



## Agreement WRPIFA-1517-SnVaPA-00024

### WATER RESOURCES WATERSHED PLAN IMPLEMENTATION AND FLOW ACHIEVEMENT AGREEMENT

BETWEEN THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

This is a binding Agreement entered into by and between the State of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY" and , hereinafter referred to as the "RECIPIENT" to carry out with the provided funds activities described herein.

#### GENERAL INFORMATION

Project Title:	WRIA 7: Establish water bank in the Snoqualmie Valley
Total Cost:	\$613,130.00
Total Eligible Cost:	\$578,980.00
Ecology Share:	\$
Recipient Share:	\$
The Effective Date of this Agreement is:	07/01/2015
The Expiration Date of this Agreement is no later than	12/31/2017
Project Type:	Water Acquisition or Water Bank/Exchange
Development	

#### Project Short Description:

Snoqualmie Valley is located in WRIA 7, just 20 miles from Seattle. The Snoqualmie River is an important resource for fish and farms; yet, instream flows are frequently not met during the irrigation season. A water bank in the Snoqualmie Valley will benefit the stream through conservation, and by moving water rights downstream. The project is supported by a broad range of instream and out of stream interests because of the broad suite of tools it could provide to benefit stream health and ag.

#### Project Long Description:

The Snoqualmie Watershed is becoming an increasingly important resource for both endangered species and food production. ESA-listed Bull Trout, Steelhead and Chinook salmon all spawn and rear in these waters; farmers work some of the most fertile soil in the nation, all within 20 miles of Seattle. The fact that minimum instream flows are frequently not met during the irrigation season (see attachments), is a major concern for all users. Summer temperatures on the tributaries are particularly harmful to salmon. Currently, no mechanism exists to incentivize

farmers to engage in practices that would enhance stream health, such as irrigation efficiency, transferring points of diversion from tributaries to mainstem or downstream, or moving from surface to ground water. There is no local entity to work with landowners to encourage metering or screening, as exists in other ag areas in WA. Nor is there an efficient mechanism to facilitate transactions to address drought emergencies. Development of a water bank is supported by a wide range of stakeholders because of the broad suite of tools it could provide to benefit stream health and ag.

The lower Snoqualmie Valley is home to 28% of King County's zoned agricultural land, yet much of its 14,000 acres do not have water rights. Production has shifted in recent decades from dairy to small-scale, diverse, specialty crops. These crop farmers typically practice very efficient irrigation techniques. The valley needs a robust, voluntary, market-based mechanism for transferring from low-value, low-efficiency irrigation to high-value, high-efficiency irrigation which has benefits to stream flows. The economic impact of increasing water supply for small farmers is immense: because of their diverse crop-type and direct-to-customer sales, it is not uncommon for small farmers to gross \$25,000 to \$35,000 per acre. They typically irrigate so efficiently that they can grow with less than one acre-foot of water per acre. A little goes a long way in the Snoqualmie Valley.

The proposal to set up a water bank would build on the water strategy development that the Snoqualmie Valley Preservation Alliance (SVPA) conducted through a WSDA-funded investigation. Because of our grassroots nature and pent up demand, this work has already yielded a preliminary inventory of market demand and supply. In fact, this summer, we are launching a pilot temporary transfer, a seasonal transfer in which one property owner will lease one third of her annual quantity to three downstream farmers, while the other two thirds will go into the state's trust program. This will be the first of its kind in the history of the Snoqualmie Valley.

The proposed bank will meet a longstanding need to facilitate intra-district seasonal and temporary transfers. To augment that supply, this grant proposal includes acquisition of upstream rights to supplement intra-district activity. This would be used to supplement the water bank and to augment instream flows, benefitting both in-stream and out of stream users.

The Snoqualmie Valley Watershed Improvement District is currently in the process of being formed; formation is estimated to be complete within months. Until that time, the nonprofit SVPA is spearheading the program on behalf of the future District. King Conservation District will be the sponsoring agency in the interim.

Overall Goal:

To augment instream flows by acquiring upstream water rights and reallocating downstream, and to encourage more efficient and ecologically beneficial irrigation practices, including conservation, monitoring, compliance, for the overall goal of simultaneously improving stream health and increasing King County's long term agricultural viability and local food production capacity.

