



AMENDMENT NO. 7
TO AGREEMENT NO. OTGP-2018-WhCoPW-00004
BETWEEN
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND
Whatcom county public works

PURPOSE: To amend the above-referenced agreement (AGREEMENT) between the state of Washington Department of Ecology (ECOLOGY) and Whatcom county public works (RECIPIENT) for the Sumas Mountain/Swift Creek Sediment Management Project (PROJECT).

Amendment No. 7 will provide for continued design of project elements, permitting, cultural resource coordination and construction of the 2022 Construction Package which will include Phase 1 of the sediment traps and upper debris flow deflection berm.

Amendment 7 of Whatcom's Contract #201810012-6 includes:

1. Adding #12 Expected Outcome to Task 1: Advance additional project elements to 100% design (see revisions to task 1).
2. Adding #13 Expected Outcome to Task 1: Advance Canyon Central Repository to 60% design.
3. Adding #14 Expected Outcome to Task 1: Advance Lower Goodwin Berm to 30% design.
4. Adding #15 Expected Outcome to Task 1: Develop Groundwater Monitoring Plan.
5. Adding additional deliverables (#28 - 35) to Task 1.
6. Adding funding to Task 1 in the amount of \$690,000.00 for a new task budget total of \$3,564,000.00.
7. Revising Task 4 description (see task 4).
8. Adding #5 Expected Outcome to Task 4: Construction of the 2022 Construction package.
9. Adding additional deliverables (#4) to Task 4.
10. Adding funding to Task 4 in the amount of \$1,950,000.00 for a new task budget total of \$2,769,400.00.
11. The overall budget for the grant is increasing by \$2,640,000.00 for a new grant total of \$8,268,400.00.
12. Changing the recipient coordinator name to James Lee for Tasks 2, 3, 5 and 6.

IT IS MUTUALLY AGREED that the AGREEMENT is amended as follows:

Total Cost:

Original: 5,628,400.00 Amended: 8,268,400.00

Total Eligible Cost:

Original: 5,628,400.00 Amended: 8,268,400.00

CHANGES TO THE BUDGET

Funding Distribution EG190099

Funding Title: State Building Construction Account

Funding Type: Grant
 Funding Effective Date: 08/01/2018 Funding Expiration Date: 06/30/2023

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

Approved Indirect Costs Rate: Approved State Indirect: 0%
 Recipient Match %: 0%
 InKind Interlocal Allowed: No
 InKind Other Allowed: No
 Is this Funding Distribution used to match a federal grant? No

State Building Construction Account	Task Total
Engineering, Design and Permitting - J005	\$ 3,564,000.00
Creek Dredging - J006	\$ 150,000.00
Land Acquisition - J009	\$ 1,700,000.00
Construction of Project Elements - J006	\$ 2,769,400.00
Design Lower Reach Stabilization - J005	\$ 50,000.00
Cultural Resources Services - J010	\$ 35,000.00

Total: \$ 8,268,400.00

CHANGES TO SCOPE OF WORK

Task Number: 1 Task Cost: \$3,564,000.00

Task Title: Engineering, Design and Permitting - J005

Task Description:

RECIPIENT will continue to develop project designs in a phased approach to facilitate construction of project elements. Each project that is constructed will provide incremental improvements to the urgent sediment management needs within the Swift Creek Site.

Project Elements are defined as follows:

- Sediment Traps: in-channel structures to capture Swift Creek gravels.
- Sediment Basins: in-channel structures to capture Swift Creek sand and fine sediments.
- Debris Flow Levees: berms to limit the extent of debris flows originating from the Swift Creek landslide.
- Repositories: permanent stockpiles of Swift Creek sediment.
- Lower Channel Reclamation: stabilization of existing levees along Swift Creek and dredging to increase channel capacity.
- Maintenance and Emergency Response: ongoing dredging, bank stabilization, stockpiling, and other work to manage Swift Creek sediments.

RECEIPIENT has completed technical analyses to support final design of phase 1 of the sediment traps and debris flow levees as well as completed the preliminary designs for repositories and phase 1 of the sediment basins, and concept designs for the wetland mitigation site. RECIPIENT has also completed final plans, specifications and engineer's estimates (PS&E) and permit applications for two (2) construction packages: Swift Creek Dredging and Oat Coles North Repository Development and Swift Creek Site Preparation and Access Road Improvements. RECIPIENT has also submitted the outline for the Supplemental Environmental Impact Statement for repositories.

