will increase farmer participation in the FLIP planning process, improve relationships between the farming and resource agencies, and provide momentum to work collaboratively to implement projects on the ground.

Recipient Task Coordinator: Fred Likkel and Paula Harris

7-Agricultural Integration

Deliverables

Number	Description	Due Date
7.1	Interlocal Agreement with the Ag Water Board. Upload in EAGL and notify ECOLOGY Project Manager.	
7.2	Signed Letter of Agreements from farmers, sign-in sheets, and reimbursement documents. Submit to ECOLOGY Project Manager and upload to EAGL.	
7.3	Copy of the signed consultant contract or Interlocal Agreement for the technical assistance provided for the drainage-based management planning pilot project. Submit to the ECOLOGY Project Manager and upload to EAGL.	
7.4	Proposal for Early Action Project(s) to ECOLOGY Project Manager and upload to EAGL.	
7.5	Documentation of the methods used for Delivery of Early Action Projects (Interlocal agreements, consultant and/or contractor agreements, etc.) to ECOLOGY Project Manager and upload to EAGL.	
7.6	Draft of educational videos. Submit to ECOLOGY Project Manager for approval prior to distribution.	
7.7	Final version of educational videos. Send video link(s) to the ECOLOGY Project Manager and upload the video file in EAGL.	

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BUDGET

Funding Distribution EG200544

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

Funding Title: Floodplains by Design Funding Type: Grant
Funding Effective Date: 07/01/2019 Funding Expiration Date: 06/30/2023

Funding Source:

Title: State Building Construction Account
Type: State
Funding Source %: 100%
Description: Floodplains By Design

Approved Indirect Costs Rate: Approved State Indirect Rate: 29.18%
Recipient Match %: 20%
InKind Interlocal Allowed: No
InKind Other Allowed: No
Is this Funding Distribution used to match a federal grant? No

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Floodplains by Design	Task Total
Project Administration/Management	\$ 62,500.00
2-South Fork Jones Cr Debris Flow Risk Reduction	\$ 1,212,500.00
3-North Fork Glacier-Gallup Alluvial Fan Restorat	\$ 650,000.00
4-Reach 1, Ferndale Levee Improvement	\$ 1,000,000.00
5-Reach 4, Phase 1 Acquisition	\$ 3,062,500.00
6-Lynden Levee Improvement	\$ 625,000.00
7-Agricultural Integration	\$ 937,500.00

Total: \$ 7,550,000.00

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
Floodplains by Design	20.00 %	\$ 1,510,000.00	\$ 6,040,000.00	\$ 7,550,000.00
Total		\$ 1,510,000.00	\$ 6,040,000.00	\$ 7,550,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

Floodplains by Design – 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.

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. 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

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

4. Deliverable Due Dates: Task deliverable due dates will be managed by and through the Deliverable Due Date Form (Form) provided by ECOLOGY prior to finalized agreement upload into EAGL.

If needed, RECIPIENT will negotiate any revisions to deliverable due dates with ECOLOGY's Project Manager. If changes are approved, RECIPIENT will resubmit the Form with the revised due dates to ECOLOGY's Project Manager who will upload the revised Form into EAGL.

5. 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).

FLOODPLAINS BY DESIGN FUNDING PROGRAM AND FCAAP EMERGENCY GRANTS TERMS AND CONDITIONS LAST UPDATED 09/12/2019

GENERAL FEDERAL CONDITIONS

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

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set

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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> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <http://www.usaspending.gov>.

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

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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 AS OF LAST UPDATED 7-1-2019 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 reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts 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:
 - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
 - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
 - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.

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- Make the IDP readily available to anyone working at the project site.
 - Discuss the IDP with staff 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 archeological or historic resources are found while conducting work under this Agreement:
- Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement:
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

5. ASSIGNMENT

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

6. COMMUNICATION

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

7. COMPENSATION

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

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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. 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

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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.

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)

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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

- 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

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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.

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.

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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.

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

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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 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

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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.