**RECIPIENT INFORMATION**

Organization Name:

Federal Tax ID: 27-3266712  
DUNS Number: 969510077

Mailing Address: PO Box 1148  
Carnation, WA, 98104

Physical Address: 10 W Snoqualmie River Rd SE  
Carnation, Washington, 98104

Organization Email: cynthia@svpa.us

**Contacts**

<b>Project Manager</b>	Cynthia Krass Executive Director  P. O. Box 1148 Carnation, Washington, 98014 Email: cynthia@svpa.us Phone: (425) 922-5725
<b>Billing Contact</b>	Cynthia Krass Executive Director  P. O. Box 1148 Carnation, Washington, 98014 Email: cynthia@svpa.us Phone: (425) 922-5725
<b>Authorized Signatory</b>	Cynthia Krass Executive Director  P. O. Box 1148 Carnation, Washington, 98014 Email: cynthia@svpa.us Phone: (425) 922-5725

## ECOLOGY INFORMATION

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

Physical Address: Water Resources  
300 Desmond Drive  
Lacey, WA 98503

## Contacts

<b>Project Manager</b>	Ria Berns  3190 160th Ave SE Bellevue, Washington, 98008-5452 Email: rber461@ecy.wa.gov Phone: (425) 649-7217
<b>Financial Manager</b>	Rose Bennett  P.O. Box 47600 Olympia, Washington, 98504-7600 Email: rben461@ecy.wa.gov Phone: (360) 407-6027

**BUDGET**

**Funding Distribution**

Funding Title:

Funding Type:

Funding Effective Date:

Funding Source:

Funding Expiration Date:

Recipient Match %:

InKind Interlocal Allowed:

InKind Other Allowed:

Is this Funding Distribution used to match a federal grant?

Effective Interest Rate: % Interest Rate: % Admin Charge: %

Terms: years

Project Start Date: Project Completion Date:

Estimated Initiation of Operation date:

Loan Security:

Final Accrued Interest: \$

Final Loan Amount: \$

Repayment Schedule Number:

	<b>Task Total</b>
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**Total: \$**

**SCOPE OF WORK**

Task Number: 1 **Task Cost:** \$139,600.00

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 interlocal agreement requirements; application for, 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 designees; 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.

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: Cynthia Krass

**Project Administration/Management**

**Deliverables**

Number	Description	Due Date
1.1	Progress Reports	06/30/2016
1.2	Recipient Closeout Report	06/30/2017

**SCOPE OF WORK**

Task Number: 2 **Task Cost:** \$307,600.00

Task Title: Acquire upstream water rights for ag use

Task Description:

The project is divided into Phase One (task 2) and Phase Two (tasks 3-6). Phase One involves acquisition of upstream water rights, which would be used to supplement the activities described in Phase Two (tasks 3-6). These two phases represent independent yet complementary activities which would strengthen each other.

These funds would be used to acquire water rights from upstream, for transfer downstream to improve instream health and for use in the lower valley. This would strengthen the water bank by establishing a self-sustaining revolving fund in which ag users could lease or buy incremental shares of this right, thereby replenishing the funds needed to acquire future supply.

Current trends in this agricultural production area are expected to continue: very small farmers intensely cultivating food for people, which typically involves very small water duty as compared to farmgate sales, so any upstream purchase would go a very long way towards meeting water supply requirements in the lower valley.

The task includes acquiring upstream water rights, consultant contract fees for conducting due diligence, negotiation, and cost reimbursement for permit review and Ecology decision. Additional opportunities will be investigated and evaluated.

Task Goal Statement:

Acquire new, upstream water supply for reallocation downstream to contribute to a water bank. Particular value placed on transactions that will result in migration from sensitive tributaries to the mainstem Snoqualmie.

Task Expected Outcome:

Make 60-150 acre-feet of water available to augment instream flows and for ag use.

Recipient Task Coordinator: Cynthia Krass

**Acquire upstream water rights for ag use**

**Deliverables**

Number	Description	Due Date
2.1	Water right acquired.	05/01/2016
2.2	Authorization of water right place of use on farm downstream secured from Dept of Ecology's NW Regional office.	05/01/2016

**SCOPE OF WORK**

Task Number: 3 **Task Cost:** \$36,120.00

Task Title: Detailed assessment of current conditions

Task Description:

Assess current conditions: ecological, economic, social, historical, legal and hydrological.  
Evaluate current and anticipated future water needs for ag and for instream flow. This will incorporate findings from the hydraulic modeling being done by King County Rivers Section to analyze changes in the flow regime as a result of modifications to Snoqualmie Falls as part of the PSE and 205 projects. (Study due out Q3 2015).  
Update assessment completed by Washington Water Trust in 2013 using the district boundaries.  
Identify concerns, issues and driving forces related to irrigation in the Valley.

Task Goal Statement:

Ensure that the project proceeds with clear, articulated and detailed problem statements that are well understood by ag community, agencies and other stakeholders, including Tulalip and Snoqualmie Tribes, and the Snoqualmie Watershed Forum.