RECEIPIENT has also completed the Whatcom County Site Specific Health and Safety Plan, and the following technical analyses in support of project design: Hydrologic and Hydraulic Report for the site existing conditions, Debris Flow Modeling Report, Construction Sequencing Schedule, Groundwater Report, Geotechnical Report, and Environmental Monitoring Report. RECIPIENT has also completed various levels of design (concept through final) for the sediment traps, sediment basins, repository, wetland mitigation site, and debris flow berms. The RECIPIENT has also completed the outline for the Supplement Environmental Impact Statement for the repository.

The RECIPIENT has also completed a Whatcom County Site Specific Health and Safety Plan for the Site.

This amendment will provide for additional technical analyses, including:

- To support design of project elements and repositories,
- Continued development of the Supplemental Environmental Impact Statement.

Task Goal Statement:

Design project elements to maximize the efficient management of Swift Creek sediment.

Task Expected Outcome:

1. Technical analysis in support of final design of project elements through reports.
2. Preliminary design of sediment repositories.
3. Concept plan for the following: wetland mitigation site, Sediment Basin Phase I O&M Plan, Sediment Trap Phase I O&M Plan.
4. 60% design drawings and cost estimates for Phase I Sediment Basin, Williams Pipeline Crossing and Wetland Mitigation Site (Gimmaka).
5. 90% design drawings and cost estimate for Phase I Sediment Traps and Debris Flow Berm.
6. 2022 construction package 100% design.
7. Wetland Mitigation Site (Gimmaka) Improvements Construction Package.
8. Permit applications.
9. Proposed action for SEIS for repositories.
10. Whatcom County HASP.

11. Completion of the draft and final SEIS for the repository.
12. Advance Sediment Basin Phase I, Williams Pipeline Crossing, Wetland Mitigation Site, Access Road Improvements & Oat Coles Grading Mods to 100% design.
13. Advance Canyon Central Repository to 60% design.
14. Advance Lower Goodwin Berm to 30% design.
15. Develop Groundwater Monitoring Plan.

Recipient Task Coordinator: James Lee

Deliverables

Number	Description	Due Date
1.1	Preliminary design of the sediment traps and debris flow levee.	07/01/2019
1.2	Alternatives analysis for the sediment basins.	07/01/2019
1.3	Technical analyses to support the final design of the sediment traps and debris flow levee.	04/30/2020
1.4	Preliminary design of the sediment basins.	07/01/2020
1.5	Outline for Supplemental Environmental Impact Statement.	04/30/2020
1.6	Preliminary design for repositories.	04/30/2020
1.7	Bid Ready PS&E package for construction package.	04/30/2020
1.8	Concept Plan for Wetland mitigation site.	04/30/2020
1.9	Whatcom County Health and Safety Plan.	06/01/2020
1.10	Groundwater Report.	07/31/2020
1.11	Update Geotechnical Report.	10/01/2021
1.12	Annual Updates to Environmental Monitoring Report due at the end of December for each year of project.	
1.13	Proposed Action for SEIS.	09/30/2020
1.14	90% Design Drawings for Phase 1 Sediment Trap and Debris Flow Berm.	11/30/2020
1.15	Cover System Site Stabilization and Access Control Analysis.	03/01/2021
1.16	Repository Basis of Design Report.	03/01/2021
1.17	Wetland Mitigation Site (Gimmaka) Development Report.	03/01/2021
1.18	2021 Wetland Mitigation Site (Gimmaka) Improvements Bid Package.	08/31/2021

1.19	Draft SEIS document.	07/30/2021
1.20	Sediment Basin Phase I 60% design package.	11/01/2021
1.21	Geotechnical memorandum to report PIT results and recommendations.	11/01/2021
1.22	Sediment Trap Operation and Monitoring Plan.	11/30/2021
1.23	Sediment Basin Phase I Operation and Monitoring Plan.	11/30/2021
1.24	Williams Pipeline Crossing Design 60% design package.	12/17/2021
1.25	Wetland Mitigation Site 60% design package.	12/17/2021
1.26	Final SEIS document.	12/31/2021
1.27	2022 Construction Package 100% design PSE.	02/28/2022
1.28	Sediment Basin Phase I 100% PSE package	10/28/2022
1.29	Williams Pipeline Crossing 100% PSE package	10/28/2022
1.30	Wetland Mitigation Site 100% PSE package	11/18/2022
1.31	Canyon Central Repository 60% PSE package	12/30/2022
1.32	Access Road Improvements (Site Prep Phase 2) 100% PSE package	11/18/2022
1.33	Lower Goodwin Berm 30% PSE package	11/18/2022
1.34	Oat Coles Grading Design Modifications 100% PSE package	07/01/2022
1.35	Groundwater monitoring plan	07/01/2022

CHANGES TO SCOPE OF WORK

Task Number: 2 **Task Cost:** \$150,000.00

Task Title: Creek Dredging - J006

Task Description:

At times the Sumas Mountain landslide releases an extraordinary amount of sediment in the Swift Creek system. This places the road infrastructure and surrounding property owners in danger. This task allows for both project related and emergency channel maintenance and stockpiling.