Task Expected Outcome:

Report detailing conclusions that will inform strategy and design for water bank.

Recipient Task Coordinator: Cynthia Krass

**Detailed assessment of current conditions**

**Deliverables**

Number	Description	Due Date
3.1	Feasibility report detailing current conditions with actionable conclusions to guide water bank strategy and design.	12/31/2015

**SCOPE OF WORK**

Task Number: 4 **Task Cost:** \$54,960.00

Task Title: Strategy and Design for Water Bank

Task Description:

Define goals and purpose of the water bank. Identify a suite of suitable transactional tools which are based on a combination of local understanding and also proven water banking practices in Western States. This could include rotational pool for leasing, seasonal transfers, migrating surface to ground water, tributaries to mainstem and possibly leasing for purposes of instream flow augmentation during extreme drought events.

This task includes designing and testing strategies and mechanisms for determining price. Ultimately, the goal is to achieve a transactional funding structure that would make the bank financially sustainable at maturity.

The water bank design task also includes defining roles and responsibilities, establishing administrative processes and institutional design.

Technical and legal review also included.

Task Goal Statement:

This is the main work of the project -- to bring the project from concept to implementation.

Task Expected Outcome:

Bank strategy and design report: At the end of this task, a water bank model will be ready for implementation district-wide, including policy and procedural documents to guide staff, commissioners and district members.

Recipient Task Coordinator: Cynthia Krass

**Strategy and Design for Water Bank**

**Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
4.1	Strategy and design report and document	06/30/2016

## SCOPE OF WORK

Task Number: 5 **Task Cost: \$7,800.00**

Task Title: Stakeholder and community outreach

### Task Description:

Water resources of course are of great interest to other agencies active in our valley, so we will convene a stakeholder group including Snoqualmie and Tulalip tribes, Ecology, nonprofits, Snoqualmie Watershed Forum, King Conservation District, neighboring cities, King County, and the general public to discuss the concept of a water bank as well as the detailed water bank strategy and design.

We have begun discussions with Tulalip Tribes; they are interested in the program because of its potential to benefit the ecology of the stream, but have asked for a little more time to review the details of the proposal before providing formal comment.

We have been in contact with Snoqualmie Tribe staff, and their preliminary response is generally positive because of the potential benefit of increasing compliance and incentivizing conservation and other habitat friendly practices.

The Snoqualmie Watershed Forum members and staff have indicated an interest in the program's potential benefit to instream flows, habitat and stream health.

Outreach under this task will also focus on engaging the agricultural and landowner community within the district. There are approximately 300 unique landowners owning 575 parcels, for a total of 10,000 acres. The valley has been in agricultural production for over 100 years, and many of the families still farm here. Nonetheless, the community is diverse, each landowner has different history, assets, need, interest and bias. This would be the first community-wide water supply effort, so it will take time to gather feedback and build confidence.

Through a WSDA funded grant, we have begun to educate landowners about their water rights, and the need for deeper education has been identified. We will conduct small group and 1:1 workshops with landowners to understand their water rights and responsibilities.

Confidence in the bank among landowners will be paramount to success, so it will be critical to reach out to landowners during the assessment stage (task 3) and the water bank design stage (task 4).

There is great interest among landowners in understanding validity of historical water rights, and history of beneficial use. This will be useful for assessing supply of water available for lease, sale or donation to the trust, as well as a tool for encouraging conservation, compliance with metering and fish-screen requirements.

Technical and legal consultation also included.

### Task Goal Statement:

Confidence in the bank among stakeholders landowners will be paramount to success, so it will be critical to reach out to all during the assessment stage (task 3) and the water bank design stage (task 4).

It is also important to work directly and frequently with other stakeholders and agencies.

### Task Expected Outcome:

Fifteen to twenty informal and 1:1 stakeholder meetings, two-four stakeholder workshops and 15-20 landowner meetings.

Recipient Task Coordinator: Cynthia Krass

**Stakeholder and community outreach**

**Deliverables**

Number	Description	Due Date
5.1	Four workshops and 15-20 landowner meetings	06/30/2017

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**SCOPE OF WORK**

Task Number: 6 **Task Cost:** \$32,900.00

Task Title: Implement water bank

Task Description:

- Begin district-wide rollout.
- Identify potential intra-district transactions
- Agency coordination for development of suitability map for long term seasonal transfers
- Negotiate Agreements, Coordinate transfers through Ecology
- Draft and review water right agreements
- Continue to communicate with stakeholders and ag community

Task Goal Statement:

Initial launch of water bank: implement the program that has been designed through this process.

Task Expected Outcome:

Support new farms, improve stream health, Increase metering compliance, Increase screen compliance.

Recipient Task Coordinator: Cynthia Krass

**Implement water bank**

**Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
6.1	Functioning water bank.	05/01/2017

**Funding Distribution Summary**

**Recipient / Ecology Share**

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
<b>Total</b>		\$	\$	\$

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS**

**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.**

**CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION:**

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department 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.

Federal Funding Accountability And Transparency Act (FFATA) Reporting Requirements:

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

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

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

ECOLOGY will not pay any invoice 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.fsr.gov](http://www.fsr.gov) <http://www.fsr.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

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

**GENERAL TERMS AND CONDITIONS**

**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/1401002.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. ARCHAEOLOGICAL AND CULTURAL RESOURCES**

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological or cultural resources. Activities associated with archaeological and cultural resources are an eligible reimbursable cost subject to approval by ECOLOGY.

RECIPIENT shall:

- a) Immediately cease work and notify ECOLOGY if any archeological or cultural resources are found while conducting work under this Agreement.
- b) Immediately notify the Department of Archaeology and Historic Preservation at (360) 586-3064, in the event historical or cultural artifacts are discovered at a work site.
- c) Comply with Governor Executive Order 05-05, Archaeology and Cultural Resources, for any capital construction projects prior to the start of any work.
- d) Comply with RCW 27.53, Archaeological Sites and Resources, for any work performed under this Agreement, as applicable. National Historic Preservation Act (NHPA) may require the RECIPIENT to obtain a permit pursuant to Chapter 27.53 RCW prior to conducting on-site activity with the potential to impact cultural or historic properties.

#### 4. ASSIGNMENT

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

#### 5. 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.

#### 6. 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 may require approval by ECOLOGY prior to purchase.
- 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 Department of Enterprise Services' Statewide Payee Desk. RECIPIENT must register as a payee by submitting a Statewide Payee Registration form and an IRS W-9 form at the website, <http://www.des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. For any questions about the vendor registration process contact the Statewide Payee Help Desk at (360) 407-8180 or email [payeehelpdesk@des.wa.gov](mailto:payeehelpdesk@des.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 should submit final requests for compensation within thirty (30) days after the expiration date of this Agreement. Failure to comply may result in delayed reimbursement.

#### 7. COMPLIANCE WITH ALL LAWS

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

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all 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.

#### 8. 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.

#### 9. 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.

#### 10. 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 accordance with the decision rendered.

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

#### 11. ENVIRONMENTAL STANDARDS

- a) RECIPIENTS who collect environmental-monitoring data must provide these data to ECOLOGY using the Environmental Information Management System (EIM). To satisfy this requirement these data must be successfully loaded into EIM, see instructions on the EIM website at: <http://www.ecy.wa.gov/eim>.
- b) RECIPIENTS are required to follow ECOLOGY's data standards when Geographic Information System (GIS) data are collected and processed. More information and requirements are available at: <http://www.ecy.wa.gov/services/gis/data/standards/standards.htm>. RECIPIENTS 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.
- c) RECIPIENTS must prepare a Quality Assurance Project Plan (QAPP) when a project involves the collection of environmental measurement data. QAPP is to ensure the consistent application of quality assurance principles to the planning and execution of all activities involved in generating data. RECIPIENTS must follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030). ECOLOGY shall review and approve the QAPP prior to start of work. The size, cost, and complexity of the QAPP should be in proportion to the magnitude of the sampling effort.

#### 12. 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.

#### 13. 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.

#### 14. 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.

#### 15. 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.

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

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

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

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

#### 17. 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"; and (f) the General Terms and Conditions.

#### 18. 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.

#### 19. 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 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 shall submit the Closeout Report within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY. RECIPIENT shall use the ECOLOGY provided closeout report format.

## 20. 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:
  - a. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
  - b. 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.
  - c. 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.

## 21. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

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

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

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

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

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

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

## 22. 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.

## 23. 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.

## 24. 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.

## 25. 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.

## 26. SUSTAINABLE PRACTICES

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

a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, and 100% post-consumer

recycled paper.

For more suggestions visit ECOLOGY's web page: Green Purchasing, <http://www.ecy.wa.gov/programs/swfa/epp>.

## 27. 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. 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.

If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

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

### c) By Mutual Agreement

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

### d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other

materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

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

#### 28. 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.

#### 29. 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.

GENERAL TERMS AND CONDITIONS LAST UPDATED 12/25/2015

DRAFT