Task Goal Statement:

Dredging and stockpiling sediment, roadway/ditch debris removal, and levee repair.

Task Expected Outcome:

Maintain the safety of the bridges at Goodwin Road and Oat Coles Road and the surrounding properties.

Recipient Task Coordinator: James Lee

Deliverables

Number	Description	Due Date
2.1	If activities for this deliverable are performed as part of a PRPR submission, a status (progress) report including a narrative and photographs of the channel maintenance activities will be included. If no activities for this task/deliverable are taking place when a PRPR is submitted, Recipient will make note of the lack of activity and why in their status (progress) report.	
2.2	If activities for this deliverable are performed as part of a PRPR submission, a status (progress) report including a narrative and photographs of the emergency channel maintenance activities will be included. If no activities for this task/deliverable are taking place when a PRPR is submitted, Recipient will make note of the lack of activity and why in their status (progress) report.	

CHANGES TO SCOPE OF WORK

Task Number: 3 **Task Cost:** \$1,700,000.00

Task Title: Land Acquisition - J009

Task Description:

The majority of the projects identified in the Swift Creek Action Plan are located on private property. As required in the Consent Decree, RECIPIENT will negotiate with the Millman Family LLC. and the Gimmaka Trust to purchase the necessary property for the project. Any remaining land acquisition funding will be used towards the purchase of wetland mitigation property or other property needed for the project. The Gimmaka property will be used for wetland mitigation and shall be referred to as the “Wetland Mitigation Site.”

The majority of the wetland mitigation site is currently utilized as an agricultural field and is being hayed regularly. It is important that the site continue to be maintained in this manner until its conversion to a wetland mitigation site. Whatcom County will perform an appraisal and lease the areas necessary for continued haying. Expenses for the appraisal will be reimbursed through this agreement.

RECIPIENT is responsible to report the total amount of lease revenue generated from the Wetland Mitigation Site on an annual basis through a progress report and agrees to funnel all total lease revenues back into the Swift Creek project. RECIPIENT

may not utilize any lease revenue generated from the Wetland Mitigation Site for any other purpose.

Task Goal Statement:

Purchase private lands necessary for implementation of the Swift Creek Action Plan.

Task Expected Outcome:

Transfer of both the Millman Family LLC property and the Wetland Mitigation Site to the Whatcom County Flood Control Zone District.

Recipient Task Coordinator: James Lee

Deliverables

Number	Description	Due Date
3.1	Formal Millman Property Offer Letter with Appraisal.	03/01/2020
3.2	Millman Family LLC. Purchase and Sale Agreement.	04/30/2020
3.3	Copy of deed for the Millman Family Property.	09/30/2020
3.4	Formal Wetland Mitigation Site Offer Letter with Appraisal.	06/30/2020
3.5	Wetland Mitigation Site Purchase and Sale Agreement.	09/30/2020
3.6	Copy of deed for the Wetland Mitigation Site (aka Gimmaka Property).	02/28/2021

CHANGES TO SCOPE OF WORK

Task Number: 4 **Task Cost:** \$2,769,400.00

Task Title: Construction of Project Elements - J006

Task Description:

RECIPIENT will implement the construction of project elements, as described in task 1, in a phased approach to provide incremental improvements to the urgent sediment management needs within the Swift Creek Site.

RECIPIENT anticipates developing the following construction packages in 2020:

- Swift Creek Channel Dredging – maintenance work (to be funded by RECIPIENT as task 2 funding from Ecology has been expended), and
- Oat Coles North Repository Development – capital work.

RECIPIENT anticipates constructing the Oat Coles North Repository Development construction package in 2020.

Repository development in anticipation of future final repository configuration includes:

- Creation of a wetland mitigation site,

- Moving access roads,
- Planting vegetative buffers,
- Installing access control, and
- Grading stockpiles.

RECIPIENT anticipates constructing the Wetland Mitigation Site Improvements in 2022. This is work on the former Gimmaka property recently acquired by the County and will include demolition of an existing residential structure and barn structure in preparation for the future Wetland Site Mitigation Project. This work will include the following items.

- o Site preparation.
- o Access control & road improvements.
- o Vegetative buffer planting.
- o Asbestos abatement of residential structure.
- o Demolition of the two (2) existing structures on site.
- o Decommissioning of existing septic tank associated with residential structure.

This task will also include minor contracts that facilitate future capital construction. Anticipated contracts are:

- Slash cleanup on the Millman property in the area that was recently logged and where the debris flow berm will be built.
- Forest revegetation on the Millman property in recently cleared areas where no future construction is anticipated.

RECIPIENT anticipates undertaking public outreach efforts to support construction activities. This work will include the following items:

- o Preparation and distribution of mailers and newsletters.
- o Fabrication and installation of warning and information signage on site.

RECIPIENT anticipates completing construction of the 2022 Construction Package. This work will include construction of Sediment Traps Phase 1 and the upper Debris Flow Deflection Berm Phase 1 work and associated site improvement work.

Task Goal Statement:

Begin first phases of project construction.

Task Expected Outcome:

1. Continued Swift Creek Channel Dredging in addition to task 2 expenditures (above initial \$150,000.00 for task 2 to be funded by RECIPIENT under this task).
2. Construction of Oat Coles North Repository Development.
3. Soliciting for contractors and executing additional construction contracts to further this project.
4. Construction of the Wetland Mitigation Site Improvements (Gimmaka Property).
5. Construction of the 2022 Construction Package.

Recipient Task Coordinator: James Lee

Deliverables

Number	Description	Due Date
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4.1	Executed contract for the additional Swift Creek Dredging to be funded by Whatcom County.	08/31/2020
4.2	Executed contract for the Oat Coles North Repository Development.	08/31/2020
4.3	Executed contract for the Wetland Mitigation Site Improvements (Gimmaka Property).	09/30/2022
4.4	Executed contract for the 2022 Construction Package	05/27/2022

CHANGES TO SCOPE OF WORK

Task Number: 5 **Task Cost:** \$50,000.00

Task Title: Design Lower Reach Stabilization - J005

Task Description:

The Lower Reach Stabilization project element includes stabilizing the existing stockpiles/levees along the creek and dredging to lower the channel elevation and increase flow conveyance. RECIPIENT has completed the conceptual design of the lower reach stabilization project.

Task Goal Statement:

Design project elements to maximize the efficient management of Swift Creek sediment.

Task Expected Outcome:

Conceptual design for lower reach stabilization.

Recipient Task Coordinator: James Lee

Deliverables

Number	Description	Due Date
5.1	Conceptual design for lower reach stabilization.	04/30/2020
5.2	Memo summarizing discussions with FEMA.	12/31/2020

CHANGES TO SCOPE OF WORK

Task Number: 6 **Task Cost:** \$35,000.00

Task Title: Cultural Resources Services - J010

Task Description:

If necessary, RECIPIENT will hire an archaeologist to conduct some or all of the following tasks.

- Drafting/finalizing Inadvertent Discovery Plan (IDP).
- Consultation with Washington State Department of Archaeology and Historic Preservation (DAHP).
- Executive Order 21-02/Section 106 consultation.
- Cultural resources literature review.
- Conducting field survey(s).
- Conducting field/on-site monitoring and data recovery.
- Technical assistance preparing for and responding to inadvertent discoveries.

Task Goal Statement:

To provide the necessary cultural resources services to complete the Swift Creek project.

Task Expected Outcome:

To fulfill the requirements of Executive Order 21-02/Section 106 in regards to cultural resources that may be or are confirmed discovered at the Swift Creek Site.

Recipient Task Coordinator: James Lee

Deliverables

Number	Description	Due Date
6.1	Monthly progress reports outlining work performed under this task.	
6.2	Inadvertent Discovery Plan (IDP).	12/31/2021
6.3	Washington State Department of Archaeology and Historic Preservation (DAHP) correspondence of risk in making a discovery on the Site is due to Ecology upon receipt from DAHP.	
6.4	Field survey report.	12/31/2021
6.5	Daily monitoring reports (if necessary), due to Ecology each month to accompany the PRPR.	

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
State Building Construction Account	0 %	\$ 0.00	\$ 8,268,400.00	\$ 8,268,400.00
Total		\$ 0.00	\$ 8,268,400.00	\$ 8,268,400.00

AUTHORIZING SIGNATURES

All other terms and conditions of the original Agreement including any Amendments remain in full force and effect, except as expressly provided by this Amendment.

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

This amendment will be effective 03/18/2022.

IN WITNESS WHEREOF: the parties hereto, having read this Amendment in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Washington State
Department of Ecology

Whatcom county public works

By: _____
Barry Rogowski Date
Toxics Cleanup
Program Manager

By: _____
Jon Hutchings Date
Director

Satpal Singh Sidhu

Whatcom County Executive Date

Christopher Quinn

Senior Deputy Prosecutor – Civil Division Date

Template Approved to Form by
Attorney General's Office